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**IN THE HIGH Court OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 98 OF 2021**

1) State Bank of India

A statutory Corporation incorporated under the State Bank of India Act, 1955, having its Corporate Office at State Bank Bhavan, M. C. Road, Nariman Point, Mumbai – 400 021.

2) State Bank of India Quarters

Irla Society, Near Velankani Church, Vile Parle (West), Mumbai – 400 05.

...Applicants

Versus

Amum Builders

A Partnership Firm having its office at 256, LT Marge, Opposite Commissioner's office, Mumbai – 400 002.

...Respondent

Ms. Sonal *a/w Mr. Ankit Tripathi, Mr. Filji Frederick, Mr. Vaibhav Singh, Ms. Nikita Bordepatil, Ms. Anushka Parab, Mr. Kush Lahankar and Ms. Tithi Raut, for the Applicants.*

Mr. Prasad Dani, Senior Advocate *a/w Mr. R. M. Haridas, Mr. Pradeep Thorat & Ms. Kaivalya Raul i/b Neel Gala, for the Respondent.*

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ARUN R. PEDNEKER, J.

RESERVED ON :

16th JULY 2026

PRONOUNCED ON:

12th OCTOBER 2026

JUDGMENT :-

1. By the present Civil Revision Application, the Applicants challenge the Judgment and Order dated 26.02.2021 passed by the Appellate Bench of Small Causes Court in Appeal No. 12 of 2016, whereby the Appellate Court set aside Judgment and Decree dated 02.05.2016 passed by the Small Causes Court in T. E. & R. Suit No. 14/23 of 2008, and directed the Applicants to deliver vacant possession of the Premises along with payment of arrears of rent and mesne profits.

2. The facts giving rise to this Civil Revision Application are as under :

The Applicants'/Original Defendant's case is that Francis Manuel Gonsalves was the owner of the property admeasuring 3,502 sq. yards situated at Irla Village, Vile Parle, Mumbai ("Suit Property"). The said property was leased by Francis Gonsalves to Ishak Dadi, Suleman Dadi and Ahmed Dadi under a Lease Deed dated 24.01.1964. The lessees thereafter executed an Agreement for Sub-lease dated 27.05.1966 in favour of M/s. Dadi Builders. After construction and sale of the building "Dil Phazir", the remaining

portion of the land was assigned to various persons (including Reiz Khan, Shakuntala Jhamb etc.) and ultimately came to be transferred to M/s. Fairdeal Development Corporation. M/s. Fairdeal Development Corporation, under an Agreement dated 22.05.1975, transferred the said remaining portion of this leased land to the Applicant's Bank, along with the residuary term under the original Lease Deed dated 24.01.1964. It is the case of the Suit Applicant that the original lessee, sub-lessee and confirming party have given up their leasehold rights by unregistered lease in favour of the Applicants. The Applicants, thereafter, constructed quarters on the Suit Premises. The Defendant/Applicant became direct tenant of the original lessor, Francis Gonsalves and after his death, the Defendants have started paying rent in respect of the Suit Premises to Ignatious Gonsalves (his legal heir), by cheque through his solicitors and Advocate M/s. Markand Gandhi & Co. The Applicants, therefore, claimed to be assignees of a part of the land forming part of the original Lease Deed dated 24.01.1964.

On the other hand, the Respondent/ Plaintiff claimed title to the leased property under a Deed of Conveyance dated 28.06.2005 executed by Ignatious Gonsalves. The Plaintiff informed the

Advocate of the erstwhile owner, M/s. Markand Gandhi & Co., and the Defendants that they had purchased the Suit Property from the erstwhile owners, Ignatious Francis Gonsalves and others. Thereafter, M/s. Markand Gandhi & Co. stopped accepting the rent of the Suit Premises tendered by the Defendants to it. The Plaintiff/Respondent has sent the Notice dated 24.08.2007 to the Defendants and thereby demanded the rent of the Suit Premises from them. The Plaintiff has also sent Notice dated 23.10.2007 to the Defendants and thereby terminated the tenancy of the Defendants in respect of the Suit Premises and called upon the Defendants to deliver the vacant possession of Suit Premises to the Plaintiffs. In the notice by the Plaintiff, the Defendants were called upon to remove the structure standing on the Suit Premises and to hand over the vacant possession of the Suit land to the Plaintiff. The Defendants failed to comply with the notice within the expiry of Notice period mentioned therein but sent Notice replies dated 31.10.2007, 20.11.2007 and 28.11.2007 through its Advocate to the Plaintiff.

3. Plaintiff/Respondent thereafter instituted T.E. & R. Suit No. 14/23 of 2008, seeking eviction of the Applicants, arrears of rent

and mesne profits. . The Applicants/Defendants resisted the Suit by filing their written statement. The defence, as pleaded is as under:

In paragraph 2 of Written Statement, it is stated that the Defendants are the assignees of a portion of a land comprised in the Lease dated 24.01.1964, for the residuary term of the lease (the residuary term will expire on 23.01.2061). The Plaintiff's ownership of the Suit Premises is subject to the terms and conditions of the said lease dated 24.01.1964, and hence the Plaintiff cannot term the Defendants as a monthly tenant and seek to recover possession in the manner sought to be done in the suit.

In paragraph 3, it is stated that the subject matter of the Suit is immovable property and the description of the property is wholly insufficient to identify the property. It is obligatory on Plaintiff to identify the Suit Property by boundaries and settlement survey numbers and there is no compliance with the mandatory description of the Suit Property as required by the Order 7 Rule 3 of the Code of Civil Procedure, 1908.

In paragraph 4, the Defendants narrated the history of their possession. It is stated that the land was transferred through various sub-lessees to M/s. Fairdeal Development Corporation, and thereafter by an Agreement made and entered into on 22.05.1975, the said Fairdeal Development Corporation transferred the Suit Premises by assignment to the Applicants for the residuary term of the of lease, created by the Indenture of Lease dated 24.01.1964, in respect of the pieces or parcels of vacant land or ground situated at Society Road, Irla Village, Vile Parle, Bombay 56, in the Registration Sub-District of Bandra, aggregating in all to 3,502 sq. yards or thereabouts. The Defendants are the Assignee of a part of vacant land comprised in the aforesaid Indenture of Lease dated 24.01.1964 for the residuary term of 97 years reserved under the original Agreement dated 24.01.1964 and hence, the Plaintiff's purporting to terminate the Defendants' tenancy by notice under Section 106 of the Transfer of Property Act does not arise.

In paragraph 5, it is contended that the Defendants are holding the Suit Premises under a valid and subsisting lease for the residuary term and the Defendants are not a simple monthly tenants as is sought to be made out by the Plaintiff. Rent was paid to the

erstwhile owner up to 31.06.2006. The Defendants deny that they are the monthly tenant and are not protected.

In paragraph 6 of Written Statement, it is stated that the residuary term of the said lease has not expired and the Plaintiff cannot seek to recover possession of the said Premises in the manner as sought to be done in the suit. The Defendants denied that they are bound to pay mesne profits at the market rate. The Defendants denied that they have committed a breach of any of the terms and conditions of their subsisting lease, as alleged or otherwise.

In paragraph 7 of written statement, it is stated that although the Plaintiff alleged to be owner of the Suit Premises on 28.06.2005, rent of the Suit Premises was paid to the erstwhile owner up to 31.07.2006.

In paragraph 8, it is stated that the Conveyance, if any, in favour of the Plaintiff is subject to the lease and the Defendants' occupation thereunder. Paragraph 9 contains general denials.

Paragraphs 10 and 11, reiterate that the lease is for the residuary term and that they should not be directed to pay the sum as

pleaded in the plaint. The remaining paragraphs also do not make out any different case or an alternate case.

4. The Trial Court on considering the pleadings formulated following issues and answered accordingly:

<u>"ISSUES</u>	<u>FINDINGS</u>
1. <i>Whether the Plaintiffs prove that they have terminated the tenancy of the Defendants by notice dated 23rd October, 2007?</i>	<i>In the negative</i>
2. <i>Whether Defendants prove that they are protected tenant?</i>	<i>In the negative</i>
3. <i>Whether Plaintiffs are entitled for decree of eviction and possession?</i>	<i>In the negative</i>
4. <i>Whether the Plaintiffs are entitled compensation as prayed?</i>	<i>In the negative</i>
5. <i>Whether Plaintiffs are entitled for mesne profit?</i>	<i>In the negative</i>
6. <i>What order and decree?</i>	<i>As per final order</i>

ADDITIONAL ISSUE

4A. <i>Whether this Court has jurisdiction to try, entertain and dispose of the Suit in view of Section 41 of the Presidency Small Causes Court Act?</i>	<i>In the affirmative"</i>
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5. Although the issue whether the Defendants are protected tenant was answered in favour of the Plaintiff, the Suit was dismissed on account of the fact that Head Lessee was not made as

a party to the Suit and there was no valid surrender of lease by the Head Lessee. The Trial Court observed as under :

“26. At the cost of repetition, the registered lease Deed dated 24 January, 1964, predecessor in title of the Plaintiffs have granted lease of the entire property for the period of 97 years in favour of Suleman Dadi and Ors. The present Defendant bank is the assignee /sublessee of the successor in title of the Head lessee i.e. Suleman Dadi and Ors. Admittedly, all the subsequent assignments/sublease of the parts of the entire property including the Suit Property were executed by the unregistered documents. In view of the Judgments of the Hon'ble Supreme Court and the Hon'ble High Courts relied upon by the Plaintiffs the lease or sublease purportedly created under unregistered document could only result in creation of Monthly lease or Monthly sub-lease. Therefore, sublease / assignment created in favour of Defendant bank by way of unregistered document would create only monthly sublease.

27. Here it is also pertinent to note that the Plaintiffs have not joined head lessee i.e. Suleman Dadi & Ors and their all Successor in title upto Fair Deal Development Corporation as party Defendants in the present suit. In order to determine the lease, the head lessee i.e. Suleman Dadi and Ors are necessary party. The privity of Contract, as created by way of registered lease Deed dated 24th January, 1964, is between predecessor in title of the Plaintiffs i.e. Francis M. Gonsalves and Head lessee i.e. Suleman Dadi and Ors. There is no privity of contract in between the present Plaintiffs ie lessor and the Defendant bank. Therefore, without the presence of Head lessee Le Suieman Dadi and Ors and their

successor in title upto Fair Deal Development Corporation, lease cannot be determined. There is privity of contract in between the lessor and lessee and not between the lessor or transferee or lessee. If there is a breach of contract, lessor is entitled to re enter in the property, but for that purpose the lessee is a necessary party and transferee would be only proper party. It is a liability of the lessee to hand over the vacant possession of the property to the lessor on the determination of lease, but as stated supra in the present suit, the Plaintiffs, have not made original lessee as a party Defendant in the present suit, but filed Suit against the Defendant bank who is sub lessee of the successor in title of Head lessee. Therefore, the Plaintiffs require to determine or terminate the lease of the Head lessee i.e. Suleman Dadi & ors in accordance with the terms and conditions of the registered lease Deed dated 24th January, 1964 and unless the Plaintiffs terminated the tenancy of the head lessee, the sub lease or assignment in favour of all the sub lessee or assignors upto the Defendant barik cannot be terminated.”

6. Aggrieved by the Judgment of the Trial Court, the Plaintiff/Respondent filed an appeal before the Appellate Court. On consideration of the submissions made, the Appellate Court framed following points for considerations and answered them as under:

	<u>POINTS</u>	<u>FINDINGS</u>
1	<i>Does the Plaintiff prove that it has described the</i>	<i>...Affirmative</i>

	<i>Suit Premises properly sufficient to identify it as provided under Order 7, Rule 3 of C.P.C.?</i>	
2	<i>Does the Plaintiff prove that it has legally and validly terminated the tenancy of the Defendant in respect of the Suit Premises by Notice dated 23.10.2007?</i>	...Affirmative
3	<i>Does the Plaintiff prove that the Defendant is in arrears of the rent of the Suit Premises of Rs.11,803/- @ Rs. 407/- p.m. for the period w.e.f 01.07.2005 to 30.11.2007 i.e. for total 29 months?</i>	...Partly Affirmative
4	<i>Does not the Plaintiff prove that the Defendant is liable to pay mesne profits compensation of Rs. 12,72,600- @ Rs.6,36,300/- p.m. for the period w.e.f 01.12.2007 to 31.01.2008 i.e. for 2 months?</i>	...Accordingly
5	<i>Whether the Suit is maintainable in law?</i>	...Affirmative
6	<i>Whether the Plaintiff is entitled for possession of the Suit Premises from the Defendant?</i>	...Affirmative

7. The Appellate Court recorded its findings thereon as discussed below :-

“10. The Plaintiff has contended in the plaint that it has purchased the property open plot of land bearing C.T.S. 434, 435, 435-1 to 24 out of Survey No. 191-A, Hissa No. 1(part), having area 3,922 sq. meters, situated at Irla Society Road, Vile Parle (West), Mumbai having boundaries mentioned in it, more particularly described in schedule annexed with it viz. Suit Property, by registered Deed of Conveyance dated 28.06.2005. The Defendant was the monthly tenant of the Plaintiff in respect of open plot of land having area about 1,553 sq.yards i.e. equal to 13377 sq.ft. as shown in red colour boundary lines in the sketch map drawn on the basis of city survey map annexed with the plaint viz. Suit Premises, out of the Suit Property.

11. ...The area 3,922 sq. meter is stated in the plaint and the schedule of the property instead of the area 3,502 sq. yards.

...The Defendant by admitting the documents Exh. 16 to 19 admitted the entire contents of t Ignatious Gonsalves hese documents. Thus, the Defendant has admitted the fact about the area of Suit Premises is 1,553 sq. yards i.e. 13377 sq. feet as given in the plaint and schedule of the Suit Property which includes Suit Premises Exh. 16 and location of the Suit Premises as given in sketch map Exh. 18 which is in consonance with the City Survey Map Exh. 17.

17. ...The Suit Premises is located separately and its area is admitted by both the parties to the suit, therefore, it will not affect in any way due to difference of area of the Suit Property if any. The cumulative effect of all facts discussed above demonstrate and we hold that the Plaintiff has described the Suit Premises properly by showing it in the sketch map Exh. 18 by red colour boundary lines which is sufficient to identify it as provided under Order 7, rule 3 (Bombay Amendment) of the C.P.C.

18. ...The original owner Francis Gonsalves died on 16.02.1968. It shows from the letter dated 03.01.2007 Exh. 20 produced by the Plaintiff that the Solicitors and Advocate M/s. Markand Gandhi and Co. of erstwhile landlord Ignatious Gonsalves and others has sent said letter to the Defendant that it will not accept the cheques in respect of the rent of the Suit Premises from it and returned three cheques and requested not to forward any more cheque to it by the Defendant.

19. Thus, the admitted, undisputed and uncontroverted facts from the pleadings, oral as well as the documentary evidence produced by both the

*parties to the Suit are that one Francis Gonsalves was the original owner of the Suit Property and he had given the same on lease to Issac Abdul Dadi, Suleman Abdul Dadi and Other for the term of 97 years by virtue of registered lease Deed dated 24.01.1964 Exh. 33 upon the terms and conditions stated therein. The said Issac Abdul Dadi, Suleman Abdul Dadi and Other have agreed to sub-demise the Suit Property to M/s. Dadi Builders. The said sub-lessee M/s. Dadi Builders have constructed the building known as Dil Pazir on the portion of the land out of the Suit Property. Thereafter, the remaining portion of the land viz. Suit Premises is assigned to various parties and ultimately, lastly to M/s. Fairdeal Corporation. The said M/s. Fairdeal Corporation has intuned, transferred and assigned the remaining portion of the land viz. the Suit Premises to the Defendant by an unregistered agreement dated 22.05.1975. It appears that the original lessees, the other numerous sub-lessees have surrendered their right in respect of the Suit Premises in favour of the Ignatius Francis Gonsalves and others, who are the Lrs of the original owner Francis Gonsalves, therefore, the Defendant was paying the rent in respect of the Suit Premises to them. Thereafter, the Plaintiff has purchased the Suit Property by registered Deed of Conveyance dated 28.06.2005 Exh.19 executed by the previous owners Ignatius Francis Gonsalves and others. The Plaintiff has informed about the purchase of the Suit Property which includes the Suit Premises to the Defendant. **Therefore, the Defendant had started paying the rent in respect of the Suit Premises to the Plaintiff. Thus, the Defendant has not disputed about the relationship of landlord and tenant between the Plaintiff and it. The Defendant became the direct tenant of the Plaintiff in respect of the Suit Premises Thus, the Plaintiff is the owner and landlord and Defendant was its tenant in respect of the Suit Premises prior to the termination of tenancy in respect of it.**"*

By the impugned Judgment dated 26.02.2021, the Appellate Bench of the Small Causes Court partly allowed the Appeal and directed the Applicants to hand over vacant possession of the Suit Premises within four months. The Applicants were also directed to pay arrears of rent of Rs.11,684/- at Rs.402.90/- per month for the period from 01.07.2005 to 30.11.2007, together with interest at the rate of 6% per annum, and an enquiry into past and future mesne profits was directed under Order XX Rule 12 of the CPC.

8. Challenging the Judgment of the Appellate Court, **Ms. Sonal**, the learned counsel for the Applicants, makes following submissions:

i) There is no jural relationship of landlord and tenant between the parties as the Plaintiff/Respondent is not the owner of the demised land. It is contended that the Plaintiff/Respondent has instituted the Suit claiming ownership of the plot of land leased/assigned to the Applicant. Respondent's claim of being the landlord rests entirely upon the title allegedly derived under the Conveyance Deed dated 28.6.2005, executed by the legal heirs of Francis Gonsalves.

ii) The occupied Suit Premises is a portion of the larger property, namely 1,553 sq. yards (equivalent to 1,298 sq. mtr.). It is, therefore, contended that the Respondent seeks eviction of the Applicant only from a portion measuring 1,553 sq. yards out of the larger property measuring 4,690 sq. yards, as reflected in the prayer clause of the Plaint.

iii) The description of the Suit Property is wholly insufficient to identify the property in dispute, thereby rendering the Respondent's claim unsustainable. The Respondent's calculation of the area under the Applicant's occupation is erroneous. The Applicant had consistently maintained in its Written Statement that it is in use, occupation and possession of 3,502 sq. yards, and not the area alleged by the Respondent.

iv) The Applicant has never admitted the Respondent's ownership under the Conveyance Deed dated 28.06.2005 and has, on the contrary, specifically disputed the Respondent's title and raised serious doubts regarding the validity and efficacy of the said Conveyance Deed. It was submitted that the issue of Respondent's title and whether Plaintiff was entitled to a decree of eviction and possession, whether the Court had jurisdiction under section 41 of

Presidency Small Causes Courts Act, necessarily required the Court to examine the Respondent's claim of ownership. It was further submitted that both parties were fully conscious that the Respondent's title was seriously in dispute and, accordingly, led evidence on the said issue.

v) Reliance is placed upon recitals contained in Conveyance Deed, particularly Recital (f) and the First Schedule, to demonstrate that the description of the property conveyed under the Conveyance Deed does not conclusively establish the Respondent's ownership over the demised Premises forming the subject matter of the present suit. A plain reading of Recital (f) together with the First Schedule of the Conveyance Deed, demonstrates that the property allegedly purchased by the Respondent is the very property described in the Plaint, namely land bearing CTS Nos. 435 and 435/1 to 24 admeasuring 3,922 sq. mtr. The Respondent's claim of ownership is founded solely on the said Conveyance Deed.

vi) The Conveyance Deed reveals that the original owner, late Francis Gonsalves, owned four distinct and separate properties. Recital (a) and the Second Schedule of the Conveyance Deed

specifically enumerate these four properties. It was argued that the fourth property comprises CTS Nos. 435, 435/1 to 24, CTS Nos. 436, 436/1 to 69 and CTS Nos. 438, 438/1 to 35, collectively admeasuring 11,924 sq. metres, whereas the Respondent has acquired under the Conveyance Deed only a portion thereof, namely CTS Nos. 435 and 435/1 to 24 admeasuring 3,922 sq. metres. The Conveyance Deed clearly distinguishes the several properties owned by late Francis Gonsalves and identifies the extent of the property conveyed to the Respondent. The recitals and schedules of the Conveyance Deed, when read as a whole, cast serious doubt on the Respondent's assertion that it has established ownership over the demised Premises from which eviction is sought. It was submitted that in the absence of a clear and specific identification of the Suit Premises with the property conveyed under the Conveyance Deed, the Respondent cannot claim the status of landlord so as to maintain the present Suit for eviction.

vii) It is further submitted that during cross-examination, PW-1 admitted that the Suit Premises are covered by the land admeasuring 3,502 sq. yards described in the Second Schedule of the Conveyance Deed. It is contended that this admission assumes

considerable significance as it is inconsistent with the Respondent's case that the Suit Premises comprise only 1,553 sq. yards.

viii) It is contended that the description of the leased property contained in the Lease Deed corresponds with the property measuring 3,502 sq. yards referred to in the Second Schedule of the Conveyance Deed and also with the Applicant's consistent stand regarding the extent of the land in its occupation. Therefore, documentary evidence, namely the Lease Deed, the Conveyance Deed and the admission of PW-1, conclusively establish that the land originally leased and presently occupied by the Applicant measures 3,502 sq. yards. It was argued that the Respondent's claim seeking eviction from only 1,553 sq. yards is contrary to its own documents and evidence and creates a serious dispute regarding the identity and extent of the Suit Premises, thereby undermining the Respondent's claim to maintain the eviction proceedings.

ix) The comparison of the Lease Deed, the Declaration and Recital (a), read with the Second Schedule of the Conveyance Deed clearly demonstrates that the demised land corresponds to the second property described in the Second Schedule of the

Conveyance Deed. It was argued that the properties described in the Second Schedule were never conveyed to the Respondent under the Conveyance Deed. Consequently, the Respondent cannot claim ownership or the status of landlord in respect of the demised land and, therefore, lacks the locus to maintain the present eviction proceedings.

x) During cross-examination, PW-1 initially deposed that 3,085 sq. yards had been leased to the Head Lessee but subsequently corrected himself and stated that 3,502 sq. yards had in fact been leased. This shifting stand further demonstrates the Respondent's attempt to align the Suit Property with the demised land, contrary to the case pleaded in the Plaint. Such inconsistent evidence, which was submitted, seriously undermines the Respondent's claim regarding the identity and extent of the Suit Property. PW-1 also deposed that the total area purchased by the Respondent was approximately 3,502 sq. yards, which is wholly inconsistent with the Conveyance Deed and materially undermines the Respondent's case. While the Plaint describes the demised Premises as measuring 1,553 sq. yards, neither the Conveyance Deed nor the Lease Deed contains any reference to such an extent. On the contrary, even in

its written submissions before the Trial Court, the Respondent asserted that the Suit Premises measured 3,502 sq. yards, thereby taking a stand inconsistent with its own pleadings.

xi) The Respondent has nowhere pleaded in the Plaint that the Suit Property had ever been subdivided. However, during his examination-in-chief, PW-1 introduced an altogether new case by deposing that the area of 3,502 sq. yards had been subdivided upon construction of the Dil Phazeer Building. Such evidence travels beyond the pleadings and is, therefore, impermissible in law. It was argued that this contradiction completely demolishes the Respondent's plea regarding subdivision of the property. PW-2, also admitted in cross-examination that no subdivision of the property had taken place. It was contended that this admission corroborates the Applicant's case and directly contradicts the evidence sought to be introduced through PW-1.

xii) The Respondent has consistently pleaded that the Applicant is in possession of only 1,553 sq. yards. However, during cross-examination, PW-1 was unable to explain the basis on which this figure had been arrived at. He admitted that the Conveyance Deed refers to an area of approximately 3,502 sq. yards, acknowledged

that the first Lease Deed also records the extent as 3,502 sq. yards, and further admitted that he would have to verify his records to explain how the figure of 1,553 sq. yards was derived. He also expressed uncertainty as to whether CTS No. 435 had been renumbered. Learned Counsel submits that these admissions clearly establish that the Respondent has no documentary basis for claiming that the Applicant occupies only 1,553 sq. yards, thereby rendering the description of the Suit Premises vague, uncertain and incapable of sustaining a decree for eviction.

xiii) The Counsel submits that the First Schedule to the Conveyance Deed records that the Suit Property was conveyed subject to the existing leases. It was contended that neither late Francis Gonsalves nor his legal heirs had ever initiated any legal proceedings against the Applicant in respect of the demised land. This clearly demonstrates that the demised land is distinct from the Suit Property described in the Conveyance Deed. The demised land does not form part of the property purchased by the Respondent under the Conveyance Deed. However, the Trial Court observed that the description of the demised land in the Declaration substantially corresponds with the description contained in the

Conveyance Deed, merely with the addition of Survey Numbers to the CTS Numbers.

xiv) The Trial Court committed an error in holding that the Applicant had not challenged the Respondent's title in the Written Statement. The finding that the Applicant had admitted the Respondent's acquisition of title under the registered Conveyance Deed dated 28 June 2005 is wholly contrary to the pleadings on record. The Written Statement consistently disputes both the Respondent's ownership and its status as landlord.

xv) The Trial Court failed to appreciate that the Respondent's title had been specifically put in issue through the Written Statement, the cross-examination of PW-1 and the written submissions filed on behalf of the Applicant. Reliance was placed upon the judgment of the Supreme Court in *Bhagwati Prasad v. Chandramaul¹*, wherein it was held that even if a plea is not expressly pleaded, a party is entitled to rely upon it where the issue is covered by implication, both parties were aware that it arose for determination, and evidence has been led thereon. Therefore the Trial Court erred in disregarding the Applicant's

1 1965 SCC OnLine SC 111

challenge to the Respondent's title merely on the ground that no separate issue had been expressly framed.

xvi) It is submitted that the Hon'ble Supreme Court, in **Ram Sarup Gupta v. Bishun Narain Inter College**², has authoritatively held that pleadings must receive a liberal and meaningful construction and that Courts ought to ascertain their true substance rather than adopt a narrow or pedantic approach. Therefore, the Trial Court failed to appreciate the real substance of the Applicant's defence. The pleadings, read as a whole, unmistakably disclosed that the Applicant had disputed the Respondent's ownership, denied the existence of any landlord-tenant relationship, questioned the identity of the Suit Property and consistently asserted that the Respondent had failed to establish title over the demised land. In such circumstances, the Trial Court ought to have construed the pleadings liberally in accordance with the principles laid down by the Hon'ble Supreme Court, instead of rejecting the Applicant's defence on technical or formal grounds.

xvii) It is submitted that the eviction Suit is not maintainable as it suffers from the non-joinder of a necessary party, namely, the Head

2(1987) 2 SCC 555

Lessee, whose presence is essential for the effective adjudication of the dispute, although the Head Lessee and other sub-lessees had surrendered their rights. It was further argued that the Conveyance Deed itself records that the lease in favour of the Head Lessee was subsisting on the date of its execution, thereby demonstrating that the Head Lessee continued to possess rights in the property. The Conveyance Deed nowhere states that the lease created under the Lease Deed had been terminated or extinguished. In the absence of any such termination, the Head Lessee continued to have a subsisting interest in the property and was, therefore, a necessary party to the eviction proceedings.

xviii) Despite the lease covering the entire 3,502 sq. yards, the Plaintiff has sought termination of the lease and recovery of possession only in respect of 1,553 sq. yards, which is legally impermissible. It was further submitted that the Defendants have consistently maintained that it is in lawful use, occupation, and possession of the entire 3,502 sq. yards and not merely a part thereof. It was, therefore, contended that since the Lease Deed constitutes a single and indivisible lease in respect of the entire demised Premises, there cannot be a valid determination or

termination of the lease in respect of only a portion of the property. Consequently, the Plaintiff's attempt to terminate the lease only in respect of 1,553 sq. yards was stated to be contrary to law and unsustainable.

xix) The contention that, the lease could not be partially determined had been specifically raised before the Trial Court as well as in the Cross-Objection; however, it was not dealt with. It is contended that, since the notice to quit neither clearly identifies the property in respect of which eviction is sought nor conforms to the averments in the plaint, it is defective, invalid, and incapable of effecting a valid determination of the tenancy.

xx) The objection regarding the invalidity of the notice to quit had been specifically raised before the Trial Court. It was also submitted that no valid notice to quit had been served in respect of the entire demised land measuring 3,502 sq. yards, thereby rendering the eviction Suit not maintainable. The Plaintiff had initially issued a notice to quit dated 23 October 2007, it subsequently issued another notice dated 11 December 2007 demanding rent from the Defendants and as such the subsequent demand for rent amounted to a waiver of the earlier notice to quit,

rendering the same ineffective. It was finally contended that the plea of waiver of the notice to quit had been specifically raised before the Trial Court, the Appellate Court, and in the Cross-Objection, yet neither Court addressed or adjudicated upon the said contention.

9. Per contra, **Mr. Prasad Dani**, the learned Senior Counsel for the Respondent, submits as under:

i) The original Plaintiff is the Owner/ Landlord of the property known as State Bank of India Quarters at Irla Society Road, Vile Parle (W), Mumbai- 400056 admeasuring about 1,553 sq yards equal to 13,377 sq.ft. out of the larger property more particularly described in the schedule at Exhibit "A" to the Plaint.

ii) The Suit being T. E. & R. Suit NO. 14/23 OF 2008 was filed under section 41 of Presidency Small Causes Court Act as the original Defendants are not protected under Maharashtra rent control Act, 1999 on two counts -

a) State Bank of India having paid-up capital of more than Rupees One Crore is not protected by virtue of section 3(1)b of M.R.C. Act, 1999.

b) The Suit Premises comprises an open piece of land.

iii) The relationship of landlord & tenant is admitted and original Defendants had tendered rent after verifying the registered Conveyance Deed dated 28.06.2005 by notice dated 24.08.2007. The original Defendants were called upon to pay rent and by notice dated 23.10.2007, the original Defendants were called upon to quit, vacate and handover the possession of the Suit land /property by removing the structure standing thereon. The notices & the correspondences are admitted facts and marked in evidence. After the expiry period of notice to quit, the Plaintiff called upon the Defendants to pay a sum of Rs.6,36,300/- per month (Rupees Six Lakhs Thirty-Six Thousand and Three Hundred Only) by way of mesne profit at the prevailing market rate, increasing progressively as per valuation report submitted by Plaintiffs amounting to approximate Rs.18 Crores.

Consideration-

10. Having considered the rival submissions and having perused the record of proceedings, the core submission of the learned counsel for the Applicants is that the Respondent is not the owner of the Suit land, as it has not purchased the entire land owned by

the original owner Francis Gonsalves and the portion of land on which the Applicant has tenancy is not purchased by the Plaintiff/Respondent and as such the Plaintiffs are not the Lordlord of the Applicant. There is discrepancy in the area mentioned in the original ownership of Francis Gonsalves and the area conveyed and the leasehold property of the Applicant is beyond the land conveyed by Ignatious Gonsalves (L. R. of Francis Gonsalves). The ownership of the land or the Suit Property is disputed by the Applicants in her arguments. The Applicants seek to draw an inference on the basis of the description of the Suit Property in the Conveyance Deed. However, in my view, such a plea is not available to the Applicants to be raised at this stage. The case as set out in the written statement by the Applicants is that they are lessees of the Suit Premises for the remainder of the lease term dated 24.01.1964 and that the Applicants have a right in the Suit Premises till the expiry of the original lease period as contained in the Lease Deed dated 24.01.1964. The entire Written Statement repeatedly asserts the right of the Defendants to occupy the Premises till the expiry of the lease period as mentioned in Lease Deed dtd. 24.01.1964. The Applicant had been paying rent to the original owner, i.e. Francis Gonsalves and thereafter to his heir

Ignatious Gonsalves from whom the Respondent has purchased the Suit Property. The Applicant Bank has paid rent to the present Respondent/Plaintiff after the transfer of the Suit Premises in favour of the Plaintiff after verifying the Conveyance Deed. The Solicitor of original owner i.e. Ignatious Gonsalves has stopped accepting rent from the Applicant after transfer. At no stage of the Suit proceedings, did the Defendants object to the ownership of the Plaintiff. Their contention all along has been that the ownership of the Plaintiff is subject to the remainder of the lease period of the original lessor in favour of Suleman Dadi and others, and that the Applicants, have received rights under the Deed of assignment and are entitled to hold the said Premises till the remainder of the term of the Lease dated 24.01.1964. The dispute of ownership of the Plaintiff and their title to the leased land is neither part of the pleadings nor the issues framed before the Trial Court or point raised before Appellate Court. At the highest, the issue raised pertains to the identification of the Suit Property which both the Courts have negated, and there was no denial of the landlord-tenant relationship by the Applicants.

11. The next issue that arises for consideration is whether the Respondent/Plaintiff could have succeeded in the Suit without making the Head Lessee as a party Defendant in the Suit. This issue may require consideration by this Court. The facts necessary to consider the issue are noted as under:

The Defendant Bank was paying the rent to the original owner, Francis Gonsalves and thereafter the legal heir Mr. Ignatious Gonsalves, through his advocate, and then, after verification of Conveyance document, started paying rent to Plaintiff, Amum Builders. The Defendant Bank held the leasehold rights through an unregistered instrument from Fairdeal. Fairdeal, in turn, had received the leasehold rights through an unregistered document from the previous sub-lessee. It is pertinent to note that the Applicant Bank was paying rent to Francis Gonsalves and thereafter to his Legal heirs Ignatious Gonsalves and not to Fairdeal. This arrangement has continued without Fairdeal asserting any right over the leased property. Thus, there is an express and implied surrender of the leasehold rights by the lessee, sub-lessees and lastly Fairdeal in favour of the landlord Francis

Gonsalves, as per provisions of the Transfer of Property Act, 1882 Section 111 and 111(f).

12. From the above facts, the question that arises is whether the Suit filed against the Defendants could have succeeded without Head Lessee being made a party to the Plaint. The submission of the Plaintiff in this regard is that, in view of the provisions of Section 111 of the Transfer of Property Act, where a lessee sub-lets the Suit Premises by an unregistered Lease Deed and the sub-lessee pays rent directly to the original lessor/land lord, there is an implied surrender of the tenancy by the Head Lessee and the sub-lessee becomes the direct lessee of the original lessor. Whereas, the learned counsel for the Applicants contends that the Applicants have received rights through various sub-lessees, whose rights were obtained originally from Head Lessee, and that there is no direct privity of contract between the Applicants and the Respondent/Plaintiff. It is further submitted that the sub-lease cannot be terminated without terminating the lease of the Head lease. If the lease of the Head Lessee is terminated, the rights of the sub-lessee may also come to an end. However, no sub-lease can be terminated without the lease of the Head Lessee/original lessee

being terminated. In this regard, the relevant provisions of the Transfer of Property Act, 1882 is noted below:

***“111. Determination of lease.**—A lease of immoveable property determines—*

(a) by efflux of the time limited thereby:

(b) where such time is limited conditionally on the happening of some event—by the happening of such event:

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(f) by implied surrender:

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; [or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in [any of these cases] the lessor or his transferee [gives notice in writing to the lessee of] his intention to determine the lease:

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.”

13. From the facts as stated by the Defendants in the Written Statement, it is apparent that the Defendants were paying rent to the erstwhile predecessor-in-title of the Suit Premises. The lease in favour of the Applicants is an unregistered lease granted by the said Fairdeal Development Corporation. It, in turn, had taken the lease from Mrs. Jhamb, which was also as an unregistered lease. Mrs. Jhamb had taken the registered lease from the earlier lessor. Mrs. Jhamb's rights in the Suit Property also came to an end in terms of the consent terms (consent terms filed after the filing of present suit). Since the Applicants were paying the rent of the Suit Property for long period to the predecessor-in-title of the Respondent-Plaintiff, there was a deemed surrender of the lease by the Head Lessee and further Sub-lessees in favour of the original owner (Francis Gonsalves), and the Applicants became the direct tenants of the predecessor-in-title of the Respondent, Mr. Francis Gonsalves.

14. The Judgment of the Supreme Court in the case of *P. M. C. Kunhiraman Nair Vs. C. R. Naganatha Iyer and Ors.*³ is relevant to the facts of present case and the paragraph is noted below:

“10. Under clause (1) of S. 111 of the Transfer of Property Act, 1908, implied surrender is a mode for determination of a lease of immovable property. In English Law, delivery of possession by the tenant to a landlord and his acceptance of possession effects a surrender by operation of law. It is also called implied surrender in contradistinction to express surrender which must be either by Deed or in writing. It has been held that directing the occupier to acknowledge the landlord as his landlord, i.e., to attorn to the landlord, is a sufficient delivery of possession by the tenant to the landlord. It has also been held that receipt of rent from a person in possession may be evidence of the landlord's acceptance of him as tenant, whether he is a stranger, or whether he was already in possession as sub-tenant. (See: Halsbury's Laws of England, 4th Edn., Voi. 27, paras 444, 445, 446 and 450; and Note (1) to para 446.) Under the illustration to clause (f) of S. 111 of the Transfer of Property Act, there would be an implied surrender of the former lease if a lessee accepts from his lessor a new lease of the property leased to take effect during the continuance of the existing lease. The said illustration is, however, not exhaustive of the cases in which there may be an implied surrender of the lease. Just as under the English Law, there can be an implied surrender under the law of transfer of property in India, if the lessor grants a new lease to a third person with the assent of the lessee under the existing lease who delivers the possession to such person or where the lessee directs his sub-tenant to pay the rent directly to a lessor. (See : *Konijeti Venkayya v. Thammana Peda Venkata Subbarao*, AIR 1957

3 AIR 1993 Supreme Court 307

Andh Pra 619 at pp. 624 and 625; and Noratmal v. Mohanlal, AIR 1966 Raj 89, at pp. 90 and 91).”

15. Reference in this regard is made to the Judgments of Supreme Court in case of *Tarachand vs. Sagarbai Alias Chaiyalibai*⁴, wherein the Court, particularly at Paragraph Nos. 22, 23, 25 and 27, held as under :

“22. Section 111(f) of the Transfer of Property Act provides for termination of tenancy by implied surrender. Such implied surrender may be either :

(1) By creation of a new relationship, or

(ii) by relinquishment of possession.

23. When the parties altered their position knowing fully well their mutual rights and obligations under an agreement thereto existing, the rule of estoppel shall apply. The Applicant, was, thus estopped from disputing the contents of the mortgage or the relation arising thereunder. As surrender is founded upon estoppel, the intention of the parties may not be of much significance.

25. Although technically a tenant may continue to occupy the Premises, once the nature of possession changes resulting in change in his status, which he accepts, the same may amount to virtual taking of possession. In any event, virtual taking of possession is not a sine qua non for implied surrender as the same can be created by a new relationship also.

27. We may, however, notice that in Gambangi Applaswamy Naidu v. Behara Venkataramanayya Patro

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an implied surrender was not inferred “22. Section 111(f) of the Transfer of Property Act provides for termination of tenancy by implied surrender. Such implied surrender may be either :

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25. Although technically a tenant may continue to occupy the Premises, once the nature of possession changes resulting in change in his status, which he accepts, the same may amount to virtual taking of possession. In any event, virtual taking of possession is not a sine qua non for implied surrender as the same can be created by a new relationship also.

27. We may, however, notice that in Gambangi Appalaswamy Naidu v. Behara Venkataramanayya Patro an implied surrender was not inferred in the fact situation obtaining therein. On the terms and conditions of the lease Deed in question, which was noticed by this Court, it was observed: (SCC p. 388, para 8)

"It may be noted that the last portion of the document is equivocal in that it does not mention whether on redemption physical possession is to be delivered or symbolical possession is to be delivered to the mortgagor. But under the terms of the Deed one thing is clear that during the currency of the mortgage the liability to pay rent to the lessor-mortgagor (albeit to be discharged by adjustment) is kept alive. If anything

such a term clearly runs counter to any implied surrender of the lessee's rights. Secondly, there is no term fixed for redemption of mortgage property which means that it was open to the mortgagor to redeem the mortgage at any time that is to say even within a very short time and if that be so, would a sitting tenant cultivating the lands under a lease, who has obliged his lessor by advancing monies to him to tide over his financial difficulties give up his rights as a lessee no sooner redemption takes place? In our view, it does not stand to reason that he would do so. This circumstance coupled with a fact that the mortgage Deed keeps alive the lessee's liability to pay rent during the currency of the mortgage clearly suggests that no implied surrender was intended by the parties."

16. In the instant case, the Applicant /Defendant were paying rent directly to Mr. Francis Gonsalves, the predecessor-in-title of the Plaintiff. The said fact is evident from the averments made in the Written Statement as well as from the reply given by the Applicant to the notice issued by the Plaintiff, wherein the Applicant called upon the Plaintiff to produce the Conveyance Deed for verification of the transfer of ownership. On verification of the Conveyance Deed, the Applicant paid rent to the Plaintiff / Respondent. In the absence of a registered lease Deed transferring the leasehold rights to the Applicant by Fairdeal, the Applicant's lease was on a month-to-month basis, and the Applicant became the direct lessee of the original landlord Mr. Francis Gonsalves.

17. Since the Applicant Bank was paying rent to the predecessor-in-title, there was implied surrender of the tenancy rights of the Head lessee and the sub-lessee in favour of landlord. The Applicant was holding a lease by an unregistered instrument. The lease of the Applicant was on month-to-month basis terminable at the instance of the landlord, as provided in the Transfer of Property Act, 1882. The Applicant could not get the remainder period of the lease-hold right of original lease as provided in the Lease Deed dated 24.01.1964. The termination of lease by the landlord is valid and accordingly the decree of eviction passed by the Appellate Court can not be interfered with.

18. The Revision Application is accordingly dismissed.

(ARUN R. PEDNEKER, J.)

19. After pronouncement of the Judgment, learned Counsel appearing for the Applicant submits that the interim order operating in her favour be extended for a period of 12 weeks to enable her to challenge the present Judgment passed today. She

further submits that she would continue to pay the interim compensation as directed by the Appellate Court during the said period. Subject to the Applicant continuing to pay the interim compensation as directed by the Appellate Court, the Judgment passed today shall remain in abeyance for a period of 12 weeks. The usual undertaking by the Applicant for surrender of the Premises and other terms be filed within two weeks from today.

(ARUN R. PEDNEKER, J.)

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