THE DIRECTOR, PRASAR BHARATI

v.

COMMISSIONER OF INCOME TAX, THIRUVANTHAPURAM

(Civil Appeal Nos. 3496-3497 of 2018)

APRIL 03, 2018

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Income Tax Act, 1961: s. 194H Explanation – Payment of Commission or brokerage – Applicability of s. 194H – Appellant-assessee entering into an agreement with several advertising agencies – Payment made by appellant to the agencies, towards commission in terms of agreement – Assessment order by the Assessing Officer that provisions of s. 194H are applicable to the payments made by the appellant to the Agencies and since the appellant failed to deduct the "tax at source" from the amount paid to the agencies, the appellant committed default thereby attracting the rigor of s. 201(1) – Said order upheld by CIT(Appeals), however, set aside by the tribunal – In appeal, the High Court upheld the order of CIT(Appeals) and AO – On appeal, held: Provisions of s. 194H are applicable to the appellant because the payments made by appellant pursuant to the agreement were in the nature of payment made by way of "commission" – In view thereof, the appellant was under statutory obligation to deduct the income tax at the time of credit or/and payment to the advertisement agencies – Non-compliance of s.194H by the assessee attracts the rigor of s. 201 which provides for consequences of failure to deduct or pay the tax as provided u/s. 194H – Thus, the provisions of s. 201 rightly invoked against the appellant by the assessing authority.

Dismissing the appeals, the Court

HELD: 1.1 Section 194H of the Income Tax Act, 1961 provides that any person other than individual or HUF, responsible for paying any income by way of "commission" (not being insurance commission as specified in Section 194D) or "brokerage" to any person shall at the time of credit of such income to the account of payee or at the time of payment of such income in cash or by cheque or draft or any other mode will deduct

A **income tax thereon at the rate of 5%. The first proviso specifies the limit. The second proviso makes the individual or HUF liable to deduct the income tax, if they exceed the limit specified therein. The third proviso exempts payment of commission or brokerage when made to BSNL and MTNL to their public call office franchisees. The Explanation appended to s.194H defines the expression "commission or brokerage". It is an inclusive definition and includes therein any payment received or receivable, directly or indirectly by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to assets, valuable article or thing not being securities. Clause (ii) defines professional services; clause (iii) defines securities; and clause (iv) provides a deeming fiction for treating any income so as to attract the rigor of the Section for ensuring its compliance.[Paras 27-28] [295-F-G, H; 296-A-B]**

1.2 The reasoning and the conclusion arrived at by the AO, CIT (Appeals) and the High Court appears to be just and proper and does not call for any interference. The High Court was right in holding that the provisions of Section 194H are applicable to the appellant because the payments made by the appellant pursuant to the agreement in question were in the nature of payment made by way of "commission" and, therefore, the appellant was under statutory obligation to deduct the income tax at the time of credit or/and payment to the payee. [Paras 29, 30] [296-C-D]

1.3 The conclusion of the High Court is clear from the undisputed facts emerging from the record of the case because the agreement itself has used the expression "commission" in all relevant clauses; Second, there is no ambiguity in any clause and no complaint was made to this effect by the appellant; Third, the terms of the agreement indicate that both the parties intended that the amount paid by the appellant to the agencies should be paid by way of "commission" and it was for this reason, the parties used the expression "commission" in the agreement; Fourth, keeping in view the tenure and the nature of transaction, it is

clear that the appellant was paying 15% to the agencies by way of "commission" but not under any other head; Fifth, the transaction in question did not show that the relationship between the appellant and the accredited agencies was principal to principal rather it was principal and Agent; Sixth, it was also clear that payment of 15% was being made by the appellant to the agencies after collecting money from them and it was for securing more advertisements for them and to earn more business from the advertisement agencies; Seventh, there was a clause in the agreement that the tax shall be deducted at source on payment of trade discount; and lastly, the definition of expression "commission" in the Explanation appended to Section 194H being an inclusive definition giving wide meaning to the expression "commission", the transaction in question did fall under the definition of expression "commission" for the purpose of attracting rigor of s. 194 H. [Para 31] [296-E-H; 297-A]

1.4 There is no difference in holding that the payment was in the nature of "commission" paid by the appellant to the advertisement agencies to secure more business for the appellant. Once it is held that the provisions of Section 194H apply to the transactions in question, it is obligatory upon the appellant to have deducted the income tax while making payment to the advertisement agencies. The non-compliance of Section 194H by the assessee attracts the rigor of Section 201 which provides for consequences of failure to deduct or pay the tax as provided under Section 194H of the Act. Therefore, the provisions of Section 201 were rightly invoked against the appellant by the assessing authority once having held that the appellant failed to comply with the provisions of Section 194H of the Act. [Paras 32, 33, 34] [297-B-D]

Jagran Prakashan Ltd v. Deputy Commissioner of Income Tax (TDS) **(2012) 345 ITR 288 – referred to.**

Case Law Reference

(2012) 345 ITR 288	**referred to**	**Para 34**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3496-3497 of 2018.

From the Judgment and Order dated 20.11.2009 of the High Court of Kerala at Ernakulam in Income Tax Appeal No. 27 of 2009 and Income Tax Appeal No. 62 of 2009.

Rajeev Sharma, Adv. for the Appellant.

Rupesh Kumar, A. K. Srivastava, Ravi Shankar Kumar, Mrs. Anil Katiyar, Advs. for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Delay condoned.

2. Leave granted.

3. These appeals are directed against the final judgment and order dated 20.11.2009 passed by the High Court of Kerala at Ernakulam in Income Tax Appeal No.27 of 2009 and Income Tax Appeal No.62 of 2009 whereby the High Court allowed the appeals preferred by the respondent herein and reversed the order dated 28.03.2007 passed by the Income Tax Appellate Tribunal, Cochin Bench in Income Tax Appeal Nos. 926 & 927/COCH/2005 for the Assessment Years 2002-2003 and 2003-2004 and restored the order dated 04.03.2005 passed by the Commissioner of Income Tax(Appeals)-II, Thiruvananthapuram and the order dated 22.09.2003 passed by the Assessing Officer.

4. In order to appreciate the issue involved in these appeals, it is necessary to set out the facts hereinbelow.

5. The appellant is known as "Prasar Bharati Doordarshan Kendra". It functions under the Ministry of Information and Broadcasting, Government of India. The dispute in this case relates to the appellant's Regional Branch at Trivandrum.

6. The appellant, in the course of their business activities, which include the running of the TV channel called "Doordarshan", has been regularly telecasting advertisements of several consumer companies.

7. With a view to have a better regulation of the practice of advertising and to secure the best advertising services for the advertisers, the appellant entered into an agreement with several advertising agencies (Annexure-P-12).

8. In terms of the agreement, the advertising agency (hereinafter referred to as "the Agency") was required to make an application to the

appellant to get the "accredited status" for their Agency so as to enable them to do business with the appellant of telecasting the advertisements of several consumer products manufactured by several companies on the appellant's Doordarshan TV Channel.

9. The agreement, *inter alia*, provided that the appellant would pay 15% by way of commission to the Agency. The Agency was to retain the commission/remuneration earned and not to part the same either directly or indirectly with any other person, advertiser or representative of any advertiser for whom it may be acting or has acted as an advertising agency. The agreement also provided the manner, mode and the time within which the payment was to be made by the Agency to the appellant. The failure to make the payment was to result in losing the accredited status by the Agency. The Agency was to give minimum annual business of Rs.6 Lakhs to the appellant in a financial year failing which their accredited status was liable to be withdrawn. The Agency was to furnish a bank guarantee for a sum of Rs.3 Lakhs. There are other clauses also in the agreement but they are not relevant for the purpose of disposal of these appeals.

10. The appellant is an assessee under the Income Tax Act (hereinafter referred to as "the Act"). In the assessment year 2002-2003(01.06.2001 to 31.03.2002) and 2003-2004 (01.04.2002 to 31.03.2003), the appellant paid a sum of Rs.2,56,75,165/- and Rs.2,29,65,922/- to various accredited Agencies, with whom they had entered into the aforementioned agreement for telecasting the advertisements given by these Agencies relating to products manufactured by several consumer companies. The amount was paid by the appellant to the Agencies towards the commission in terms of the agreement.

11. The question arose before the Assessing Officer (AO) in the assessment proceedings as to whether the provisions of Section 194H of the Act, which came into force with effect from 01.06.2001, are applicable to the payments in question made by the appellant to the Agencies and, if so, whether the appellant deducted "tax at source" as provided under Section 194H of the Act from the amount paid by the appellant to the Agencies.

12. The AO made the assessment vide its order dated 22.09.2003. Insofar as the aforementioned question was concerned, the AO was of the view that the provisions of Section 194H of the Act are applicable to the payments made by the appellant to the Agencies because the

A payments were made in the nature of "commission" as defined in Explanation appended to Section 194H of the Act. The AO held that the appellant, therefore, committed default thereby attracting the rigor of Section 201(1) of the Act because they failed to deduct the "tax at source" from the amount paid to various advertising agencies during the
B Assessment Years in question as provided under Section 194A of the Act.

13. On quantification, the AO found that during the Assessment Year 2002-2003, the appellant had paid a sum of Rs.2,56,75,165/- towards the commission to the Agencies and on this sum, they were required to deduct tax amount to Rs.16,34,283/- and a sum of Rs.3,80,611/- towards
C interest for delayed payment under Section 201(1-A) of the Act and during the Assessment Year 2003-2004, the appellant had paid a sum of Rs.2,29,65,922/- towards the commission to the Agencies and on this sum, they were required to deduct tax amounting to Rs.11,15,944/- and a sum of Rs.1,54,050/- towards interest for delayed payment under Section
D 201(1-A) of the Act.

14. The appellant felt aggrieved and filed appeals before the Commissioner of Income Tax (Appeals)-II, Thiruvanathapuram. By order dated 04.03.2005, the Commissioner concurred with the reasoning and conclusion arrived at by AO and accordingly dismissed the appeals.

E 15. The appellant felt aggrieved and filed appeals before the Tribunal. By order dated 28.03.2007, the Tribunal following its earlier order allowed the appeals and set aside the orders passed by AO and CIT (Appeals).

16. The Revenue (Income Tax Department), felt aggrieved by
F the order passed by the Tribunal, filed appeals under Section 260-A of the Act in the High Court. By impugned judgment, the High Court allowed the appeals and while setting aside the Tribunal's order restored the order of CIT (Appeals) and AO.

17. The High Court was of the opinion that the provisions of
G Section 194H are applicable to the payments made by the appellant to the Agencies during the period in question because the payments made were in the nature of "commission" paid to the Agencies as defined in Explanation appended to Section 194H of the Act and since the appellant failed to deduct the "tax at source" while making these payments to the
H Agencies in terms of the agreement in question, they committed default

of non-compliance of Section 194H resulting in attracting the provisions of Section 201 of the Act.

18. The appellant (assessee) felt aggrieved and filed these appeals by way of special leave in this Court.

19. Heard Mr. Rajeev Sharma, learned counsel for the appellant and Mr. Rupesh Kumar, learned counsel for the respondent.

20. Submissions of learned counsel for the appellant (assesse) were two-fold. In the first place, he argued that the payments made by the appellant to the accredited agencies during the assessment years in question were not in the nature of commission. According to learned counsel, the relationship between the appellant and the accredited Agencies was not that of principal and the agent but it was in the nature of principal-to-principal. In other words, the submission was that the accredited agencies were not working as agent of the appellant and nor the appellant was paying them any amount by way of commission.

21. Referring to the terms of the agreement, learned counsel tried to point out that the Agencies, in terms of the agreement, purchased the air time from the appellant and then sold it in the market for advertisement to their customer after retaining 15% commission given to them by the appellant. It was, therefore, his submission that such transaction cannot be regarded as being between the principal and agent and nor the payment can be regarded as having been made by way of commission so as to attract the rigor of Section 194H and Section 201 of the Act.

22. Learned counsel also submitted that by mistake some other format of the agreement was placed by the appellant before the High Court and, therefore, the appellant suffered adverse order in question (see averments made in Paras 4 and 5 of the application seeking permission to file additional documents at page 134/135). Learned counsel then took us to the relevant provisions of the proper agreement filed in this Court as Annexure P-12 and contended that having regard to the nature of the agreement and its terms, the submission urged deserves acceptance.

23. In reply, learned counsel for the respondent (Revenue) supported the impugned judgment and contended that the order passed by the AO, CIT (Appeals) and the impugned judgment deserve to be upheld as all the three orders are based on proper reasoning calling no interference.

A 24. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in these appeals.

25. Section 194H, which is relevant for the disposal of these appeals reads as under:

B **"194H. Commission or brokerage-Any person not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of**

C **the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent.**

Provided that no deduction shall be made under this

D **section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee, does not exceed fifteen thousand rupees.**

E **Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such commission or**

F **brokerage is credited or paid, shall be liable to deduct income-tax under this section.**

Provided also that no deduction shall be made under this section on any commission or brokerage payable by Bharat Sanchar Nigam Limited or Mahanagar Telephone

G **Nigam Limited to their public all office franchisees.**

Explanation- For the purposes of this section,-

(i) "commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered

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(not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;

(ii) the expression "professional services" means services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the Board for the purposes of section 44AA;

(iii) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(iv) where any income is credited to any account, whether called "suspense account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly."

26. The aforementioned Section was inserted in the Act with effect from 01.06.2001 by replacing the earlier Section 194H. This Section deals with the payment of "commission or brokerage".

27. It provides that any person other than individual or HUF, responsible for paying any income by way of "commission" (not being insurance commission as specified in Section 194D) or "brokerage" to any person shall at the time of credit of such income to the account of payee or at the time of payment of such income in cash or by cheque or draft or any other mode will deduct income tax thereon at the rate of five percent. The first proviso specifies the limit. The second proviso makes the individual or HUF liable to deduct the income tax, if they exceed the limit specified therein. The third proviso exempts payment of commission or brokerage when made to BSNL and MTNL to their public call office franchisees.

28. The Explanation appended to Section 194H defines the expression "commission or brokerage". It is an inclusive definition and includes therein any payment received or receivable, directly or indirectly by a person acting on behalf of another person for services rendered

A (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to assets, valuable article or thing not being securities. Clause (ii) defines professional services; clause (iii) defines securities; and clause (iv) provides a deeming fiction for treating any income so as to attract the rigor of the Section for ensuring its compliance.

B

29. Keeping in mind the requirements of Section 194H when we examine the transaction in question, we are of the considered view that the reasoning and the conclusion arrived at by the AO, CIT (Appeals) and the High Court appears to be just and proper and does not call for any interference.

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30. In other words, in our considered view, the High Court was right in holding that the provisions of Section 194H are applicable to the appellant because the payments made by the appellant pursuant to the agreement in question were in the nature of payment made by way of "commission" and, therefore, the appellant was under statutory obligation

D to deduct the income tax at the time of credit or/and payment to the payee.

31. The aforementioned conclusion of the High Court is clear from the undisputed facts emerging from the record of the case because we notice that the agreement itself has used the expression "commission"

E in all relevant clauses; Second, there is no ambiguity in any clause and no complaint was made to this effect by the appellant; Third, the terms of the agreement indicate that both the parties intended that the amount paid by the appellant to the agencies should be paid by way of "commission" and it was for this reason, the parties used the expression

F "commission" in the agreement; Fourth, keeping in view the tenure and the nature of transaction, it is clear that the appellant was paying 15% to the agencies by way of "commission" but not under any other head; Fifth, the transaction in question did not show that the relationship between the appellant and the accredited agencies was principal to principal rather it was principal and Agent; Sixth, it was also clear that

G payment of 15% was being made by the appellant to the agencies after collecting money from them and it was for securing more advertisements for them and to earn more business from the advertisement agencies; Seventh, there was a clause in the agreement that the tax shall be deducted at source on payment of trade discount; and lastly, the definition of

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expression "commission" in the Explanation appended to Section 194H being an inclusive definition giving wide meaning to the expression "commission", the transaction in question did fall under the definition of expression "commission" for the purpose of attracting rigor of Section 194H of the Act.

32. For all these reasons, we find no difficulty in holding that the payment in question was in the nature of "commission" paid by the appellant to the advertisement agencies to secure more business for the appellant.

33. Once it is held that the provisions of Section 194H apply to the transactions in question, it is obligatory upon the appellant to have deducted the income tax while making payment to the advertisement agencies. The non-compliance of Section 194H by the assessee attracts the rigor of Section 201 which provides for consequences of failure to deduct or pay the tax as provided under Section 194H of the Act.

34. In our view, the provisions of Section 201 were, therefore, rightly invoked in this case against the appellant by the assessing authority once having held that the appellant failed to comply with the provisions of Section 194H of the Act.

35. Learned counsel for the appellant (assessee) placed reliance on the decision of the Allahabad High Court in **Jagran Prakashan Ltd vs. Deputy Commissioner of Income Tax(TDS),** (2012)345 ITR 288 in support of his submission.

36. On perusal of the said judgment, we find that the law laid down by the Allahabad High Court is not applicable to the facts of the case at hand and the learned Judges rightly distinguished the case at hand with the facts involved in the Allahabad case. The learned Judges of the Allahabad High Court in Paras 61 and 62 of the judgment dealt with the impugned judgment with which we are concerned in these appeals and distinguished it in the following words:

> "**61. Now we come to the judgment of the Kerala High Court in the case of CIT vs. Director, Prasar Bharti reported in (2010) 325 ITR 205(ker.) on which much reliance has been placed by the assessing authority. The Prasar Bharati is fully owned Government of India undertaking engaged in telecast of news, various sports, entertainments, cinemas**

and other programmes. The advertisements were canvassed through agents under the agreement with them. The advertising agencies and the Director, Prasar Bharati were principal and agent as per the agreement and the Doordarshan provided 15% discount on the basis of which it was contended that no deduction at source was required. The Tribunal held that there was no liability for deduction of tax at source under Section 194H which judgment was reversed by the Kerala High Court. From the facts of the aforesaid case, it is clear that Doordarshan had appointed agents i.e. advertising agencies and there was agreement entered between them. In the aforesaid circumstances, 15% advertisement charges collected and remitted was held to be in the form of commission payable to the agent by Doordarshan. There was explicit agreement between the agency and the Doordarshan where both understood that payment made to the agency was liable to tax deduction. It is useful to quote the following observations of the judgment of Kerala High Court:-

.....

From the above, it is very clear that parties have understood their relationship as Principal and Agent and what is paid to the agent by Doordarshan is 15% of advertisement charges collected and remitted to it by the agent which is in the form of commission payable to the Agent by Doordarshan. Counsel for the respondent referred to one of the agreements where the commission is referred to as standard discount and contended that the arrangement between respondent and advertising agency is not agency but is a Principal to Principal arrangement of sharing advertisement charges. We are unable to accept this contention because advertisement contract entered into between the customer and the agency is for telecasting advertisement in Doordarshan channels. The agent canvasses advertisement on behalf of Doordarshan under agreement between them and the advertisement charges recovered from the customers are also in accordance with

tariff prescribed by Doordarshan which is incorporated in the agreement. Further it is specifically stated in the agreement that advertisement material should also conform to the discipline introduced by Doordarshan which is nothing but a Government agency which cannot telecast all what is desired to be telecast by advertising agencies. In fact, Doordarshan is bound by advertisement contract canvassed by advertising agencies and it is their duty under the agreement between them and the advertising agencies to telecast advertisement material in terms of the contract which the agency signs with the customer. In our view, the transaction is a pure agency arrangement between the respondent and the advertising agencies because one acts for the other and the act of the agent binds the respondent in their capacity as Principal of the agent. It is pertinent to note that commission or brokerage defined under explanation (i) to Section 194H has a wide meaning and it covers any payment received or receivable directly or indirectly by a person acting on behalf of another person for services rendered. In this case, no one can doubt that 15% commission paid to advertising agencies by the Doordarshan is for canvassing advertisements on behalf of the respondent. So much so, the payment of 15%, by whatever name called, whether discount or commission, falls within the definition of "commission" as defined under Explanation (i) to Section 194H of the Act.

.....

It is very clear from the above provision that the advertising agency clearly understood the agreement as an agency arrangement and the commission payable by the respondent to such agency is subject to tax deduction at source under the Income Tax Act and so much so the provision in the agreement was for the agent after retaining 15% to give cheque or demand draft for TDS amount which was originally 5% until it was enhanced to 10% by Finance Act 2007 with effect from 1.6.2007.

62. In the aforesaid case, the relationship of principal and agent was fully established since the advertising agency

A **was appointed as agent by written agreement and there was specific clause that tax shall be deductible at source on payment of trade discount. In the said circumstances, the Kerala High Court held that Section 194H of the Income Tax Act was applicable. In the present case, there is no agreement between the petitioner and the advertising agency and the advertising agency has never been appointed as agent of the petitioner. Thus the above case of the Kerala High Court is clearly inapplicable and the reliance on the said judgment for fastening the liability of tax and interest on the petitioner is wholly untenable. The judgment of the Kerala High Court thus does not help the respondents in the present case."**

37. In our opinion, the Allahabad High Court very rightly noticed the distinction between the facts in the case of **Jagaran Prakashan Ltd.** (supra) and the case with which we are concerned in these appeals and held that it depends upon the facts of each case to decide as to what is the nature of payment made by the party concerned. Their Lordships rightly noticed that the case before them (**Jagaran Prakashan Ltd**.) did not have any agreement like the one in this case wherein in terms of the agreement, it is unmistakably proved that the payment was being made by the appellant (assessee) to the agencies by way of "commission". In our view, therefore, the decision of the Allahabad High Court is of no help to the case of the appellant for taking a different view.

38. In the light of the foregoing discussion, we concur with the reasoning and the conclusion arrived at by the High Court and find no merit in these appeals. The appeals thus fail and are accordingly dismissed.

Nidhi Jain Appeals dismissed.

SURESH KUMAR KOHLI

v.

RAKESH JAIN & ANR.

(Civil Appeal No. 3996 of 2018)

APRIL 19, 2018

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ]

Rent Control and Eviction: Tenancy – Joint tenancy or tenancy-in-common – Appellant let out a premises to father and his son-respondent no. 2 who started a family business – Respondent no. 1-second son, inducted as partner in the family business – Issuance of notice to respondent no. 2 and his father terminating the tenancy – Subsequently, death of the father – Eviction petition by appellant – Decreed by the Rent Controller – Said order upheld by the High Court – Meanwhile, objections filed by respondent no. 1 in the execution petition u/s. 47 O. XXI, r 26(1) claiming that he was a necessary party – Additional Rent Controller rejected the objection petition, however, the High Court allowed the petition – On appeal, held: When original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants – Landlord need not implead all legal heirs of the deceased tenant, whether they are occupying the property or not – It is sufficient for the landlord to implead either of those persons who are occupying the property, as party – Eviction petition against one of the joint tenant is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs – Furthermore, filing of objections in the execution petition at this belated stage, seems to be a deliberate attempt to nullify the decree passed in favour of the appellant – Thus, the order passed by the High Court set aside and that of the Additional Rent Controller restored – Code of Civil Procedure, 1908 – s. 47 O. XXI, r 26(1).

Tenancy – Joint tenancy or tenancy in common – Concept of – Difference between – Explained.

A **Allowing the appeal, the Court**

HELD: 1.1 The concepts of joint tenancy and tenancy-in-common are different and distinct in form and substance. The incidents regarding the co-tenancy and joint tenancy are different: joint tenants have unity of title, unity of commencement of title,
B **unity of interest, unity of equal shares in the joint estate, unity of possession and right of survivorship. Tenancy-in-common is a different concept. There is unity of possession but no unity of title, i.e. the interests are differently held and each co-tenant has different shares over the estate. Thus, the tenancy rights, being proprietary rights, by applying the principle of inheritance, the**
C **shares of heirs are different and ownership of leasehold rights would be confined to the respective shares of each heir and none will have title to the entire leasehold property. Therefore, the estate shall be divided among the co-tenants and each tenant in common has an estate in the whole of single tenancy.**
D **Consequently, the privity exists between the landlord and the tenant in common in respect of such estate.[Para 10, 11] [307-E-H]**

1.2 From a perusal of lease deed , it is found that the suit premises was let out jointly to the father and his son. Thus, both
E **of them were joint tenants and upon the death of the father, respondent No. 1 inherited the tenancy as joint tenant only. In the light of *H.C. Pandey* case, the situation is very clear that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants. It is not necessary for landlord to implead all**
F **legal heirs of the deceased tenant, whether they are occupying the property or not. It is sufficient for the landlord to implead either of those persons who are occupying the property, as party. There may be a case where landlord is not aware of all the legal heirs of deceased tenant and impleading only those heirs who**
G **are in occupation of the property is sufficient for the purpose of filing of eviction petition. An eviction petition against one of the joint tenant is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. Thus, the plea of the tenants on this count must fail.**
H **[Para 19, 20] [322-F, 323-B-C]**

1.3 Even otherwise, the intervention at this belated stage of execution proceedings, in the fact and circumstances of the case, seems to be a deliberate attempt to nullify the decree passed in favour of the appellant as when respondent no.1 filed objections under Section 47 Order XXI, r 26(1) of the Code, he claimed to be in possession of the suit premises, however, he failed to produce any evidence except two rent receipts that too when the respondent no. 1 in his objection petition filed in the execution proceedings of the eviction decree has himself admitted that the there exists a dispute between him and Respondent No. 2 and they had parted their ways. [Para 21] [323-D-E]

1.4 The judgment and order passed by the Single Judge of the High Court is set aside. The judgment and order passed by the Additional Rent Controller is restored. [Para 22] [323-F]

H.C. Pandey v. *G.C. Paul* **(1989) 3 SCC 77 – relied on.**

Mohd. Usman v. *(Mst.) Surayya Begum* **(1990) 2 RCR (Rent) 408**; *Mst. Surayya Begum* v. *Mohd. Usman and Others* **(1991) 3 SCC 114**; *Harish Tandon* v. *Addl. District Magistrate, Allahabad, U.P. and Others* **(1995) 1 SCC 537**; *Boddu Venkatakrishna Rao and Others* v. *Smt. Boddu Satyavathi and Others* **AIR 1968 SC 751**; *Gian Devi Anand* v. *Jeevan Kumar and Others* **(1985) 2 SCC 683**; *Uttam* v. *Saubhag Singh and Others* **(2016) 4 SCC 68 – referred to.**

Case Law Reference

(1989) 3 SCC 77	**relied on.**	**Para 7**
(1990) 2 RCR (Rent) 408	**referred to**	**Para 7**
(1991) 3 SCC 114	**referred to**	**Para 7**
(1995) 1 SCC 537	**referred to**	**Para 7**
AIR 1968 SC 751	**referred to**	**Para 9**
(1985) 2 SCC 683	**referred to**	**Para 9**
(2016) 4 SCC 68	**referred to**	**Para 9**

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3996 of 2018.

From the Judgment and Order dated 05.12.2013 of the High Court of Delhi at New Delhi in CM(M) No. 880 of 2012.

Dhruv Mehta, Sr. Adv., Rajiv Raheja, Adv. for the Appellant.

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Huzefa Ahmadi, Sr. Adv., Ms. Kaveeta Wadia, Shashank Tripathi, Rahul Gupta, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. K. AGRAWAL, J. 1. Leave granted.

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2. The present appeal is directed against the final judgment and order dated 05.12.2013 passed by the High Court of Delhi in CM (M) No. 880 of 2012 whereby learned single Judge of the High Court allowed the petition filed by the Respondent No. 1 herein against the judgment and order dated 08.06.2012 passed by the Additional Rent Controller in D Ex Petition No. 51 of 2012 wherein the objections filed by the Respondent No. 1 herein under Section 47 read with Order XXI Rule 26(1) of the Code of Civil Procedure, 1908 (in short 'the Code') were rejected.

3. **Brief facts**:-

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(a) Suresh Kumar Kohli-the appellant herein is the owner of shop bearing No. 3, Building No. 2656, Ajmal Khan Road, Karol Bagh, New Delhi (in short 'the suit premises'). On 15.11.1975, his father, along with one another, let out the suit premises on a monthly rental of Rs. 450/- to Late Shri Ishwar Chand Jain, father of Respondent No. 1 herein, and Ramesh Chand Jain-Respondent No. 2 herein. The tenants started a F family business under the name and style of M/s Rakesh Wool Store. Shri Rakesh Jain - Respondent No. 1 herein was inducted as a partner in the family business on 02.04.1979.

(b) On 25.04.2009, the owner sent a legal notice to Respondent No. 2 herein and his father Late Shri Ishwar Chand Jain terminating the G tenancy with effect from 31.05.2009. Shri Ishwar Chand Jain died on 08.03.2010.

(c) Since the tenant failed to vacate the suit premises, the appellant herein filed Eviction Petition bearing No. E-304/2010 under Section 14(1)(e) read with Section 25-B of the Delhi Rent (Control) Act, 1958

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(hereinafter referred to as 'the Act') on the ground of *bona fide* need. The Additional Rent Controller, New Delhi, vide judgment and order dated 30.11.2011, decreed the eviction petition in favour of the appellant herein.

(d) Being aggrieved by the decree in favour of the appellant herein, Respondent No. 2 herein preferred Rent Control Revision being No. 212 of 2012 before the High Court. Learned single Judge of the High Court, vide judgment and order dated 08.05.2012, dismissed the revision. Aggrieved by the above order, Respondent No. 2 herein preferred Review Petition being No. 383 of 2012 before the High Court. Learned single Judge of the High Court, vide judgment and order dated 17.08.2012, dismissed the review petition filed by Respondent No. 2 herein.

(e) Meanwhile, Respondent No. 1 herein filed objections in Execution Petition No. 51/2012 under Section 47 Order XXI Rule 26(1) before the Additional Rent Controller, New Delhi claiming that he being a necessary party as he inherited rights in a joint family business and he was not aware of the pendency of the eviction proceedings. The Additional Rent Controller, vide judgment and order dated 08.06.2012, rejected the objection petition filed by Respondent No. 1 herein.

(f) Aggrieved by the order dated 08.06.2012, Respondent No. 1 herein preferred CM (Main) No. 880 of 2012 before the High Court. Learned single Judge of the High Court, vide judgment and order dated 05.12.2013, allowed the petition filed by the Respondent No. 1 herein.

(g) Aggrieved by the judgment and order dated 05.12.2013, the appellant has preferred this appeal by way of special leave before this Court.

4. Heard Mr. Dhruv Mehta, learned senior counsel for the appellant and Mr. Huzefa Ahmadi, learned senior counsel for the respondents and perused the records.

Point(s) for consideration:-

5. The only point for consideration before this Court is whether in the light of present facts and circumstances of the case, the status of the heirs and legal representatives of the deceased tenant will be of joint tenants or of tenants-in-common.

Rival submissions:-

6. Learned senior counsel appearing for the appellant contended that the High Court failed to appreciate the fact that Respondent No.2, apart from being a tenant in his own right, was also one of the heirs and legal representative of the deceased - Shri Ishwar Chand Jain and, thus, his estate and interest was amply represented and the absence of Respondent No.1 was not fatal to the maintainability of the Eviction Petition filed by the appellant against the tenant-Respondent No.2. Learned senior counsel further contended that Respondent No.2 and his father late Shri Ishwar Chand Jain were joint tenants when their tenancy was determined, and therefore, eviction suit filed by the landlord-appellant against one of the joint tenant was perfectly valid and maintainable. The death of one of the joint tenant after termination of the tenancy will have no effect as right of the party crystallized on the date of service of the notice and termination of the tenancy.

7. Learned senior counsel further contended that the High Court erred in holding that Respondent No.1 was a necessary party to the suit for eviction on the ground that the tenancy between the parties is tenancy-in-common and not a joint tenancy. He finally contended that the High Court erred in law in applying the provisions of the Hindu Succession Act, 1956 while interpreting the status of Respondent No.1 *qua* the suit shop after the death of his father who was the original tenant in the suit premises. The Act, being a special Act and the "tenant" having been defined in the said Act, the provisions of the Rent Act will prevail over the provisions of the Hindu Succession Act, 1956. In support of his plea, learned senior counsel relied upon the following decisions of this Court, viz., ***H.C. Pandey*** vs. ***G.C. Paul*** (1989) 3 SCC 77, ***Mohd. Usman*** vs. ***(Mst.) Surayya Begum*** (1990) 2 RCR (Rent) 408, ***Mst. Surayya Begum*** vs. ***Mohd. Usman and Others*** (1991) 3 SCC 114 and ***Harish Tandon*** vs. ***Addl. District Magistrate, Allahabad, U.P. and Others*** (1995) 1 SCC 537.

8. On the other hand, learned senior counsel appearing for the respondents contended that on a careful perusal of the provisions of the Act and the definition of 'Tenant' given thereunder read with Section 19 of the Hindu Succession Act, 1956, the intention of the legislature would not be to exclude the former Act from the operation of the latter and the High Court was right in placing reliance on Section 19 of the Hindu

Succession Act,1956 to hold that on the death of a tenant, his legal heirs hold the tenancy estate as tenants-in-common and not as joint tenant.

9. Learned senior counsel further submitted that the present appeal deserves to be dismissed as the appellant has acted in a clandestine manner to undermine the interest of Respondent No. 1 in the suit premise and the High Court was right in setting aside the order of the Additional Rent Controller and directing the impleadment of Respondent No. 1 in the eviction petition. He finally contended that the findings of the High Court in the present case should not be interfered with as the same would lead to grave injustice to the respondents. In support of his aforesaid pleas, learned senior counsel has relied upon the following decisions of this Court, viz., ***Boddu Venkatakrishna Rao and Others*** vs. ***Smt. Boddu Satyavathi and Others*** AIR 1968 SC 751, ***Gian Devi Anand*** vs. ***Jeevan Kumar and Others*** (1985) 2 SCC 683 and ***Uttam*** vs. ***Saubhag Singh and Others*** (2016) 4 SCC 68.

Discussion:-

10. The issue at hand is what would be the status of the succeeding legal representatives after the death of the statutory tenant. In this regard, it would be worthy to discuss the two capacities, viz., tenancy-in-common and joint tenancy, and the rights that one holds in these two different capacities. Fundamentally, the concepts of joint tenancy and tenancy-in-common are different and distinct in form and substance. The incidents regarding the co-tenancy and joint tenancy are different: joint tenants have unity of title, unity of commencement of title, unity of interest, unity of equal shares in the joint estate, unity of possession and right of survivorship.

11. Tenancy-in-common is a different concept. There is unity of possession but no unity of title, i.e. the interests are differently held and each co-tenant has different shares over the estate. Thus, the tenancy rights, being proprietary rights, by applying the principle of inheritance, the shares of heirs are different and ownership of leasehold rights would be confined to the respective shares of each heir and none will have title to the entire leasehold property. Therefore, the estate shall be divided among the co-tenants and each tenant in common has an estate in the whole of single tenancy. Consequently, the privity exists between the landlord and the tenant in common in respect of such estate.

12. In ***Boddu Venkatakrishna Rao (supra),*** this Court has held as under:-

> "**5.** Let us now consider the position in law. The law has been summarised in *Mulla's Transfer of Property Act* (Fifth Edition) at page 226. As early as 1896 it was held by the Judicial Committee of the Privy Council in *Jogeswar Narain Deo* v. *Ram Chandra Dutt* that
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> > "The principle of joint tenancy appears to be unknown to Hindu law except in the case of coparcenary between the members of an undivided family."
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> and that it was not right to import into the construction of a Hindu will an extremely technical rule of English conveyancing. Many years later the principle was reiterated in the case of Mt. *Bahu Rani* v. *Rajendra Baksh Singh..*"

13. In ***Gian Devi (supra)***, this Court has held as under:

> **"34.** It may be noticed that the Legislature itself treats commercial tenancy differently from residential tenancy in the matter of eviction of the tenant in the Delhi Rent Act and also in various other Rent Acts. All the grounds for eviction of a tenant of residential premises are not made grounds for eviction of a tenant in respect of commercial premises. Section 14(1)(*d*) of the Delhi Rent Act provides that non-user of the residential premises by the tenant for a period of six months immediately before the filing of the application for the recovery of possession of the premises will be a good ground for eviction, though in case of a commercial premises no such provision is made. Similarly, Section 14(1)(*e*) which makes bona fide requirement of the landlord of the premises let out to the tenant for residential purposes a ground for eviction of the tenant, is not made applicable to commercial premises. A tenant of any commercial premises has necessarily to use the premises for business purposes. Business carried on by a tenant of any commercial premises may be and often is, his only occupation and the source of livelihood of the tenant and his family. Out of the income earned by the tenant from his business in the commercial premises, the tenant maintains himself and his family; and the tenant, if he is residing in a tenanted house, may also be paying his rent out of the said income. Even if a tenant is evicted

from his residential premises, he may with the earnings out of the business be in a position to arrange for some other accommodation for his residence with his family. When, however, a tenant is thrown out of the commercial premises, his business which enables him to maintain himself and his family comes to a standstill. It is common knowledge that it is much more difficult to find suitable business premises than to find suitable premises for residence. It is no secret that for securing com- mercial accommodation, large sums of money by way of salami, even though not legally payable, may have to be paid and rents of commercial premises are usually very high. Besides, a business which has been carried on for years at a particular place has its own goodwill and other distinct advantages. The death of the person who happens to be the tenant of the commercial premises and who was running the business out of the income of which the family used to be maintained, is itself a great loss to the members of the family to whom the death, naturally, comes as a great blow. Usually, on the death of the person who runs the business and maintains his family out of the income of the business, the other members of the family who suffer the bereavement have necessarily to carry on the business for the maintenance and support of the family. A running business is indeed a very valuable asset and often a great source of comfort to the family as the business keeps the family going. So long as the contractual tenancy of a tenant who carries on the business continues, there can be no question of the heirs of the deceased tenant not only inheriting the tenancy but also inheriting the business and they are entitled to run and enjoy the same. We have earlier held that mere termination of the contractual tenancy does not bring about any change in the status of the tenant and the tenant by virtue of the definition of the "tenant" in the Act and the other Rent Acts continues to enjoy the same status and position, unless there be any provisions in the Rent Acts which indicate to the contrary. The mere fact that in the Act no provision has been made with regard to the heirs of tenants in respect of commercial tenancies on the death of the tenant after termination of the tenancy, as has been done in the case of heirs of the tenants of residential premises, does not indicate that the Legislature intended that the heirs of the tenants of commercial premises will cease to enjoy the protection afforded to the tenant under the Act. The

A Legislature could never have possibly intended that with the death of a tenant of the commercial premises, the business carried on by the tenant, however flourishing it may be and even if the same constituted the source of livelihood of the members of the family, must necessarily come to an end on the death of the tenant, only because the tenant died after the contractual tenancy had been terminated. It could never have been the intention of the Legislature that the entire family of a tenant depending upon the business carried on by the tenant will be completely stranded and the business carried on for years in the premises which had been let out to the tenant must stop functioning at the premises which the heirs of the deceased tenant must necessarily vacate, as they are afforded no protection under the Act. We are of the opinion that in case of commercial premises governed by the Delhi Act, the Legislature has not thought it fit in the light of the situation at Delhi to place any kind of restriction on the ordinary law of inheritance with regard to succession. It may also be borne in mind that in case of commercial premises the heirs of the deceased tenant not only succeed to the tenancy rights in the premises but they succeed to the business as a whole. It might have been open to the Legislature to limit or restrict the right of inheritance with regard to the tenancy as the Legislature had done in the case of the tenancies with regard to the residential houses but it would not have been open to the Legislature to alter under the Rent Act, the law of succession regarding the business which is a valuable heritable right and which must necessarily devolve on all the heirs in accordance with law. The absence of any provision restricting the heritability of the tenancy in respect of the commercial premises only establishes that commercial tenancies notwithstanding the determination of the contractual tenancies will devolve on the heirs in accordance with law and the heirs who step into the position of the deceased tenant will continue to enjoy the protection afforded by the Act and they can only be evicted in accordance with the provisions of the Act. There is another significant consideration which, in our opinion, lends support to the view that we are taking. Commercial premises are let out not only to individuals but also to Companies, Corporations and other statutory bodies having a juristic personality. In fact, tenancies in respect of commercial premises are usually taken by Companies and Corporations. When the tenant

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is a Company or a Corporation or anybody with juristic personality, question of the death of the tenant will not arise. Despite the termination of the tenancy, the Company or the Corporation or such juristic personalities, however, will go on enjoying the protection afforded to the tenant under the Act. It can hardly be conceived that the Legislature would intend to deny to one class of tenants, namely, individuals the protection which will be enjoyed by the other class, namely, the Corporations and Companies and other bodies with juristic personality under the Act. If it be held that commercial tenancies after the termination of the contractual tenancy of the tenant are not heritable on the death of the tenant and the heirs of the tenant are not entitled to enjoy the protection under the Act, an irreparable mischief which the Legislature could never have intended is likely to be caused. Any time after the creation of the contractual tenancy, the landlord may determine the contractual tenancy, allowing the tenant to continue to remain in possession of the premises, hoping for an early death of the tenant, so that on the death of a tenant he can immediately proceed to institute the proceeding for recovery and recover possession of the premises as a matter of course, because the heirs would not have any right to remain in occupation and would not enjoy the protection of the Act. This could never have been intended by the Legislature while framing the Rent Acts for affording protection to the tenant against eviction that the landlord would be entitled to recover possession, even if no grounds for eviction as prescribed in the Rent Acts are made out.

35. In our opinion, the view expressed by this Court in *Ganapat Ladha case* and the observations made therein which we have earlier quoted, do not lay down the correct law. The said decision does not properly construe the definition of the "tenant" as given in Section 5(11)(*b*) of the Act and does not consider the status of the tenant, as defined in the Act, even after termination of the commercial tenancy. In our judgment in *Damadilal case* this Court has correctly appreciated the status and the legal position of a tenant who continues to remain in possession after termination of the contractual tenancy. We have quoted at length the view of this Court and the reasons in support thereof. The view expressed by a seven Judge Bench of this Court in *Dhanapal Chettiar*

A *case* and the observations made therein which we have earlier quoted, lend support to the decision of this Court in *Damadilal case*. These decisions correctly lay down that the termination of the contractual tenancy by the landlord does not bring about a change in the status of the tenant who continues to remain in possession after the termination of the tenancy by virtue of the provisions of the Rent Act. A proper interpretation of the definition of tenant in the light of the provisions made in the Rent Acts makes it clear that the tenant continues to enjoy an estate or interest in the tenanted premises despite the termination of the contractual tenancy."

C 14. This Court, in ***H.C. Pandey (supra)***, has held as under:-

"4. It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negativing or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable thereof. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants…."

E 15. In ***Mohd. Usman (supra)***, the High Court of Delhi has held as under:-

"5. I find no force in the contention raised by the learned counsel for respondent No. 1. The provision regarding inheritance of tenancy in respect of Mahomedans and Hindus is not different. The Supreme Court in Gian Devi Anand's case (Supra) has no doubt observed that tenancy right which is inheritable devolves on the heirs under the ordinary law of succession. It only means that only those heirs who would be entitled to inherit the property of a deceased tenant under the ordinary law of succession would be entitled to inherit even the right of tenancy after the death of the tenant. This position is amply clear from the fact that even under Section 19 of the Hindu Succession Act 1956 which prescribes the mode of succession of two or more heirs provides that if two or more heirs succeed together to the property of an intestate they shall take the property as tenants in common and

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not as joint tenants and in-spite of this the Supreme Court in H.C. Pandey's case (supra) has observed that the heirs of a deceased tenant succeed to the right of tenancy as joint tenants. The Supreme Court in H.C. Pandey's case (supra) has observed as follows:-

> "It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negativing or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable there. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants. In the present case it appears that the respondent acted on behalf of the tenants, that he paid rent on behalf of all and he accepted notice also on behalf of all. In the circumstances, the notice was served on the respondent was sufficient. It seems to us that the view taken in Ramesh Chand Bose (AIR 1977 Allahabad 38) (supra) is erroneous where the High Court lays down that the heirs of the deceased tenant succeed as tenants in common. In the Transfer of Property Act notice served by the appellant on the respondent is a valid notice and therefore the suit must succeed."

6. In the light of the above observations of the Supreme Court there can be no doubt that even if one of the legal heirs is not a party to proceedings for eviction filed by the landlord against the legal heirs of the original tenant, that heir who has been left out cannot later on come forward and agitate his or her right in the tenancy. In the present case, I find that Surayya Begum who claims to be living in the same disputed premises alongwith other legal heirs after the death of Khalil Raza has chosen to file her objections after the whole round of litigation is over and after the other legal heirs have lost right upto the Supreme Court. It is thus clear that these objections are filed only to defeat the decree and delay the execution of the decree. In my view, therefore, even if Surayya Begum was not a party to the previous litigation between the parties she has no right to object to the execution of the decree

A and the Additional Rent Controller ought to have dismissed the objections on that ground alone.

7. In the circumstances, the petition is allowed. The order of the Additional Rent Controller Delhi dated 2nd September, 1989 is set aside. The objections filed by respondent No.1 are dismissed. Respondent No.1 Mst. Surayya Begum is however given on month's time to vacate the premises. No costs."

16. Further, in ***Surayya Begum (Mst) (supra),*** this Court has held as under:-

"7. The learned advocates representing the decree holders in these two appeals have argued that when the tenancy rights devolve on the heirs of a tenant on his death, the incidence of tenancy remains the same as earlier enjoyed by the original tenant and it is a single tenancy which devolves on them. There is no division of the premises or of the rent payable, and the position as between the landlord and the tenant continues unaltered. Relying on *Kanji Manji* v. *Trustees of the Port of Bombay* and borrowing from the judgment in *H.C. Pandey case* it was urged that the heirs succeed to the tenancy as joint tenants. The learned counsel for the appellants have replied by pointing out that as the aforesaid two decisions were distinguished by this Court in the latter case of *Textile Association*, it was not open to the landlords to support the impugned judgments by relying upon the earlier two cases.

8. So far as Section 19 of the Hindu Succession Act is concerned, when it directs that the heirs of a Hindu dying intestate shall take his property as tenants-in-common, it is dealing with the rights of the heirs inter se amongst them, and not with their relationship with a stranger having a superior or distinctly separate right therein. The relationship between the stranger and the heirs of a deceased tenant is not the subject matter of the section. Similar is the situation when the tenant is a Mohammedan. However, it is not necessary for us to elaborate this aspect in the present appeals. The main dispute between the parties, as it appears from their respective stands in the courts below, is whether the heirs of the original tenants who were parties to the proceeding, represented the objector heirs also. According to the decree holder in *Miss Renu Sharma's case* their interest was adequately represented by their

mother and brothers and they are as much bound by the decree as the named judgment debtors. In *Surayya Begum's case* respondent 1 has denied the appellant's claim of being one of the daughters of Khalil Raza, and has been contending that the full estate of Khalil Raza which devolved upon his heirs on his death was completely represented by respondents 2 to 9. In other words, even if the appellant is held to be a daughter of Khalil Raza the further question as to whether her interest was represented by the other members of the family will have to be answered."

17. In ***Harish Tandon (supra)***, this Court has held as under:-

"20. The Act with which we are concerned is a statute which purports to regulate the relationship between the landlord and the tenant and in many respects contains provisions for achieving that object which are different from the Transfer of Property Act. As such it was open to the framers of the Act to look to the interest of the tenant as well as the landlord and to prescribe conditions under which the tenant can continue to occupy a building and having contravened any of the conditions prescribed shall be deemed to have ceased to occupy the building.

21. On the question as to whether any contravention by Ganpat Roy, one of the heirs of Sheobux Roy, will be a ground for eviction from the whole premises, the High Court was of the opinion that after the death of Sheobux Roy, his five sons became tenants in common and not joint tenants of the premises because of which contravention by one of the tenants shall not be a ground for eviction, so far the other co-tenants are concerned. In support of this finding, reliance was placed by the High Court on a judgment of this Court in *Mohd. Azeem* v. *Distt. Judge*. From the facts of that case it appears that the original tenant had died in 1969 leaving behind a widow, three sons and a daughter. In connection with sub-section (3) of Section 12, after making reference to the Full Bench judgment of Allahabad High Court it was said:

> "The Full Bench proceeded on the basis that the heirs become joint tenants and answered the main problem by saying that if any member of the family of such joint tenants built or acquired a house in vacant state the tenancy would be deemed to have ceased. In framing these questions for reference and

A in answering the referred questions, the definition of 'tenant' was lost sight of. All the heirs as normally reside with the deceased tenant in the building at the time of his death become tenants. The definition does not warrant the view that all the heirs will become a body of tenants to give rise to the concept of joint tenancy. Each heir satisfying the further qualification B in Section 3(*a*)(1) of the Act in his own right becomes a tenant and when we come to Section 12(3) of the Act, the words 'the tenant or any member of his family' will refer to the heir who has become a tenant under the statutory definition and members of his family."

C However, this Court in the case of *H.C. Pandey* v. *G.C. Paul* in connection with the same Act said:

"It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negativing or limiting the succession, the tenancy rights devolve on the D heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefor. That is the position as between the landlord and the heirs of the deceased tenant. E In other words, the heirs succeed to the tenancy as joint tenants."

22. The attention of the learned Judges constituting the Bench in the case of *H.C. Pandey* v. *G.C. Paul* was not drawn to the view expressed in the case of *Mohd. Azeem* v. *Distt. Judge*. There F appears to be an apparent conflict between the two judgments. It was on that account that the present appeal was referred to a Bench of three Judges. According to us, it is difficult to hold that after the death of the original tenant his heirs become tenants-in-common and each one of the heirs shall be deemed to be an independent tenant in his own right. This can be examined with G reference to Section 20(2) which contains the grounds on which a tenant can be evicted. Clause (*a*) of Section 20(2) says that if the tenant is in arrears of rent for not less than four months and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand, then that shall

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be a ground on which the landlord can institute a suit for eviction. Take a case where the original tenant who was paying the rent dies leaving behind four sons. It need not be pointed out that after the death of the original tenant, his heirs must be paying the rent jointly through one of his sons. Now if there is a default as provided in clause (*a*) of sub-section (2) of Section 20 in respect of the payment of rent, each of the sons will take a stand that he has not committed such default and it is only the other sons who have failed to pay the rent. If the concept of heirs becoming independent tenants is to be introduced, there should be a provision under the Act to the effect that each of the heirs shall pay the proportionate rent and in default thereto such heir or heirs alone shall be liable to be evicted. There is no scope for such division of liability to pay the rent which was being paid by the original tenant, among the heirs as against the landlord what the heirs do inter se, is their concern. Similarly, so far as ground (*b*) of sub-section (2) of Section 20, which says that if the tenant has wilfully caused or permitted to be caused substantial damage to the building, then the tenant shall be liable to be evicted; again, if one of the sons of the original deceased tenant wilfully causes substantial damage to the building, the landlord cannot get possession of the premises from the heirs of the deceased tenant since the damage was not caused by all of them. Same will be the position in respect of clause (*c*) which is another ground for eviction, i.e., the tenant has without the permission in writing of the landlord made or permitted to be made, any such construction or structural alteration in the building which is likely to diminish its value or utility or to disfigure it. Even if the said ground is established by the landlord, he cannot get possession of the building in which construction or structural alterations have been made diminishing its value and utility, unless he establishes that all the heirs of the deceased tenant had done so. Clause (*d*) of sub-section (2) of Section 20 prescribes another ground for eviction — that if the tenant has without the consent in writing of the landlord, used it for a purpose other than the purpose for which he was admitted to the tenancy of the building or has been convicted under any law for the time being in force of an offence of using the building or allowing it to be used for illegal or immoral purposes; the landlord cannot get possession of the building unless he establishes the said ground individually against all the heirs. We

A are of the view that if it is held that after the death of the original tenant, each of his heirs becomes independent tenant, then as a corollary it has also to be held that after the death of the original tenant, the otherwise single tenancy stands split up into several tenancies and the landlord can get possession of the building only if he establishes one or the other ground mentioned in sub-section (2) of Section 20 against each of the heirs of original tenant. One of the well-settled rules of interpretation of statute is that it should be interpreted in a manner which does not lead to an absurd situation."

C 18. Further, in ***Uttam (supra)***, this Court has held as under:-

"9. Also of some importance are Sections 19 and 30 of the said Act which read as follows:

"**19.** ***Mode of succession of two or more heirs***.—If two or more heirs succeed together to the property of an intestate, they shall take the property—

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(*a*) save as otherwise expressly provided in this Act, per capita and not per stirpes; and

(*b*) as tenants-in-common and not as joint tenants.

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30. ***Testamentary succession***.—Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

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Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall, notwithstanding anything contained in this Act, or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section."

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10. Before analysing the provisions of the Act, it is necessary to refer to some of the judgments of this Court which have dealt, in

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particular, with Section 6 before its amendment in 2005, and with Section 8. In *Gurupad Khandappa Magdum* v. *Hirabai Khandappa Magdum*, the effect of the old Section 6 was gone into in some detail by this Court. A Hindu widow claimed partition and separate possession of a 7/24th share in joint family property which consisted of her husband, herself and their two sons. If a partition were to take place during her husband's lifetime between himself and his two sons, the widow would have got a 1/4th share in such joint family property. The deceased husband's 1/4th share would then devolve, upon his death, on six sharers, the plaintiff and her five children, each having a 1/24th share therein. Adding 1/4th and 1/24th, the plaintiff claimed a 7/24th share in the joint family property. This Court held: (SCC pp. 386-87, paras 6-7)

14. On application of the principles contained in the aforesaid decisions, it becomes clear that, on the death of Jagannath Singh in 1973, the proviso to Section 6 would apply inasmuch as Jagannath Singh had left behind his widow, who was a Class I female heir. Equally, upon the application of Explanation 1 to the said Section, a partition must be said to have been effected by operation of law immediately before his death. This being the case, it is clear that the plaintiff would be entitled to a share on this partition taking place in 1973. We were informed, however, that the plaintiff was born only in 1977, and that, for this reason, (his birth being after his grandfather's death) obviously no such share could be allotted to him. Also, his case in the suit filed by him is not that he is entitled to this share but that he is entitled to a 1/8th share on dividing the joint family property between 8 co-sharers in 1998. What has therefore to be seen is whether the application of Section 8, in 1973, on the death of Jagannath Singh would make the joint family property in the hands of the father, uncles and the plaintiff no longer joint family property after the devolution of Jagannath Singh's share, by application of Section 8, among his Class I heirs? This question would have to be answered with reference to some of the judgments of this Court.

15. In *CWT* v. *Chander Sen*, a partial partition having taken place in 1961 between a father and his son, their business was divided and thereafter carried on by a partnership firm consisting of the two of them. The father died in 1965, leaving behind him his son

A and two grandsons, and a credit balance in the account of the firm. This Court had to answer as to whether credit balance left in the account of the firm could be said to be joint family property after the father's share had been distributed among his Class I heirs in accordance with Section 8 of the Act. This Court examined the legal position and ultimately approved of the view of four High Courts, namely, Allahabad, Madras, Madhya Pradesh and Andhra Pradesh, while stating that the Gujarat High Court view contrary to these High Courts, would not be correct in law. After setting out the various views of the five High Courts mentioned, this Court held:

> "*21*. It is necessary to bear in mind the Preamble to the Hindu Succession Act, 1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.
>
> *22*. In view of the Preamble to the Act i.e. that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in Class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undivided family. The Gujarat High Court view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under Section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in Section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by Section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under Section 8 of the Hindu Succession Act would be HUF in his hand vis-à-vis his own son; that would amount to creating two classes among the heirs mentioned in Class I, the male heirs in whose hands it will be joint Hindu family property and vis-à-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It

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may be mentioned that heirs in Class I of Schedule under Section 8 of the Act included widow, mother, daughter of predeceased son, etc.

23. Before we conclude we may state that we have noted the observations of *Mulla's Commentary on Hindu Law*, 15th Edn. dealing with Section 6 of the Hindu Succession Act at pp. 924-26 as well as *Mayne Hindu Law*, 12th Edn., pp. 918-19.

24. The express words of Section 8 of the Hindu Succession Act, 1956 cannot be ignored and must prevail. The Preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which excludes son's son but includes son of a predeceased son cannot be ignored.

25. In the aforesaid light the views expressed by the Allahabad High Court, the Madras High Court[8], the Madhya Pradesh High Court, and the Andhra Pradesh High Court, appear to us to be correct. With respect we are unable to agree with the views of the Gujarat High Court noted hereinbefore."

17. In *Bhanwar Singh* v. *Puran*, this Court followed *Chander Sen case* and the various judgments following *Chander Sen case*. This Court held:

"*12*. The Act brought about a sea change in the matter of inheritance and succession amongst Hindus. Section 4 of the Act contains a non obstante provision in terms whereof any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Act, ceased to have effect with respect to any matter for which provision is made therein save as otherwise expressly provided.

13. Section 6 of the Act, as it stood at the relevant time, provided for devolution of interest in the coparcenary property. Section 8 lays down the general rules of succession that the property of a male dying intestate devolves according to the provisions of the Chapter as specified in Class I of the Schedule.

A In the Schedule appended to the Act, natural sons and daughters are placed as Class I heirs but a grandson, so long as father is alive, has not been included. Section 19 of the Act provides that in the event of succession by two or more heirs, they will take the property per capita and not per stirpes, as also tenants-in-common and not as joint tenants.

B

14. Indisputably, Bhima left behind Sant Ram and three daughters. In terms of Section 8 of the Act, therefore, the properties of Bhima devolved upon Sant Ram and his three sisters. Each had 1/4th share in the property. Apart from the legal position, factually the same was also reflected in the record-of-rights. A partition had taken place amongst the heirs of Bhima.

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15. Although the learned first appellate court proceeded to consider the effect of Section 6 of the Act, in our opinion, the same was not applicable in the facts and circumstances of the case. In any event, it had rightly been held that even in such a case, having regard to Section 8 as also Section 19 of the Act, the properties ceased to be joint family property and all the heirs and legal representatives of Bhima would succeed to his interest as tenants-in-common and not as joint tenants. In a case of this nature, the joint coparcenary did not continue."

D

E

19. From a perusal of lease deed dated 15.11.1975, we find that the suit premises was let out jointly to late Shri Ishwar Chand Jain and Shri Ramesh Chand Jain, son of late Shri Ishwar Chand Jain. Thus, both of them were joint tenants and upon the death of Shri Ishwar Chand Jain, Respondent No. 1 inherited the tenancy as joint tenant only. Further, in view of a catena of decisions of this Court on the subject as well as the principles laid down in ***H.C. Pandey (supra)***, we are of the opinion that the High Court erred in holding that the decisions relied upon by learned senior counsel for the appellant are not applicable to the facts of the present case on the premise that in the given case itself the validity and binding nature of the notice given to one of the legal representatives of the deceased tenant under Section 106 of the Transfer of property Act, 1882 on other legal representatives was determined only on the basis of the fact that they hold the tenancy as joint tenants and notice given to one means notice given to all.

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Conclusion:-

20. We are of the view that in the light of ***H.C. Pandey (supra)***, the situation is very clear that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants. It is not necessary for landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not. It is sufficient for the landlord to implead either of those persons who are occupying the property, as party. There may be a case where landlord is not aware of all the legal heirs of deceased tenant and impleading only those heirs who are in occupation of the property is sufficient for the purpose of filing of eviction petition. An eviction petition against one of the joint tenant is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. Thus, the plea of the tenants on this count must fail.

21. Even otherwise, the intervention at this belated stage of execution proceedings, in the fact and circumstances of the case, seems to be a deliberate attempt to nullify the decree passed in favour of the appellant herein as when Respondent No.1 filed objections under Section 47 Order XXI of the Code, he claimed to be in possession of the suit premises, however, he failed to produce any evidence except two rent receipts for the months of December, 1993 and January 1994 that too when the Respondent No. 1 in his objection petition filed in the execution proceedings of the eviction decree has himself admitted that the there exists a dispute between him and Respondent No. 2 and they had parted their ways.

22. In light of the above discussion, the judgment and order dated 05.12.2013 passed by learned single Judge of the High Court is set aside. The judgment and order dated 30.11.2011 passed by the Additional Rent Controller is hereby restored. The appeal is allowed.

Nidhi Jain Appeal allowed.