A DUNLOP INDIA LIMITED

v.

A.P. RAHNA AND ANR.

(Civil Appeal No. 3911 of 2011)

B MAY 4, 2011

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

Kerela Buildings (Lease and Rent Control) Act, 1965:

C *s.11(4)(v) – Eviction on the ground that tenant ceased to occupy the premises for six months without reasonable cause – Held: If the premises is let out for business or commercial purpose, complete cessation of the business/commercial activity may give rise to a presumption that the tenant had* D *ceased to occupy the premises – The initial burden to show that the tenant has ceased to occupy the premises continuously for 6 months is always on the landlord – Once such evidence is adduced, the burden shifts on the tenant to prove that there was reasonable cause for his having ceased* E *to occupy the tenanted premises for a continuous period of 6 months – In the instant case, the tenant did not produce any evidence to prove physical occupation of the premises or any business transaction – It also failed to produce any evidence to show that there was reasonable cause for non occupation of the suit premises – The tenant was declared a sick* F *company – It had neither pleaded nor any evidence was produced to show that the financial stringency was due to the reasons beyond its control – Therefore, so called financial stringency cannot be construed as reasonable cause within the meaning of s.11(4)(v) – The finding of courts below that* G *the landlord had succeeded in making out a case for eviction u/s.11(4)(v) and there was no reasonable cause for the tenant to have ceased to occupy the suit premises continuously for a period of six months is upheld – Rent and eviction.*

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s.11(4)(v) – Financial difficulty of the tenant whether reasonable cause for non-occupation of the tenanted premises – Held: If the suit premises is let out for industrial or commercial/business purpose and the same is not used for the said purpose continuously for a period of six months, the tenant cannot plead financial crunch as a ground to justify non-occupation of the building unless cogent evidence is produced by him to prove that he could not carry on the industrial or commercial/business activity due to fiscal reasons which were beyond his control – Legal possession of the building by the tenant by itself, is not sufficient for refusing an order of eviction unless the tenant proves that there was reasonable cause for his having ceased to occupy the building – Sick Industrial Companies (Special Provisions) Act, 1985 – s.22(1).

Applicability of s.22(1) of SICA, 1985 to eviction proceedings – Held: Prohibition contained in s.22(1) does not operate as a bar to the maintainability of a petition filed for eviction of tenant – Sick Industrial Companies (Special Provisions) Act, 1985 – s.22(1).

***Res judicata**: Eviction petitions on the ground that tenant ceased to occupy the premises continuously for six months from June 1998 without any reasonable cause – Rent Control Court decreed the suit – Appellate Court set aside the decree – High Court affirmed the same – Meanwhile another set of eviction petitions filed on the ground that tenant ceased to occupy the premises from September 2001 continuously for six months without any reasonable cause – Held: The second set of rent control petitions were not barred by res judicata because the period of non-occupation was different in the two petitions and even though the ground of eviction in the two sets of petitions was similar, the same were based on different causes.*

Words and phrases:

A *Word "occupy" – Connotation of, in the context of s.11(4)(v) of the Kerela Buildings (Lease and Rent Control) Act, 1965.*

Occupy and legal possession – Distinction between.

B **The respondents-landlord filed the eviction petitions against the appellant-tenant on the various grounds under the Kerela Buildings (Lease and Rent Control) Act, 1965 including the ground prescribed under Section 11(4)(v) of the Act alleging that the appellant had ceased** C **to occupy the suit premises from June, 1998. The Rent Control Court held that the appellant had ceased to occupy the suit premises continuously for six months without reasonable cause and, therefore, allowed the petitions and directed the appellant to vacate the** D **premises. The Appellate Court set aside the eviction order passed by the Rent Control Court. The High Court dismissed the revision petitions filed by the respondents.**

During the pendency of the revisions before the High E **Court, the respondents filed fresh eviction petitions under Sections 11(2)(b), 11(3), 11(4)(i), 11(4)(v). This time, the respondents pleaded that the appellant had ceased to occupy the premises since September 2001 without any reasonable cause. The petitions were allowed by the** F **Rent Control Court which was confirmed by the Appellate Court. The High Court, however, allowed the revision petitions filed by the appellant and remitted the matter to the Rent Control Court for fresh adjudication. After remand, the appellant filed written statement and claimed that the petitions filed by the respondents were liable to** G **be dismissed as barred by *res judicata* because earlier eviction petitions filed by them on similar grounds were dismissed by the Appellate Court and the High Court. On merits, the plea of the appellant was that due to financial constraints, the appellant could not run its business**

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effectively and profitably and it was declared sick under the Sick Industrial Companies (Special Provisions) Act, 1985 by BIFR and appeal against the same was pending before the AAIFR. The Rent Control Court, Appellate Court and the High Court concurrently held that the appellant had ceased to occupy the premises since September 2001, and that the pendency of the proceedings under the SICA, 1985 could not be construed as a reasonable cause for non-occupation of the premises. The instant appeals were filed challenging the order of the High Court.

Dismissing the appeals, the Court

HELD: 1.1. The word "occupy" used in Section 11(4)(v) of the Kerela Buildings (Lease and Rent Control) Act, 1965 is not synonymous with legal possession in technical sense. It means actual possession of the tenanted building or use thereof for the purpose for which it is let out. If the building is let out for residential purpose and the tenant is shown to be continuously absent from the building for six months, the Court may presume that he has ceased to occupy the building or abandoned it. If the building is let out for business or commercial purpose, complete cessation of the business/ commercial activity may give rise to a presumption that the tenant has ceased to occupy the premises. In either case, legal possession of the building by the tenant will, by itself, be not sufficient for refusing an order of eviction unless the tenant proves that there was reasonable cause for his having ceased to occupy the building. [Para 17] [1107-D-F]

Paulina Joseph v. Idukki District Wholesale Co-operative ConsumerStores Ltd. **(2006) 1 KLT 603 – approved.**

1.2. The initial burden to show that the tenant has ceased to occupy the building continuously for 6 months

A **is always on the landlord. He has to adduce tangible evidence to prove the fact that as on the date of filing the petition, the tenant was not occupying the building continuously for 6 months. Once such evidence is adduced, the burden shifts on the tenant to prove that**
B **there was reasonable cause for his having ceased to occupy the tenanted premises for a continuous period of 6 months. No strait-jacket formula can be evolved for determining as to what is the reasonable cause and each case is required to be decided keeping in view the nature**
C **of the lease, the purpose for which the premises are let out and the evidence of the parties. If the building, as defined in Section 2(1) is let out for industrial or commercial/business purpose and the same is not used for the said purpose continuously for a period of six**
D **months, the tenant cannot plead financial crunch as a ground to justify non occupation of the building unless cogent evidence is produced by him to prove that he could not carry on the industrial or commercial/business activity due to fiscal reasons which were beyond his control. If the tenant does not use the building for the**
E **purpose for which it is let out, he cannot be said to be occupying the building merely because he has put some furniture or articles or machinery under his lock and key. [Para 18] [1107-G-H; 1108-A-D]**

F *Ram Dass v. Davinder* **(2004) 3 SCC 684: 2004 (3) SCR 518 – relied on.**

Brown v. Brash **(1948) 1 All. E.R. 922 – referred to.**

Achut Pandurang Kulkarni v. Sadashiv Ganesh
G *Phulambrikarm***AIR 1973 Bom. 210;** *Ananthasubramania Iyer v. Sarada Amma* **1978 KLT 338;** *Mathai Antony v. Abraham* **(2004) 3 KLT 169;** *Kurian Thomas v. Sreedharan Menon* **(2004) 3 KLT 326;** *Simon & Ors. v. Rappai* **(2008) 2 KLJ 488 – approved.**

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1.3. In this case, the Rent Control Court, after detailed scrutiny of the pleadings and the evidence of the parties recorded a finding that while the landowners (respondents) succeeded in proving that the tenant (appellant) had ceased to occupy the suit premises for a period exceeding six months, the latter could not prove that it was occupying the premises or that non occupation thereof was for a reasonable cause. The Rent Control Court took cognizance of the appellant's plea that it was carrying on business activities from the suit premises with reduced staff strength but discarded the same by observing that the relevant records like the attendance register, muster roll, wage register had not been produced and no evidence was adduced to prove payment of electricity bills and sale and purchase of goods. The High Court also analysed the pleadings and evidence of the parties and concurred with the findings recorded by the Rent Control Court. As against this, the appellant did not produce any evidence to prove physical occupation of the premises or any business transaction. It also failed to produce any evidence to show that there was reasonable cause for non occupation of the suit premises. [Para 28] [1119-D-G]

2. The arguments that the second set of rent control petitions should have been dismissed as barred by *res judicata* because the issue raised therein was directly and substantially similar to the one raised in the first set of rent control petitions was not tenable for the reason that while in the first set of petitions, the respondents had sought eviction on the ground that the appellant had ceased to occupy the premises from June, 1998, in the second set of petitions, the period of non occupation commenced from September, 2001 and continued till the filing of the eviction petitions. That apart, the evidence produced in the first set of petitions was not found

A acceptable by the Appellate Authority because till 2.8.1999, the premises were found kept open and alive for operation. The Appellate Authority also found that in spite of extreme financial crisis, the management had kept the business premises open for operation till 1999. In the B second round, the appellant did not adduce any evidence worth the name to show that the premises were kept open or used from September, 2001 onwards. The Rent Controller took cognizance of the notice fixed on the front shutter of the building on 1.10.2001 that the C company is a sick industrial company under the 1985 Act and operation has been suspended with effect from 1.10.2001; that no activity had been done in the premises with effect from 1.10.2001 and no evidence was produced to show attendance of the staff, payment of salary to the D employees, payment of electricity bills from September, 2001 or that any commercial transaction was done from the suit premises. It is, thus, evident that even though the ground of eviction in the two sets of petitions was similar, the same were based on different causes. Therefore, the E evidence produced by the parties in the second round was rightly treated as sufficient by the Rent Control Court and the Appellate Authority for recording a finding that the appellant had ceased to occupy the suit premises continuously for six months without any reasonable cause. [Para 29] [1119-H; 1120-A-G]

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3.1. The appellant was declared a sick industrial company on 22.6.1998 and the Operating Agency was appointed under Section 17(3) of the 1985 Act to examine the viability of the company. After several hearings, the G BIFR passed order directing the appellant to sort out all pending issues with secured creditors, Central/State Governments, TIIC, KSIIDC and TNSEP and submit a revised comprehensive and fully tied up rehabilitation scheme to the Operating Agency. For the next about five

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years, no tangible step was shown to have taken by the appellant for revival of its business activities. In August and November, 2006, the appellant filed applications before the BIFR seeking its permission for issue of two crore equity shares of Rs. 10/- each fully paid up at par to the company's promoters and/or its associates on private placement basis against full consideration to be utilized for rehabilitation. Thereupon, the BIFR passed order dated 16.3.2007. Three appeals were filed against that order. The AAIFR dismissed the appeals and held that in view of the various orders, the net worth of the appellant has turned positive and it can no longer be treated as sick industrial company. Before the Rent Control Court, the appellant had neither pleaded nor any evidence was produced to show that financial stringency was due to the reasons beyond its control and on that account, the suit premises could not be used from September, 2001 onwards for the purpose specified in the lease deeds. Therefore, the so called financial stringency cannot be construed as reasonable cause within the meaning of Section 11(4)(v). [Para 32] [1124-E-G; 1125-A-E]

3.2. The order passed by the AAIFR has no bearing on the decision of the issues raised by the respondents in the context of Section 11(4)(v) of the 1965 Act because what was required to be considered by the Rent Control Court was whether as on the date of filing the petition the appellant had ceased to occupy the premises continuously for a period of six months without reasonable cause. The improvement in the financial health of the appellant after many years cannot impinge upon the concurrent finding recorded by the Rent Control Court and the Appellate Authority that the respondents had succeeded in making out a case for eviction under Section 11(4)(v) and that there was no reasonable cause

A **for the appellant to have ceased to occupy the suit premises continuously for a period of six months. [Para 33] [1125-E-H]**

Shree Chamundi Mopeds Ltd. v. Church of South India TrustAssociation **(1992) 3 SCC 1: 1991 (1) Suppl SCR 46 ;** B *GujaratSteel Tube Co. Ltd. v. Virchandbhai B. Shah* **(1999) 8 SCC 11: 1999(3) Suppl. SCR 624 ;** *Carona Ltd. v. Parvathy Swaminathan and Sons* **(2007) 8 SCC 559: 2007 (10) SCR 656 – referred to.**

C **Case Law Reference:**

(2006) 1 KLT 603	**approved**	**Para 13, 26**
2004 (3) SCR 518	**relied on**	**Para 20**
D **(1948) 1 All. E.R. 922**	**approved**	**Para 21**
AIR 1973 Bom. 210	**approved**	**Para 22**
(2004) 3 KLT 326	**approved**	**Para 25**
1978 KLT 338	**approved**	**Para 23**
E **(2004) 3 KLT 169**	**approved**	**Para 24**
(2008) 2 KLJ 488	**referred to**	**Para 27**
1991 (1) Suppl. SCR 46	**referred to**	**Para 30**
F **1999 (3) Suppl. SCR 624**	**referred to**	**Para 31**
2007 (10) SCR 656	**referred to**	**Para 32**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3911 of 2011.

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From the Judgment & Order dated 27.7.2009 of the High Court of Kerala at Ernakulam in RCR No. 134 of 2009.

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WITH

C.A. 3912 of 2011.

R.F. Nariman, C. Mukund, Ashok Jain, Pankaj Jain, Bijoy Kumar Jain for the Appellant.

S. Gopakumaran Nair, C.A. Sundaran, N.M. Mohamed Ayub, K.N. Madhusoodhanan (for T.G. Narayanan Nair), Romy Chacko, Jasaswani Mishra for the Respondents.

The Judgment of the Court was delivered by

G.S. SINGHVI, J. 1. Leave granted.

2. These appeals are directed against judgment dated 27.7.2009 of the Division Bench of the Kerala High Court whereby the revisions filed by the appellant against the order passed by District Judge, Ernakulam (hereinafter referred to as, "the Appellate Authority") under Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short, "the 1965 Act") were dismissed and the direction given by IIIrd Additional Munsiff and Rent Control Court, Ernakulam (for short, "the Rent Control Court") for vacating the suit premises was confirmed.

3. A.B. Abdul Khader (predecessor of the respondents) leased out the suit premises comprised in Survey Nos.341/1 and 2 situated at Ernakulam village to the appellant for its godown and office for a period of 10 years with effect from 1.12.1966. After 2 years and about 2 months, the parties executed two lease deeds dated 3.2.1969, which were duly registered. For the sake of reference, the relevant portions of the lease deed executed in respect of Survey No.341/1 measuring 83 cents are extracted below:

> "THIS DEED OF LEASE made on the Third day of February One Thousand Nine Hundred and Sixty Nine corresponding to the Fourteenth day of Magha One

A thousand Eight Hundred and Ninety One of the Sakha Era BETWEEN A.B. ABDUL KHADER son of Alumkaparambli Bava, Indian National, Businessman, aged Forty five years, residing at Alumkaparampil, Chittor Road, Ernakulam in the City of Cochin in Ernakulam B District in Kerala State (hereinafter called "the Lessor" which expression shall unless excluded by or repugnant to the context include his heirs, executors, administrators and assigns) of the One Part AND DUNLOP INDIA LIMITED, formerly THE DUNLOP RUBBER COMPANY (INDIA) C LIMITED, a Company duly incorporated in India having its Registered office at Dunlop House, 57-B Free School Street, Calcutta, herein represented by its duly constituted attorney G.S. Krishna son of Govindarajapuram Subramaniam, Indian National, Business, Executive, aged D Forty four years, residing at 26, Dr. Hedge Road, Nangumbakkam in the City of Madras (hereinafter called "the Lessee" which expression shall unless excluded by or repugnant to the context include its successors and assigns) of the Other Part.

E WITNESSES as follows:-

1. In consideration of the rent hereinafter reserved and of the covenants on the part of the Lessee hereinafter stipulated, the Lessor hereby demises unto the Lessee all F those pieces of parcels of land situate in Ernakulam Town comprised in Survey Number 341 Sub Division 1 (part) admeasuring 83 cents equivalent to 33 acres 58.844 sq. meteres together with the buildings and structures erected thereon more particularly described in the Schedule G hereunder written together with all the fixtures, fittings, pathways, passages, rights and privileges appurtenant thereto TO HOLD the same unto the Lessee for a term of ten years from 1st December 1966 paying therefore during the continuance of the lease a monthly rent of Rs.4,000/- (Rupees Four Thousand) only on the days and in the H

manner and subject as hereunder provided.

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) The Lessee shall permit the Lessor or his authorised agents with or without workmen during business hours to enter upon the demised premises for the purpose of viewing the condition thereof and from time to time for the purpose of effecting the necessary repairs and maintenance as hereunder provided.

(d) The Lessee shall deliver up the said demised premises on termination of the lease in as good order and condition as they were in at the time when the lease hereby created commenced subject to determination due to normal wear and tear and defects, if any, for want of proper repair and maintenance which is the liability of the lessor as hereinafter mentioned.

2. The Lessor hereby covenants with the Lessee as follows:-

(a) Subject to the due observance and performance of the terms, covenants and conditions by the Lessee herein on their part to be observed and performed the lessee shall have the right during the continuance of the lease to use the premises without interruption by the Lessor or any person claiming under or in trust for him.

(b) xxx xxx xxx

(c) xxx xxx xxx

3. Provided always and it is mutually agreed by and between the parties hereto as follows:

(a) Notwithstanding the period of lease herein before

provided the Lessee shall have the option to terminate the lease by giving three months notice in writing to the Lessor at any time during the continuance of this Lease.

(b) The lessees shall have the option to renew the lease for a further period of ten years at the same rent and other terms, covenants and conditions as existed during the initial period of ten years save and except the Clause for renewal provided the Lessee gives notice in writing to the Lessor three months before the expiry of the initial period of ten years of the Lessee's intention to exercise the option.

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) xxx xxx xxx

(f) xxx xxx xxx

(g) The Lessee shall be at liberty at its own costs to construct at any time and at any place of the demised premises counters, strong rooms and safe deposit vaults and to fix, erect, bring in or upon or fasten to the demised premises and to alter and rearrange from time to time, furniture fixtures and fittings which the Lessee may require for its business such as partition screens, counters, platforms, shelves, cases, cupboards, heavy safes, cabinets, lockers, strong room doors, vault doors, cabinets of any size and weight, steel collapsible gates, ventilators, grills, shutters, sunblinds, gas and electric fittings, stoves, light, fans, air conditioners, sinks and other equipment, fittings, articles and things all of which the Lessee shall be at liberty to remove at any time at its pleasure, before the expiration or sooner determination of the tenancy without objection on the part of the Lessor and the Lessee shall make good the damage, if any, which may be thereby

caused to the demised premises." A

4.The appellant exercised the option for extension of the term of lease but did not vacate the premises at the end of extended period. After the death of A.B. Abdul Khader, respondent No. 1 became owner of the property comprised in B Survey No. 341/1 while respondent No. 2 became owner of the property comprised in Survey No.341/2. They filed Rent Control Petition Nos.45 and 146 of 1999 for eviction of the appellant on the grounds specified in Section 11(2)(b), 11(3), 11(4)(i) and 11(4)(v) of the 1965 Act. By an order dated 11.4.2001, the C Rent Control Court allowed both the petitions and directed the appellant to vacate the premises. The appeals preferred against that order were allowed by the Appellate Authority and the order of eviction was set aside. While reversing the finding recorded by the Rent Control Court that the appellant had D ceased to occupy the suit premises continuously for six months without reasonable cause, the Appellate Authority observed as under:

"I find merit in the submission of the learned counsel for the appellant that suspension of business activity on E account of extreme financial crunch, at the same time keeping the unit open and alive for operation cannot amount to cessation of occupation without valid reasons. Ext. C1(a) notice conveys eloquently that there was no intention to abandon possession and the tenant did F continue occupation. Business activity was not being run on account of peculiar circumstances. Till 2.8.1999 the premises were kept open and alive for operation. It is important to note that the employees of the tenant were not directed not to come to the establishment on any day prior F to 2.8.1999. I am of the opinion that Ext.C1(a) read as a whole can never convey to a prudent mind that there was cessation of occupation. Physical inability to carry on business activity on account of financial difficulties and the closing down of the production in the factories cannot ipso H

A fact, in the facts and circumstances of the case, lead to the conclusion that the management of the tenant (which had kept the unit open and alive for operation till 2.8.1999) had ceased to occupy the building till 2.8.1999. Cessation to occupy had a physical ingredient as also a mental B ingredient. Reading of Ext. C1(a) as a whole, I am unable to agree that there was such objectionable cessation of occupation. Though it indicates that there was no business activity and the establishment remained defunct and idle, there was still the intention to occupy and the hope that it C will be possible to resume even business activity. The inevitable conclusion flowing from Ext.C1(a) is that the employees were continuing to attend the offices in the petition schedule building till 2.8.1999. At any rate, it would be impossible to come to a conclusion that there was D cessation of occupation prior to 2.8.1999 though I would readily agree that there was no business activity in the petition schedule building for some period of time even prior to 2.8.1999. I am in these circumstances of the opinion that Ext. C1(a), the trump card on which the E landlords place reliance cannot deliver any crucial advantage or assistance to the landlords in their attempt to establish cessation of occupation."

The Appellate Authority also referred to the Commissioner's report but refused to rely upon the same by F recording the following reasons:

"The inspection by the commissioner was on 10th September and monsoon season had preceded such inspection. Some wild growth as indicated in Ext. C1 G (assuming that Ext. C1 can be legally taken cognizance of), is not, according to me, sufficient to establish cessation of occupation. In the light of the very specific statement in Ext. C1(a) that inspite of the extreme financial crunch, the management had till 2.8.1999 kept the unit open and alive for operation and that Ext.C1(a) notice was being issued H

on 2.8.1999 as management was convinced that there is no prospect of running the company immediately must definitely convey to the court that there was no cessation of occupation prior to 2.8.1999 at any rate. The wild growth perceived by the commissioner and reported in Ext. C1 cannot in these circumstances tilt the scales in favour of the landlords. I am in these circumstances of the opinion that the learned Rent Control Court erred in coming to the conclusion that the landlords have succeeded in proving cessation of occupation for a period of 6 months immediately prior to the filing of the petitions without reasonable cause. I am unable to concur with the conclusion of the learned Rent Control Court on this aspect. I am in these circumstances satisfied that the challenge raised on this ground also deserves to be upheld."

5. Civil Revision Petition Nos.579 and 580 of 2002 filed by the respondents were dismissed by the Division Bench of the High Court vide judgement dated 18.12.2006. The High Court agreed with the Appellate Authority that the evidence produced by the landlord was not sufficient for recording a finding that the tenant had ceased to occupy the premises for a continuous period of six months without reasonable cause.

6. During the pendency of the revisions before the High Court, the respondents filed fresh rent control petitions which came to be registered as RCP Nos.109 of 2002 and 38 of 2003 for eviction of the appellant under Section 11(2)(b), 11(3), 11(4)(i) and 11(4)(v). This time, the respondents pleaded that the appellant herein has ceased to occupy the premises since September, 2001 without any reasonable cause. Both the petitions were allowed by the Rent Control Court vide order dated 11.2.2004, which was confirmed by the Appellate Authority by dismissing the appeals preferred by the appellant. However, Civil Revision Petition No.368 of 2005 filed by the appellant was allowed by the High Court vide order dated

A 18.12.2006 and the matter was remitted to the Rent Control Court for fresh adjudication of the rent control petitions after giving opportunity to the appellant to file counter statement and adduce evidence.

B 7. After remand, the appellant filed written statement and claimed that the petitions filed by the respondents were liable to be dismissed as barred by *res judicata* because Rent Control Petition Nos. 45 and 146 of 1999 filed by them on similar grounds were dismissed by the Appellate Authority and the High Court. On merits, it was pleaded that due to financial C constraints, the appellant could not run its business effectively and profitably and it was declared sick under the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, "the 1985 Act") by the Board for Industrial and Financial Reconstruction (BIFR) in Case No.14 of 1998 and the appeal filed against the D order of BIFR was pending before Appellate Authority for Industrial and Financial Reconstruction (AAIFR). It was also averred that due to financial crisis, the staff strength was reduced to bare minimum but there was no cessation of occupation of the suit premises.

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8. On the pleadings of the parties, the Rent Control Court framed the following issues:

"(1) Whether the petition is barred by resjudicata and also u/s.15 of the Act?

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(2) Whether RW1 is having any authority to represent the respondent?

(3) Whether there is a commercial lease between the G parties as alleged?

(4) Whether the Petitioners are entitled for an order of eviction u/s.11(2)(b) of the Act?

(5) Whether the Respondent ceased to occupy the

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petition schedule buildings continuously for six months? A

(6) Whether there is any reasonable cause for the cessation of occupation if any?

(7) Whether the Petitioners are entitled for an order of eviction u/s 11(4)(v) of the Act? B

(8) Relief and costs?"

9. After considering the pleadings and evidence of the parties, the Rent Control Court held that the petitions filed by the respondents were not barred by *res judicata* and Section 15 of the 1965 Act cannot be invoked for denying relief to them because two sets of rent control petitions were based on different causes. However, the respondents' plea that the appellant was in arrears of rent was rejected on the ground that no evidence had been produced by them to prove the same. The Rent Control Court then considered the question whether the appellant had ceased to occupy the suit premises since September, 2001 without reasonable cause and answered the same in affirmative. The Rent Control Court referred to the evidence produced by the parties including the reports Exhibits C1 and C2 produced by Advocate Commissioners PW2 and PW3 and recorded the following observations: C D E

"(i) From Ext.C1 report filed by PW2 it can be seen that the two entrance gates on the northern side of the petition schedule property in O.S. 109/02 is found rusted and closed. The boundary fencing on the northern side is found damaged. F

(ii) The land surrounding the side petition schedule building is fully covered with grass and shrubs and PW2 the commission even found it difficult to walk through the premises. The sheds in the said property were seen in dilapidated condition and the commissioner could not go G H

near to the shed as it was covered with tall bushes and shrubs.

(iii) The eastern wall of the petition scheduled building in RCP 109/02 had to rusted shutters which was seen closed.

(iv) It is also reported that the commissioner could not enter into the buildings as it was closed. On looking through the glass window PW2 could see some furniture inside the building which are full of dust, damaged and unfit for use. Though the service line of electric connection to the petition schedule building was there commissioner verified and found that the electric connection being disconnected.

(v) PW3 is the advocate commissioner who had inspected the petition schedule building RCP No.38/03 and filed Ext.C2 report it can be seen that the petition schedule building in RCP 38/2003 was lying closed at the time of both the inspections made by PW3. The commissioner has also noted the notice fixed in the front shutter of the petition schedule building by Sri A.K. Agarwal Company Secretary on 1.10.2001 stating that the Respondent company is a sick industrial company under the Sick Industrial Companies (Special Provisions) Act and operations at Kochi has been suspended w.e.f. 1.10.2001 onwards. It is also mentioned in ex.C2 that the front shutters and the shutters provided at the eastern side are full of dust and the same were rusted due to non use, and the entire compound around the petition schedule building are full of bush and the bushes are seen at some places grown on to the petition schedule building and some other places grown to the roof of petition schedule building.

(vi) The commissioner has also noted five calendars for year 2001 seen inside the rooms in the petition schedule building. PW3 also has noted that the switchboard provided at the eastern and western wall of the petition schedule building were not having electricity supply. It is

also noted that the four iron gates provided for the compound were covered with dust and rust due to non use.

(vii) Even though the condition of the petition schedule buildings happened to be as noted by PW2 and PW3 to a limited extent to non-maintenance and repairs it cannot be found that it happened only due to non-maintenance and repairs.

(viii) The calendars for the year 2001 noted by PW3 inside the petition schedule building in RCP No.38/03 and the notice dated 01.10.2001 affixed at the front shutter of the same building clearly shows that both the petition schedule buildings were not been opening from 1.10.2001 towards till the inspection date. Since the petition schedule buildings were not opened since September, 2001 the inability of the Petitioner to carry out the repairs and maintenance also is to be looked into."

(emphasis supplied)

10. The Rent Control Court then considered the plea of the appellant that on account of pendency of the proceedings under the 1985 Act, the staff strength was reduced to bare minimum but discarded the same on the ground that staff attendance register, muster roll, wages register maintained in the office as also the document showing purchase and sale of the goods, payment of electricity charges etc. had not been produced showing payment of the dues since September, 2001 and observed:

"The specific case of RW1 is that due to the proceedings under the provisions of Sick Industrial Companies (Special Provisions) Act, the staff strength of the Respondent company was reduced to bare minimum at the petition schedule buildings. According to RW1 even though there were such proceedings respondent was functioning in the schedule buildings with minimum staff. *During cross*

A *examination RW1 admitted that the staff attendance register, muster roll wages register etc are maintaining in the petition schedule buildings. She also admitted that they are maintaining stock register in the petition schedule buildings. But none of there documents are* B *produced before court. According to RW1 she omitted to produce these documents.* Had these documents for the relevant period come in illegible/- the details regarding the strength of the staff and the business being carried on is the petition schedule buildings would have been revealed. C *She also admitted that documents are maintained regarding the purchase and sale done in the petition schedule buildings but those documents are also not produced before court. ..... The specific case of PW1 is that the electric connection was disconnected* D *more than 1½ years before. But according to RW1 the electricity connection was disconnected only two months prior to her examination before court.* If there was actually electric supply to the petition schedule buildings and the Respondents had paid the electricity charge definitely RW1 could have produced the electricity bill pertaining to the E petition schedule buildings. *Though RW1 stated that she can produce the electricity bill from 2001 September onwards pertaining to the petition schedule buildings neither of them has been produced till now. From all these it can be seen that the Respondents were not occupying* F *the petition schedule buildings from 2001 September onwards, and they had ceased to occupy the petition schedule buildings continuously for more than six months.*

G According to RW1 respondent could not conduct the business in full swing in the petition schedule building due to BIFR and AAIFR proceedings. Ext.B9 is the order of AAIFR, New Delhi in appeal No.1/02 wherein the Respondent is the appellant. On perusal of Ext.B9 it can H be seen that several reliefs and concessions were given

to the Respondent company by the AAIFR. But as per ext.B9 no restriction is seen imposed on the work of respondent company all together or particularly in the schedule buildings at Cochin. ..... *As already observed respondents could not produce any of the mandatory prescribed registers such as stock register, day book, muster roll, attendance register wages register etc. to show that any business were being carried out in the petition schedule buildings even with minimum staff. Even it was specifically put to RW1 that due to the proceedings before BIFR and AAIFR, whether the board of directors was resolved to reduce the staff strength she answered that the staff were told not to come and they have agreed for the same. It is something unbelievable. RW1 has produced Ext.B13 series to B25 series invoices to show that they are conducting business to the scheduled property. But on going through ext.B13 series to ext.B25 series it cannot be found that those transactions were made through Kaloor Office where in the petition schedule building situates as these invoices were given to the Chennai office of respondent.* The learned counsel for the Petitioner has pointed out that in ext.B11 series and B12 series after the Chennai address of the Respondent company it is seen typed in another machine in Ext.B11 series and written in another handwriting in Ext.B12 series, "through Kaloor Office Cochin". The same and address of the purchasing dealer in all these documents are the Chennai address of the Respondent company. Ext.B11 series to ext.B25 series cannot be relied on to show that business was being conducted in scheduled buildings. *It is also to be noted that ExtB11 series to B25 series are of the year 2006 and these do not in any help the Respondents to show that any business was being conducted in the petition schedule building in between September, 2001 and filing of these RCPs. It is also admitted by RW1 that copy of invoice are to be given at the check post. But ext.B11 to*

A *B25 series produced are having 4 to 6 copies of each invoices. If while passing the sales tax check post copy of invoices were given as stated there would not have been such number of copies at in ext. B11 to B25 series. Therefore the genuineness of these documents are also*
B *doubtful.* On a perusal of the entire evidence it can be seen that the Respondent has failed to prove that the cessation of occupation of petition schedule buildings for the continuous period of more than six months were due to the restrictions imposed by BIFR and AAIFR. Hence
C these points are found in favour of the Petitioners."

(emphasis supplied)

11. On the basis of above analysis of the pleadings and evidence, the Rent Control Court concluded that the appellant
D had ceased to occupy the suit premises since September, 2001 without any reasonable cause and, accordingly, directed it to vacate the premises.

12. The Appellate Authority independently examined the
E pleadings and evidence of the parties and reiterated the finding recorded by the Rent Control Court that the appellant had ceased to occupy the premises since September, 2001 and that the pendency of the proceedings under the 1985 Act cannot be construed as a reasonable cause for non occupation
F of the premises.

13. The Division Bench of the High Court, though not required in law to do so, minutely scrutinized the evidence produced by the parties and concurred with the Rent Control Court and the Appellate Authority that the respondents had
G succeeded in making out a case for eviction of the appellant under Section 11(4)(v). The High Court referred to the expression "reasonable cause" used in Section 11(4)(v), the judgment in *Paulina Joseph v. Idukki District Wholesale Co-operative Consumer Stores Ltd.* (2006) 1 KLT 603 and
H observed:

"Interpreting the scope and meaning of "reasonable cause" provided in section 11(4)(v) of the Act a Division Bench of this Court in Paulina Joseph vs Idukki District Wholesale Co-operative Consumer Stores Ltd., (2006 (1) KLT 603) held that if there is a plausible explanation to the question why the business was not run in the premises continuously, it may be a relevant fact in considering whether there was reasonable cause for cessation of occupation. But it is held that existence of such reasonable cause depends on the facts and circumstances of each cases. It is further held that the occupation of the building depends on the purpose for which it is let and the purpose for which it is used. The nature of the business and the requirement of the physical presence or otherwise of the tenant in the building for the conduct of the business is a relevant fact. But in this case on considering the facts the requirement of physical presence is highly essential to observe that the tenant company is continuing in occupation, because the tenanted premises is occupied as their office and godown. The burden to prove that there is reasonable cause for non occupation is solely on the tenant when it is proved that there is cessation of physical occupation.

The question to be examined is whether on the facts of this case the tenant was successful in proving any such reasonable cause. The rent control petitions were filed during the years 2002 and 2003. It has come out in evidence that the tenant ceased to occupy the premises since last so many years from the date of filing of the rent control petition itself. Further it has come out in evidence that since the lapse of more than six years from filing of rent control petitions, still as on today, it is conceded that the company could not resume business of physical occupation at the tenanted premises. Therefore we have no hesitation to hold that the tenant was not successful in establishing any genuine intention or hope of reviving the physical occupation not it was successful it establishing

A any reasonable cause for the cessation of occupation."

14. Shri R.F. Nariman, learned senior counsel for the appellant argued that the impugned judgment and the orders passed by the Rent Control Court and the Appellate Authority are liable to be set aside because the Rent Control Petition Nos. 109 of 2002 and 38 of 2003 were barred by *res judicata*. Learned senior counsel submitted that the issue whether the appellant had ceased to occupy the building continuously for six months without reasonable cause had already been decided against the respondents in the proceedings arising out of Rent Control Petition Nos.45 and 146 of 1999 and, as such, the second set of petitions filed on the same cause were not maintainable. He further submitted that even though two sets of rent control petitions related to different periods, the evidence produced by the respondents to prove their case with reference to Section 11(4)(v) was substantially the same and the Rent Control Court committed serious error by passing an order of eviction ignoring the contrary finding recorded by the Appellate Authority and the High Court in the earlier round of litigation and this error was repeated by the Appellate Authority and the High Court while dismissing the appeals and revisions filed by the appellant. Shri Nariman argued that the finding recorded by the Rent Control Court and the Appellate Authority that the appellant had ceased to occupy the suit premises continuously for six months without reasonable cause was based on misreading of evidence and the High Court committed serious error by approving the same ignoring the finding recorded in the earlier round of litigation, which had become final. Learned senior counsel emphasized that due to pendency of proceedings under the 1985 Act, the appellant could not effectively use the suit premises, but that did not justify a conclusion that it had ceased to occupy the premises. He then submitted that the pendency of case under the 1985 Act was, by itself, sufficient for recording a finding that there was reasonable cause for the appellant to have ceased to occupy the suit premises. Shri Nariman invited our attention to order dated 3.3.2008 passed

by AAIFR vide which the appeals filed against the order of the BIFR were dismissed and argued that the impugned order may be set aside because the appellant's financial condition has considerably improved.

15. S/Shri S. Gopakumaran Nair and C.A. Sundaram, learned senior counsels for the respondents argued that the concurrent findings recorded by the Rent Control Court and the Appellate Authority on issue Nos.5, 6 and 7, which have been approved by the High Court, do not suffer from any legal infirmity warranting interference by this Court. Learned senior counsel candidly admitted that the order of eviction passed in the earlier round of litigation was reversed by the Appellate Authority and the revisions filed by the respondents were dismissed by the High Court, but argued that the findings recorded in those proceedings could not be treated as *res judicata* qua the petitions filed in 2002/2003 because the same were based on a different cause. Learned counsel pointed out that in the first round, the respondents had sought eviction under Section 11(4)(v) by alleging that the appellant had ceased to occupy the suit premises from June, 1998 and in the second set of petitions, eviction was sought on the ground that the appellant had ceased to occupy the premises from September, 2001. Learned counsel pointed out that while the respondents had succeeded in proving that the suit premises were vacant since September, 2001, the appellant could not produce any tangible evidence to prove occupation of the premises or that there was reasonable cause for its having ceased to occupy the suit premises. They emphasized that the Rent Control Court and the Appellate Authority had rightly discarded the evidence of RW1 on the issue of continued occupation of the suit premises because she failed to produce the staff attendance register, muster rolls, wage registers, electricity bills and payment thereof as also documents showing purchase and sale of the goods from the suit premises.

16. We have considered the respective submissions.

A Section 11(1) contains a non obstante clause and declares that notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of the Act. The first proviso to Section 11(1) carves
B out an exception and lays down that nothing contained in this section shall apply to a tenant whose landlord is the State Government or the Central Government or other public authority notified under this Act. Second proviso to Section 11(1) carves out another exception and lays down where the tenant denies
C the title of the landlord or claims right of permanent tenancy, the Rent Control Court shall decide whether the denial or claim is bonafide and if it records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and such court can pass a decree for eviction on any of the
D grounds enumerated in Section 11 even though the Court may find that such denial does not involve forfeiture of the lease or that the claim is unfounded. Section 11(4)(v) of the Act which has bearing on this case reads as under:

> "(1) to (3) xxx xxx xxx
>
E
>
> (4) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building,-
>
> (i) to (iv) xxx xxx xxx
>
F
>
> (v) if the tenant ceases to occupy the building continuously for six months without reasonable cause."

The definition of the term "building" contained in Section
G 2(1) is as under:

> "(1). "building" means any building or hut or part of a building or hut, let or to be let separately for residential or non residential purpose and includes–
>
H (a) the garden grounds well's tanks and

structures if any, appurtenant to such building, hut, or part of such building or hut, and let or to be let along with such building or hut;

(b) any furniture supplied by the landlord for use in such building or hut or part of a building or hut

(c) any fittings or machinery belonging to the landlord, affixed to or installed in such building or part of such building, and intended to be used by the tenant for or in connection with the purpose for which such building or part of such building let or to be let,

but does not include a room in a hotel or boarding house...."

17. The word "occupy" used in Section 11(4)(v) is not synonymous with legal possession in technical sense. It means actual possession of the tenanted building or use thereof for the purpose for which it is let out. If the building is let out for residential purpose and the tenant is shown to be continuously absent from the building for six months, the Court may presume that he has ceased to occupy the building or abandoned it. If the building is let out for business or commercial purpose, complete cessation of the business/commercial activity may give rise to a presumption that the tenant has ceased to occupy the premises. In either case, legal possession of the building by the tenant will, by itself, be not sufficient for refusing an order of eviction unless the tenant proves that there was reasonable cause for his having ceased to occupy the building.

18. The initial burden to show that the tenant has ceased to occupy the building continuously for 6 months is always on the landlord. He has to adduce tangible evidence to prove the fact that as on the date of filing the petition, the tenant was not occupying the building continuously for 6 months. Once such

A evidence is adduced, the burden shifts on the tenant to prove that there was reasonable cause for his having ceased to occupy the tenanted premises for a continuous period of 6 months. No strait-jacket formula can be evolved for determining as to what is the reasonable cause and each case is required B to be decided keeping in view the nature of the lease, the purpose for which the premises are let out and the evidence of the parties. If the building, as defined in Section 2(1), is let out for industrial or commercial/business purpose and the same is not used for the said purpose continuously for a period of C six months, the tenant cannot plead financial crunch as a ground to justify non occupation of the building unless cogent evidence is produced by him to prove that he could not carry on the industrial or commercial/business activity due to fiscal reasons which were beyond his control. If the tenant does not use the building for the purpose for which it is let out, he cannot be said D to be occupying the building merely because he has put some furniture or articles or machinery under his lock and key.

19. At this stage, we may notice some precedents which throw some light on the true interpretation of the expressions E "occupy" and "reasonable cause" used in Section 11(4)(v) of the 1965 Act.

20. In *Ram Dass v. Davinder* (2004) 3 SCC 684, this Court interpreted Section 13(2)(v) of the Haryana Urban F (Control of Rent and Eviction) Act, 1973 in terms of which an order of eviction could be passed against the tenant if he is shown to have ceased to occupy the premises continuously for a period of 4 months without reasonable cause. Respondent Davinder was tenant in the shop belonging to appellant-Ram G Dass. The appellant filed a petition for eviction of the respondent on the ground that he had ceased to occupy the shop for a continuous period of 4 months without any reasonable cause. The Rent Controller analysed the pleadings of the parties and evidence produced by them and held that the appellant has been able to prove that the respondent had H

ceased to occupy the premises for a continuous period of more than 4 months and there was no reasonable cause for doing so. The plea of the respondent that he had kept the shop closed intermittently due to sickness was not accepted by the Rent Controller. The Appellate Authority, on an independent evaluation of the evidence, confirmed the finding of the Rent Controller. The High Court allowed the revision filed by the respondent and set aside the orders of the Rent Controller and the Appellate Authority. This Court reversed the order of the High Court and restored the one passed by the Rent Controller. The Court highlighted the distinction between the terms "possession" and "occupy" in the context of Rent Control Legislation in the following words:

> "The terms "possession" and "occupy" are in common parlance used interchangeably. However, in law, possession over a property may amount to holding it as an owner but to occupy is to keep possession of by being present in it. The rent control legislations are the outcome of paucity of accommodations. Most of the rent control legislations, in force in different States, expect the tenant to occupy the tenancy premises. If he himself ceases to occupy and parts with possession in favour of someone else, it provides a ground for eviction. Similarly, some legislations provide it as a ground of eviction if the tenant has just ceased to occupy the tenancy premises though he may have continued to retain possession thereof. The scheme of the Haryana Act is also to insist on the tenant remaining in occupation of the premises. Consistently with what has been mutually agreed upon, the tenant is expected to make useful use of the property and subject the tenancy premises to any permissible and useful activity by actually being there. To the landlord's plea of the tenant having ceased to occupy the premises it is no answer that the tenant has a right to possess the tenancy premises and he has continued in juridical possession thereof. The Act protects the tenants from eviction and enacts specifically

A the grounds on the availability whereof the tenant may be directed to be evicted. It is for the landlord to make out a ground for eviction. The burden of proof lies on him. However, the onus keeps shifting. Once the landlord has been able to show that the tenancy premises were not
B being used for the purpose for which they were let out and the tenant has discontinued such activities in the tenancy premises as would have required the tenant's actually being in the premises, the ground for eviction is made out. The availability of a reasonable cause for ceasing to
C occupy the premises would obviously be within the knowledge and, at times, within the exclusive knowledge of the tenant. *Once the premises have been shown by evidence to be not in occupation of the tenant, the pleading of the landlord that such non-user is without*
D *reasonable cause has the effect of putting the tenant on notice to plead and prove the availability of reasonable cause for ceasing to occupy the tenancy premises."*

(emphasis supplied)

E 21. In *Brown v. Brash* (1948) 1 All. E.R. 922, the Court of appeal was called upon to examine correctness of an order passed by the County Court Judge, who upheld the tenant's claim to possession of the premises and awarded damages against the appellant for trespass. The facts of that case were
F that the premises were let out to the tenant in 1941 on a quarterly rent of 26 pounds. In 1945, the tenant was convicted and sentenced to serve 2 years' imprisonment for stealing 6 tones of tea. While going to jail, the tenant left physical occupation of the premises to his mistress and two illegitimate
G children. In March 1946, the tenant's mistress left the premises and dropped the two children with his mother. In the meanwhile, the landlord sold the premises. The purchaser filed an action in July 1946 for eviction of the tenant on the ground that he had abandoned possession. The County Court Judge held that the tenant had not abandoned possession and that even though he
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failed in some of his obligations under the tenancy, it was not reasonable to make an order for possession against him. In December 1946, the purchaser of the original landlord transferred the premises to the appellant. After release from prison, the tenant brought an action for possession and damages for trespass. His claim was allowed by the County Court Judge, who directed the appellant to return the premises to the respondent-tenant and also pay damages. The Court of appeal reversed the order of the County Court Judge and held:

> "We are of opinion that a "non-occupying" tenant prima facie forfeits his status as a statutory tenant. But what is meant by "non-occupying"? The term clearly cannot cover every tenant who for however short a time, or however necessary a purpose, or with whatever intention as regards returning, absents himself from the demised premises. To retain possession or occupation for the purpose of retaining protection the tenant cannot be compelled to spend 24 hours in all weathers under his own roof for 365 days in the year. Clearly, for instance, the tenant of a London house, who spends his week-ends in the country, or his long vacation in Scotland, does not necessarily cease to be in occupation. *Nevertheless, absence may be sufficiently prolonged or unintermittent to compel the inference, prima facie, of a cesser of possession or occupation. The question is one of fact and of degree.* Assume an absence sufficiently prolonged to have this effect. *The legal result seems to us to be as follows:-(1) The onus is then on the tenant to repel the presumption that his possession has ceased. (2) To repel it he must, at all events, establish a de facto intention on his part to return after his absence.* (3) But we are of opinion that neither in principle nor on the authorities can this be enough. To suppose that he can absent himself for 5 or 10 years or more and retain possession and his protected status simply by proving an inward intention to return after so protracted an absence would be to frustrate the spirit

A and policy of the Acts as affirmed in Keeves v. Dean (1) and Skinner v. Geary (3), (4) Notwithstanding an absence so protracted the authorities suggest that its effect may be averted if he couples and clothes his inward intention with some formal, outward, and visible sign of it, i.e., instals in
B the premises some caretaker or representative, be it a relative or not, with the status of a licensee and with the function of preserving the premises for his own ultimate home-coming. There will then, at all events, be someone to profit by the housing accommodation involved which will
C not stand empty. It may be that the same result can be secured by leaving on the premises, as deliberate symbols of continued occupation, furniture, though we are not clear that this was necessary to the decision in Brown v. Draper (4). Apart from authority, in principle possession in fact (for
D it is with possession in fact and not with possession in law that we are here concerned) requires not merely an "animus possidendi" but a "corpus possessionis," viz., some visible state of affairs in which the animus possidendi finds expression. (5) If the caretaker (to use that term for short) or the furniture be removed from the
E premises otherwise than quite temporarily, we are of opinion that the protection, artificially prolonged by their presence, ceases, whether the tenant wills or desires such removal or not. A man's possession of a wild bird, which he keeps in a cage, ceases if it escapes notwithstanding
F that his desire to retain possession of it continues and that its escape is contrary thereto. We do not think in this connection that it is open to the tenant to rely on the fact of his imprisonment as preventing him from taking steps to assert possession by visible action. *The tenant, it is*
G *true, had not intended to go to prison. He committed intentionally the felonious act which in the events which have happened landed him there, and thereby put it out of his power to assert possession by visible acts after Mar. 9,1946. He cannot, in these circumstances, we feel,*

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be in a better position than if his absence and inaction had been voluntary." A

(emphasis supplied)

22. In *Achut Pandurang Kulkarni v. Sadashiv Ganesh Phulambrikarm,* AIR 1973 Bom. 210, the learned Single Judge of the Bombay High Court interpreted Section 13(1)(k) of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 the language of which is somewhat similar to Section 11(4)(v) of the 1965 Act. The learned Single Judge referred to order passed by Chagla, C.J. in Civil Revision Application No.1527/1953 decided on July 30, 1954 and observed: B C

"As observed by Chagla, C. J., in the above case, physical possession by a tenant himself was not necessary. Physical possession by other members of the family also is not necessary if there was reasonable cause for their remaining absent from the premises. The question is one of fact and degree. If there is evidence on record to show that the tenant had something more than a vague wish to return and that he had a real hope coupled with the practicable possibility of its fulfilment within a reasonable time, it cannot be said that he had no reasonable cause for not using the premises. In every case it is the duty of the Court to satisfy itself that the tenant had no reasonable cause. *Absence may be sufficiently prolonged or unintermittent to compel the inference prima facie of a cesser of occupation. The onus is on the tenant in such a case to repel the presumption and to establish that his possession had not ceased or that he had ceased to occupy on account of reasonable cause.* In my judgment, this can be established if the tenant proves notwithstanding the intention on his part to return after his absence, his helplessness in remaining absent from the premises. D E F G

It is true that the tenant should have made proper attempts to discharge the onus in the present case by producing the H

A orders, if not before the trial Court, at least before the Appellate Court. That, however, as stated above, does not permit the Courts to brush aside the requirements of Section 13(1)(k). It is a matter for not awarding the costs. The Court cannot ignore the nature of the tenant's services
B and his liability to be transferred when deciding the question under Section 13(1)(k). I do not propose to lay down that in every case where a Government servant is transferred and he goes on paying rent in respect of the premises, he had reasonable cause for not using the
C premises for the purpose for which they were let. The question will depend on the facts and circumstances of each case. *The tenant must couple and clothe his inward intention to return, with some formal, outward and visible sign of it, as for instance by installing some caretaker or*
D *representative, be it a relative or not with the status of a licensee and with the function of preserving the premises for his own ultimate home-coming.* It may also be that the same result can be secured by leaving on the premises, as a deliberate symbol of continued occupation, furniture.
E *As stated by Asquith L. J., in Brown v. Brash and Ambrose,* (1948) 2 KB 247, the tenant must prove not only animus possidendi but a corpus possessionis."

(emphasis supplied)

F 23. In *Ananthasubramania Iyer v. Sarada Amma* 1978 KLT 338, the learned Single Judge of the Kerala High Court held:

"The physical absence of the tenant from the building for more than six months would raise a presumption that he
G had ceased to occupy the building and that he had abandoned it and that it was for the tenant to dislodge the presumption and establish that he had the intention to continue to occupy the tenanted premises."

H 24. The word "occupy" appearing in Section 11(4)(v) of the

1965 Act has been interpreted by the Kerala High Court in large number of cases. In *Mathai Antony v. Abraham* (2004) 3 KLT 169, the Division Bench of the High Court referred to several judgments including the one of this Court in *Ram Dass v. Davinder* (supra) and observed:

> "The word "occupy" occurring in S. 11(4)(v) has got different meaning in different context. The meaning of the word "occupy" in the context of S. 11 (4)(v) has to be understood in the light of the object and purpose of the Rent Control Act in mind. The rent control legislation is intended to give protection to the tenant, so that there will not be interference with the user of the tenanted premises during the currency of the tenancy. Landlord cannot disturb the possession and enjoyment of the tenanted premises. Legislature has guardedly used the expression "occupy" in S.1l (4)(v) instead of "possession". Occupy in certain context indicates mere physical presence, but in other context actual enjoyment. Occupation includes possession as its primary element, and also includes "enjoyment". The word "occupy" sometimes indicates legal possession in the technical sense; at other times mere physical presence. We have to examine the question whether mere "physical possession" would satisfy the word "occupy" within the meaning of S.11 (4)(v) of the Act. In our view mere physical possession of premises would not satisfy the meaning of "occupation" under S. 1l (4)(v). The word "possession" means holding of such possession, animus possidendi, means, the intention to exclude other persons. The word "occupy" has to be given a meaning so as to hold that the tenant is actually using the premises and not mere physical presence or possession. A learned single Judge of this Court in Abbas v. Sankaran Namboodiri (1993(1) KLT 76) took the view that the word occupation is used to denote the tenant's actual physical use of the building either by himself or through his agents or employees. The Division Bench of this Court of which one of us is a party

A (Radhakrishnan, J.), in Rajagopalan v. Gopalan (2004 (1) KLT SNP.54) interpreting S. 11 (4)(v) took the view that occupation in the context of S.I 1(4) means only physical occupation, which requires further explanation. Occupation in the context of S. 11(4)(v) means actual user. If the B landlord could establish that in a given case even if the tenant is in physical possession of the premises, the premises is not being used, that is a good ground for eviction under S.11(4)(v) of the Act. S.11(4) uses the words "put the landlord in possession" and not "occupation", but C 11 (4)(v) uses the words "the tenant ceases to occupy". In S. 11 (4)(v) in the case of landlord the emphasis is on "possession" but in the case of tenant the emphasis is on "occupation". The word "occupy" has a distinct meaning so far as the Rent Act is concerned when pertains to tenant, D that is, possession with user."

25. In *Kurian Thomas v. Sreedharan Menon* (2004) 3 KLT 326, the High Court held as under:

"Once landlord could establish the tenant has ceased to E occupy the premises continuously for six months prior to the filing of the petition he is entitled to get order of eviction under that section. The word "occupation" must be understood to be not mere physical possession. Tenant should use the building. The word "occupy" means to F cohabit with, to hold or have in possession. Tenanted premises must be in the state of being enjoyed and occupied. The word "occupy" used by the statute would show that tenanted premises be put to use. Tenant cannot be heard to contend that he is having physical possession of the premises though not in occupation. So far as this G case is concerned, we are of the view landlord has discharged the burden and then the onus has shifted to the tenant and the tenant could not establish that he has not ceased to occupy the premises and even if there is cessation that was with reasonable cause."

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26. In *Paulina Joseph v. Idukki District Wholesale Co-operative Consumer Stores Ltd.* (supra), the Division Bench of the High Court referred to the dictionary meaning of the word "reasonable" and observed:

> "The question whether the tenant ceases to occupy the building continuously for six months is primarily a question of fact to be determined with reference to the facts available in each case. The scope of "occupation of the building" depends on the purpose for which the building is let and the purpose for which it is used. The nature of the business and the requirement of the physical presence or otherwise of the tenant in the building for the conduct of the business is a relevant fact. No straight jacket formula can be evolved in the matter of proof of cessation of occupation within the meaning of Section 11(4)(v) of the Act. This intention of the tenant, though not conclusive as such has also relevance in determining whether there was actual cessation of occupation within the meaning of Section 11(4)(v). When it is proved by the landlord that the tenant ceased to occupy the building continuously for six months, the burden of proving that there was reasonable cause for such cessation is on the tenant. Reasonable cause is also a question of fact to be decided in the light of the facts proved in the case. No rigid formula can be evolved for proof of "reasonable cause". The facts and circumstances of the case, the particular facts with reference to the business activities of the tenant, the nature of the business, the magnitude of the business, the circumstance which led to the cessation of occupation are all relevant in considering whether there was reasonable cause. If the cessation of occupation was due to circumstances beyond the control of the tenant, certainly the Courts would be inclined to accept the case of the tenant that cessation of occupation was not without reasonable cause. Financial constraint of the tenant by itself may not be a sufficient reason to hold that there was

A reasonable cause. But that is not completely irrelevant in considering the question. Whether the tenant is an individual or an organization controlled by the Government or a Co-operative society may also be relevant in considering the question of reasonable cause. If there is
B a plausible explanation to the question why the business was not run in the premises continuously, it may well be a relevant fact in considering whether there was reasonable cause for cessation of occupation under Section 11(4)(v), depending on the facts and circumstances of each case.
C In the given set of facts and circumstances, if it can be concluded that an ordinary prudent man would act in the manner in which the tenant did, it can be safely said that the cessation of occupation was with reasonable cause."

(emphasis supplied)

D

27. In *Simon & Ors. v. Rappai* (2008) 2 KLJ 488, the High Court interpreted Section 11(4)(v) and held:

"As far as the ground available under Section 11(4)(v) is
E concerned, it is well settled by various decisions of this Court that if the landlord has discharged the initial burden it is upto the tenant to lead evidence in the matter to show that he has been conducting business in the premises. A learned Single Judge of this Court in the decision report
F in Abbas v. Sankaran Namboodiri (1993 (1) KLT 76) while examining the question held that, the word 'occupation' is used to denote the tenant's actual physical use of the building either by himself or through his agents or employees and legal possession is not sufficient. It was held that, "however, if a landlord succeeds in proving that
G his tenant did not occupy the building almost near the period fixed in Section 11(4)(v) of the Act it may help the court to presume that there could have been cessation of occupation for the statutory period. Such background presumption is not anathematic to the law of evidence". In
H para.7 it was observed that, "be that as it may, burden is

on the landlord to prove that the tenant ceased to occupy the building for six months. But it is hard to expect a landlord to prove the precise during which his tenant ceased to occupy the building. However, if the court is satisfied on the evidence and/or with the aid of presumptions that the tenant did not occupy the building for such length of time as would cover the statutory period, then the burden would shift to the tenant to show that he had reasonable cause for such non-occupation." Finally it was also observed in para.9 that, 'but, possession must combine with something more to make it occupation. Legal possession does not by itself constitute occupation'. These principles can be safely applied to the facts of this case."

28. In this case, the Rent Control Court, after detailed scrutiny of the pleadings and the evidence of the parties recorded a finding that while the landowners (respondents herein) succeeded in proving that the tenant (appellant herein) had ceased to occupy the suit premises for a period exceeding six months, the latter could not prove that it was occupying the premises or that non occupation thereof was for a reasonable cause. The Rent Control Court took cognizance of the appellant's plea that it was carrying on business activities from the suit premises with reduced staff strength but discarded the same by observing that the relevant records like the attendance register, muster roll, wage register had not been produced and no evidence was adduced to prove payment of electricity bills and sale and purchase of goods. The High Court also analysed the pleadings and evidence of the parties and concurred with the findings recorded by the Rent Control Court. As against this, the appellant did not produce any evidence to prove physical occupation of the premises or any business transaction. It also failed to produce any evidence to show that there was reasonable cause for non occupation of the suit premises.

29. The arguments of Shri Nariman that the second set of

A rent control petitions should have been dismissed as barred by *res judicata* because the issue raised therein was directly and substantially similar to the one raised in the first set of rent control petitions does not merit acceptance for the simple reason that while in the first set of petitions, the respondents B had sought eviction on the ground that the appellant had ceased to occupy the premises from June, 1998. In the second set of petitions, the period of non occupation commenced from September, 2001 and continued till the filing of the eviction petitions. That apart, the evidence produced in the first set of C petitions was not found acceptable by the Appellate Authority because till 2.8.1999, the premises were found kept open and alive for operation. The Appellate Authority also found that in spite of extreme financial crisis, the management had kept the business premises open for operation till 1999. In the second D round, the appellant did not adduce any evidence worth the name to show that the premises were kept open or used from September, 2001 onwards. The Rent Controller took cognizance of the notice fixed on the front shutter of the building by A.K. Agarwal on 1.10.2001 that the company is a sick industrial company under the 1985 Act and operation has been E suspended with effect from 1.10.2001; that no activity had been done in the premises with effect from 1.10.2001 and no evidence was produced to show attendance of the staff, payment of salary to the employees, payment of electricity bills from September, 2001 or that any commercial transaction was F done from the suit premises. It is, thus, evident that even though the ground of eviction in the two sets of petitions was similar, the same were based on different causes. Therefore, the evidence produced by the parties in the second round was rightly treated as sufficient by the Rent Control Court and the G Appellate Authority for recording a finding that the appellant had ceased to occupy the suit premises continuously for six months without any reasonable cause.

30. The question whether the prohibition contained in H Section 22(1) of the 1985 Act operates as a bar to the

maintainability of a petition filed for eviction of the tenant was considered and answered in negative in *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association* (1992) 3 SCC 1. In that case, this Court referred to the provisions of the Karnataka Rent Control Act, Section 22(1) of the 1985 Act and observed:

> "11. Similarly in Civil Appeal No. 2553 of 1991 this question has been raised by the appellant-company to challenge the order of the learned Single Judge of the Karnataka High Court dated March 15, 1991 dismissing the revision petition under Section 50(1) of Karnataka Rent Control Act. For the reasons aforementioned Section 22(1) of the Act cannot be invoked to assail the said order of the High Court on the ground that on the date of passing of the order of the High Court the matter was pending before the Appellate Authority. But in this appeal, the order allowing the eviction petition was passed by the XII Additional Small Causes Court on September 30, 1989 and at that time the matter under Sections 15 and 16 was pending before the Board. It is, therefore, necessary to consider the second question about the applicability of Section 22(1) to eviction proceedings instituted by the landlord against the tenant who happens to be a sick company. In this regard, it may be mentioned that the following proceedings only are automatically suspended under Section 22(1) of the Act:
>
> (1) proceedings for winding up of the industrial company;
>
> (2) proceedings for execution, distress or the like against the properties of the sick industrial company; and
>
> (3) proceedings for the appointment of receiver.
>
> 12. Eviction proceedings initiated by a landlord against a

A tenant company would not fall in categories (1) and (3) referred to above. The question is whether they fall in category (2). It has been urged by the learned counsel for the appellant-company that such proceedings fall in category (2) since they are proceedings against the B property of the sick industrial company. *The submission is that the leasehold right of the appellant-company in the premises leased out to it is property and since the eviction proceedings would result in the appellant-company being deprived of the said property, the said* C *proceedings would be covered by category (2). We are unable to agree. The second category contemplates proceedings for execution, distress or the like against any other properties of the industrial company. The words 'or the like' have to be construed with reference to the* D *preceding words, namely, 'for execution, distress' which means that the proceedings which are contemplated in this category are proceedings whereby recovery of dues is sought to be made by way of execution, distress or similar proceedings against the property of the company. Proceedings for eviction instituted by a landlord against* E *a tenant who happens to be a sick industrial company, cannot, in our opinion, be regarded as falling in this category.* We may, in this context, point out that, as indicated in the Preamble, the Act has been enacted to make special provisions with a view to securing the timely F detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of G the measures so determined. The provision regarding suspension of legal proceedings contained in Section 22(1) seeks to advance the object of the Act by ensuring that a proceeding having an effect on the working or the finances of a sick industrial company shall not be instituted H or continued during the period the matter is under

consideration before the Board or the Appellate Authority or a sanctioned scheme is under implementation without the consent of the Board or the Appellate Authority. *It could not be the intention of Parliament in enacting the said provision to aggravate the financial difficulties of a sick industrial company while the said matters were pending before the Board or the Appellate Authority by enabling a sick industrial company to continue to incur further liabilities during this period. This would be the consequence if sub-section (1) of Section 22 is construed to bring about suspension of proceedings for eviction instituted by landlord against a sick industrial company which has ceased to enjoy the protection of the relevant rent law on account of default in payment of rent. It would also mean that the landlord of such a company must continue to suffer a loss by permitting the tenant (sick industrial company) to occupy the premises even though it is not in a position to pay the rent. Such an intention cannot be imputed to Parliament. We are, therefore, of the view that Section 22(1) does not cover a proceeding instituted by a landlord of a sick industrial company for the eviction of the company premises let out to it."*

(emphasis supplied)

31. In *Gujarat Steel Tube Co. Ltd. v. Virchandbhai B. Shah* (1999) 8 SCC 11, it was argued on behalf of the appellant that suit for recovery of rent etc. is not maintainable in view of the prohibition contained in Section 22(1). While affirming the judgment of the High Court, the Court referred to the earlier judgment in *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association* (supra) and held:

"Section 22 no doubt, inter alia, states that notwithstanding any other law no suit for recovery of money shall lie or be proceeded with except with the consent of the Board, but as we look at it the filing of an eviction petition on the ground of non-payment of rent cannot be regarded as filing

A of a suit for recovery of money. *If a tenant does not pay the rent, then the protection which is given by the Rent Control Act against his eviction is taken away and with the non-payment of rent order of eviction may be passed. It may be possible that in view of the provisions of Section* B *22, the trial court may not be in a position to pass a decree for the payment of rent but when an application under Section 11(4) is filed, the trial court in effect gives an opportunity to the tenant to pay the rent failing which the consequences provided for in the sub-section would* C *follow. An application under Section 11(4), or under any other similar provision, cannot, in our opinion, be regarded as being akin to a suit for recovery of money."*

(emphasis supplied)

D The same view was reiterated in *Carona Ltd. v. Parvathy Swaminathan and Sons* (2007) 8 SCC 559.

32. We shall now examine whether pendency of the proceedings under the 1985 Act, which implies that the E appellant was facing financial difficulty in conducting its business constituted reasonable cause for cessation of occupation of the premises. The appellant was declared a sick industrial company on 22.6.1998 and IDBI was appointed as the Operating Agency under Section 17(3) of the 1985 Act to examine the viability of the company. Subsequently, State Bank F of India was appointed as the Operating Agency. After several hearings, the BIFR passed order dated 19.10.2001 and directed the appellant to sort out all pending issues with secured creditors, Central/State Governments, TIIC, KSIIDC and TNSEP and submit a revised comprehensive and fully tied up G rehabilitation scheme to the Operating Agency. For the next about five years, no tangible step is shown to have taken by the appellant for revival of its business activities. In August and November, 2006, the appellant filed applications before the BIFR seeking its permission for issue of two crore equity H shares of Rs. 10/- each fully paid up at par to the company's

promoters and/or its associates on private placement basis against full consideration to be utilized for rehabilitation. Thereupon, the BIFR passed order dated 16.3.2007. Three appeals were filed against that order. The AAIFR dismissed the appeals after taking note of order passed by the Madras High Court in Writ Petition (C) No. 24422 of 2006, order dated 25.4.2007 passed by the Orissa High Court in W.P (C) No. 344 of 2008, order dated 5.2.2008 passed by this Court in SLP(C) CC Nos. 1943-1944 of 2008 and held that in view of the various orders, the net worth of the appellant having turned positive and it can no longer be treated as sick industrial company.

Before the Rent Control Court, the appellant had neither pleaded nor any evidence was produced to show that due to financial stringency was due to the reasons beyond its control and on that account, the suit premises could not be used from September, 2001 onwards for the purpose specified in the lease deeds. Therefore, the so called financial stringency cannot be construed as reasonable cause within the meaning of Section 11(4)(v).

33. We are also of the view that order dated 3.3.2008 passed by the AAIFR has no bearing on the decision of the issues raised by the respondents in the context of Section 11(4)(v) of the 1965 Act because what was required to be considered by the Rent Control Court was whether as on the date of filing the petition the appellant had ceased to occupy the premises continuously for a period of six months without reasonable cause. The improvement in the financial health of the appellant after many years cannot impinge upon the concurrent finding recorded by the Rent Control Court and the Appellate Authority that the respondents had succeeded in making out a case for eviction under Section 11(4)(v) and that there was no reasonable cause for the appellant to have ceased to occupy the suit premises continuously for a period of six months.

A 34. In the result, the appeals are dismissed. The parties are, however, left to bear their own costs. The appellant is allowed three months time to deliver vacant possession of the suit premises to the respondents subject to its filing usual undertaking before this Court within four weeks. It is also made
B clear that during this period of three months, the appellant shall not induct any other person in the premises or transfer its possession to any other person in any capacity whatsoever.

D.G. Appeals dismissed.