IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13194 OF 2023

The Hong Kong & Shanghai Banking
Corporation Limited .... *Petitioner*

: Versus :

1. The Maharashtra State Electricity Board
2. Maharashtra State Dist. Co. Ltd.
3. Maharashtra State Power Generating Co. Ltd.
4. Maharashtra State Transmission Co. Ltd.
5. MSEB Holding Co. Ltd. .... *Respondents*

Mr. Darius Khambatta, *Senior Advocate with Mr. Tushar Hatiramani, Mr. Rajendra Barot, Mr. Vivek Shetty, Ms. Cheryl Fernandes and Mr. Naman Nayyar i/b AZB & Partners, for the Petitioner.*

Mr. Anil Anturkar, *Senior Advocate with Mr. Amey Deshpande, Ms. Vandana M. Bait, Ms. Niyati Sontakke, Mr. Gaurang C Jhaveri an Mr. Shubham Misar, for the Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.

Judg. Reserved on : 10 December 2024.

Judg. Pronounced on : 17 December 2024.

JUDGMENT:

1) ***Rule***. Rule made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for hearing and disposal.

2) By this petition, Petitioner challenges judgment and order dated 5 July 2023 passed by the Appellate Bench of Small Causes Court dismissing P. Appeal No.213 of 2018 and confirming the decree dated 26 April 2018 passed by the Small Causes Court in T.E. & R. Suit No.346/366 of 2001. The Small Causes Court has dismissed the suit filed by the Petitioner seeking eviction of the Respondents-Defendants by holding the same as not maintainable.

3) A brief factual narration for better understanding of the issue at hand would be necessary. Petitioner is a Banking Corporation registered under the provisions of Hong Kong & Shanghai Banking Ordinance, as well as, under the Companies Act, 1956 and has its Indian head office at HSBC Building at 52/60, Mahatma Gandhi Road, Mumbai 400 001. The Mercantile Bank of India Limited owned and possessed building then named as 'Mercantile Bank Building' situated at Mahatma Gandhi Road, Mumbai. By two Indentures of Lease dated 21 January 1953, the Mercantile Bank Limited demised on to the Governor of Bombay premises situated on the 3rd and 4th floor of the building for a period of 1 year from 1 July 1952 to 30 June 1953. It appears that after the expiry of the tenure of the lease on 30 June 1953, no further document has been executed extending or renewing the lease. Maharashtra State Electricity Board **(MSEB)** is a statutory corporation constituted under Section 5 of the Electricity Supply Act, 1948. It appears that MSEB started occupying the suit premises since the year 1954 and started paying rent in respect thereof at the rate of Rs.17,763.93/- per month. The Mercantile Bank of India Limited was succeeded by Hong Kong & Shanghai Banking Corporation Ltd. **(Petitioner)** and this is how Petitioner became owner of the entire building which came to be

renamed as 'HSBC building'. According to the Petitioner, MSEB started paying monthly rent in respect of the suit premises to it.

4) Petitioner terminated MSEB's tenancy in respect of the suit premises by letter dated 16 March 1992 and called upon it to handover possession thereof. Another letter dated 27 November 1998 was served by the Petitioner to Respondent-MSEB communicating that it required the suit premises for expanding its business as a banking institution and called upon MSEB to handover possession of the suit premises.

5) According to the Petitioner, after coming into effect of the Maharashtra Rent Control Act, 1999 **(MRC Act)** w.e.f. 31 March 2000, Respondent-MSEB lost protection under the Act on account of its inclusion in Section 3(1)(b) thereof. By letter dated 1 August 2000, Petitioner issued yet another letter reiterating the contents of earlier letters dated 16 March 1992 and 27 November 1998 and called upon MSEB to handover vacant possession of the premises. On 16 August 2000, Respondent-MSEB issued another response stating that it was in possession and occupation of the suit premises since 1954 and denied that its tenancy was terminated in any manner. A detailed response was issued on 11 September 2000 stating therein that it was eligible for protection of tenancy under the provisions of Section 15 of the M.R.C. Act and that therefore the tenancy could not be terminated. On 13 January 2001, Petitioner issued two more notices for 3rd and 4th floor premises once again terminating the tenancy of MSEB contending that it was not entitled to protection under the M.R.C. Act. On 28 February 2001, MSEB sent a response reiterating that termination of its tenancy was erroneous.

6) In the above background, Petitioner-HSBC filed T.E. & R. Suit No.346/366 of 2001 in the Small Causes Court at Mumbai *inter-alia* seeking eviction of MSEB. MSEB filed written statement contesting jurisdiction of the Small Causes Court to try and entertain the suit by claiming protection of its tenancy under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 **(Bombay Rent Act)** as continued under the provisions of the MRC Act. MSEB also raised contentions about unconstitutionality of the provisions of Section 3(1)(b) of the M.R.C. Act in the written statement. Based on pleadings filed by the parties, Small Causes Court framed issues. Parties led evidence in support of their respective claims. On behalf of Plaintiff, Mr. Rajeev Sen Gupta was examined as P.W.1. Plaintiff also examined Mr. Sanjeev Uppal as P.W. 2, Samir Jayant Karekatte, Kishore Karamsi, Karsandas Thakkar, Kamaruddin Maruwala and Dr. Champa. Defendant-MSEB examined Ballal Ramchandra Marathe as its witness. During currency of the trial of the suit, the State Government issued Notification dated 4 June 2005 under Section 131 of the Electricity Act 2003 making the Maharashtra State Electricity Reforms Transfer Scheme, 2005 (**Transfer Scheme**) under which the entire business of MSEB was divided into various newly formed Companies such as Maharashtra State Distribution Company Ltd., Maharashtra State Power Generating Company Ltd, Maharashtra State Transmission Company Limited, and MSEB Holding Co. Ltd. By separate Notification dated 4 June 2005, all properties, interests in properties, rights and liabilities vested in MSEB stood vested with the State Government and thereafter re-vested into the four Government Companies w.e.f. 6 June 2005 in accordance with the Transfer Scheme. Petitioner accordingly amended the suit and impleaded the four companies formed as per

the Transfer Scheme as Defendant Nos.2 to 5. MSEB filed additional written statement on 5 March 2010 taking an additional stand that the State Government continued as a tenant in respect of the suit premises. It relied upon the provisions of the Transfer Scheme to alternatively contend that even if the suit premises can be construed to have been transferred to MSEB, the same again stood re-transferred by operation of law in favour of the State Government. Defendant Nos.2, 3, 4 and 5 also filed their individual Written Statements.

7) After considering the pleadings, documentary and oral evidence, the Small Causes Court proceeded to dismiss T.E. & R. Suit No.346/366 of 2001. The Small Causes Court held that the suit was not maintainable as Defendant No.1-MSEB is 'State' and therefore protected under Section 3(1)(a) of the M.R.C. Act. The Small Causes Court held that Governor of Bombay and thereafter the State of Maharashtra is the tenant in respect of the suit premises and therefore the tenancy could not be terminated by issuance of a notice. The Court also held that notice under Section 80 of the Code of Civil Procedure, 1908 **(the Code)** to the State Government was necessary. Accordingly, it held the termination notice to be illegal. The Small Causes Court accordingly held the suit to be not tenable as well as bad for want of notice under Section 80 of the Code. It also accused Plaintiff-HSBC of suppressing material facts and committing fraud. The Small Causes Court accordingly dismissed the suit by its judgment and decree dated 26 April 2018.

8) Plaintiff-HSBC filed P. Appeal No.213 of 2018 before the Appellate Bench of the Small Causes Court. The Appellate Court has

however dismissed the Appeal by its judgment and decree dated 5 July 2023. The Appellate Court has also held that termination of tenancy of the Defendants was illegal as the State Government is the real tenant in respect of the suit premises. It further held that in absence of State Government as a party Defendant, the suit was not maintainable. This is how the Appeal preferred by the Petitioner came to be dismissed by the Appellate Bench of the Small Causes Court.

9) Petitioner is aggrieved by the concurrent decrees passed by the Small Causes Court and its Appellate Bench and has accordingly filed the present petition.

10) Mr. Khambatta, the learned Senior Advocate appearing for the Petitioner would submit that the Small Causes Court and its Appellate Bench have erred in dismissing Plaintiff's suit seeking eviction of the Defendants, who no longer enjoyed protection of their tenancy under Section 3(1)(b) of the M.R.C. Act. He would submit that the Trial and the Appellate Courts have erred in holding that the State Government is a tenant in respect of the suit premises ignoring a specific admission given by Defendant No.1-MSEB both in correspondence as well as in pleadings that it is the tenant in respect of the suit premises. He would take me through the correspondence prior to filing of the suit to demonstrate that MSEB did not take a stand of State Government being the tenant at any point of time. He would submit that it is an admitted position that Defendant No.1-MSEB alone has been paying rent in respect of the suit premises to the Plaintiff. That the State Government has not paid rent at any point of time in respect of the suit premises. That there is no

pleading, much less evidence, to show that the rent is being paid by Defendant No.1-MSEB on behalf of the State Government. The rent is paid by MSEB on its own behalf for occupying the suit premises all by itself. He would then take me through the averments made in the written statement in which Defendant No.1-MSEB repeatedly pleaded that it is the tenant in respect of the suit premises and has been paying rent to the Petitioner. That in the written statement, MSEB nowhere pleaded that the State Government is the real tenant or that it is merely occupying the suit premises on behalf of the State Government. Mr. Khambatta would submit that in the additional written statement, however, Defendant No.1-MSEB sought to raise mutually destructive plea that State of Maharashtra continued as a lessee in respect of the suit premises and by relying on Notification dated 4 June 2005, raised further contradictory plea of re-transfer of the suit premises in favour of the State Government. He would rely upon judgment of the Apex Court in ***Gautam Sarup Versus. Leela Jetly and others***[1] in support of his contention that though alternative pleas can be raised, the same cannot be mutually destructive of each other.

11) Mr. Khambatta would submit that judicial admissions given by Defendant No.1-MSEB in its written statement that it is the tenant in respect of the suit premises would stand on a higher footing than the evidence led by it. That since Defendant No.1-MSEB admitted in its written statement that it is the tenant in respect of the suit premises and since it never raised any contention that State Government is the tenant, there was no necessity for the Plaintiff to lead any evidence to prove tenancy of Defendant No.1-MSEB. That the fact which is expressly admitted in the written statement, need not be proved once again by leading evidence. In support of his

[1] (2008) 7 SCC 85

contention of admissions in pleadings or judicial admissions, admissible under Section 58 of the Indian Evidence Act, standing on higher footing than evidentiary admissions, Mr. Khambatta would rely upon judgment of the Apex Court in ***Nagindas Ramdas Versus. Dalpatram Ichharam alia Brijram and others***[2]. Alternatively, Mr. Khambatta would submit that there are evidentiary admissions in the present case as Defendant's witness specifically admitted contents of MSEB's letter dated 11 September 2000 being correct, as well as about MSEB paying rent to the Plaintiff in respect of the suit premises since 1954 and at the very least since 1961. He would rely upon judgment of the Supreme Court in ***Narayan Bhagwantrao Gosavi Balajiwale Versus. Gopal Vinayak Gosavi and others***[3] in support of his contention that an admission is the best evidence. He would submit that none of these admissions have been explained or shown to be wrong. Mr. Khambatta would object to an attempt being made by MSEB before this Court to resile from the admissions of its witness by verbally stating that Mr. Marathe, the Superintending Engineer of MSEB could not have made admissions on behalf of MSEB. That having chosen to lead evidence of Mr. Marathe, MSEB's contention, which has never been raised before, cannot be countenanced. The impugned judgment completely ignores the unexplained evidentiary admissions made by MSEB and in doing so has recorded a perverse finding that there exists no proof of tenancy between the Petitioner and MSEB.

12) Mr. Khambatta would submit that the averments in written statement of Defendant No.1-MSEB raising a challenge to constitutional validity of Section 3(1)(b) of the MRC Act as

[2] (1974) 1 SCC 242
[3] AIR 1960 SC 100

discriminatory against it as well as its claim being covered by provisions of MRC Act and therefore covered by Section 41(2) of the Presidency Small Causes Court Act, 1882 **(PSCC Act)** in itself constitute as admission as to its tenancy in respect of the suit premises.

13) Mr. Khambatta would further submit that the Small Causes Court has erroneously accused Plaintiff of suppression of material facts. He would submit that the Plaintiff came out with a specific case that Defendant No.1-MSEB is the tenant in respect of the suit premises. This assertion of the Plaintiff was specifically admitted by MSEB in its written statement. It was therefore not necessary for the Plaintiff to plead the history of execution of Indentures in favour of Governor of Bombay, as well as about transmission of tenancy rights in favour of MSEB. That in the suit filed under the provisions of Section 41 of the PSCC Act for eviction of a tenant who has lost protection under the provisions of the M.R.C. Act, it is not necessary to plead the entire history of various tenancies created prior to the Defendant occupying the premises as a tenant. He would rely upon judgment of the Apex Court in ***Arunima Baruah Versus. Union of India and others***[4] in support of his contention that for refusal to exercise discretionary jurisdiction, the suppression must be of material facts. That non-disclosure of prior history of tenancies is not a suppression of material fact for refusing to entertain Plaintiff's suit for eviction of MSEB who admitted itself to be the tenant in respect of the suit premises.

14) Without prejudice to his contention that Plaintiff was not required to plead or prove transmission of tenancy rights from

[4] (2007) 6 SCC 120

Governor of Bombay to Defendant-MSEB on account of specific admissions given by MSEB about its tenancy, Mr. Khambatta would submit that the law recognises implied surrender of tenancy. That a contractual tenancy was created in favour of the Governor of Bombay vide Indenture dated 21 January 1953 and the tenure of the said lease expired on 30 June 1954. MSEB has specifically admitted that it has been occupying the premises since the year 1954 by paying rent to the Plaintiff. That thus landlord-tenant relationship got created between Plaintiff and MSEB and the same was impliedly severed between Plaintiff and Governor of Bombay/State of Maharashtra. He would also rely upon judgment of the Apex Court in ***Pushpa Rani and others Versus. Bhagwanti Devi and another***[5] in support of his contention that implied surrender of tenancy can be inferred from evidence as to conduct of the parties. He would submit that the judgment of the Apex Court in ***Pushpa Rani*** has been followed by Division Bench of this Court in ***Urmi Deepak Kadia Versus. State of Maharashtra***[6]**.** That accordingly, the express determination under Sections 12 and 13 of the Bombay Rent Act was not essential in law.

15) Mr. Khambatta would further submit that impugned judgment erroneously holds that the premises vest in the State of Maharashtra under the Notification dated 4 June 2005, even though the premises are being used by Defendant Nos. 2 to 5 for running their business. That the erroneous finding recorded in the judgment of Trial and Appellate Courts ought to be set aside, as in any case, the Notification is issued in 2005 i.e. after the date of filing of the Petitioner's suit and thus should not be considered. In any event and assuming that premises were enlisted in Schedules A to D, the

5 1994 Supp(3) SCC 76
6 (2015) 6 Bom.C.R. 354

premises would have first vested in the State Government and then re-vested in Respondent Nos. 2 to 5. Without prejudice, he would submit that the suit premises did not fall under Schedules A to D of the 2005 Notification and thus fell in Schedule E, which was property retained by MSEB under the 2005 Notification.

16) Lastly, Mr. Khambatta would submit that the objective behind exclusion of entities enumerated under Section 3(1)(b) of the M.R.C. Act is to ensure that the tenants who can afford to pay rent at market rate should be excluded from the purview of rent protection. He would rely upon judgment of the Apex Court in ***Leelabai Gajanan Pansare and others Versus. Oriental Insurance Company Limited and others***[7] and of this Court in ***Depe Global Shipping Agencies Pvt. Ltd. Versus. Mather and Platt (India) Ltd.***[8]. He would submit that Defendant No.1-MSEB is a public sector undertaking and going by the legislative intention behind enacting Section 3(1)(b) of the M.R.C. Act, it cannot be permitted to retain possession of the tenanted premises by taking a convenient stand of State Government being the real tenant. He would submit that ultimately it is MSEB who uses and occupies the suit premises and the legislative intention is to ensure that entities like Defendant-MSEB vacate the tenanted premises since it is in a position to pay rent at the market rate. That if the contention of MSEB of it being a State under Article 12 is accepted, it would defeat the very object and purpose of Section 3(1)(b), also observed and upheld in ***Leelabai Gajanan Pansare*** and ***Depe Global Shipping Agencies Pvt. Ltd.*** Mr. Khambatta would therefore pray for setting aside the impugned decrees and pray for decreeing the suit filed by the Plaintiff.

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7 (2008) 9 SCC 720

8 2024 1 SCC 389

17) The petition is opposed by Mr. Anturkar, the learned Senior Advocate appearing for Respondents-Defendants. He would submit that a contractual tenancy got created in the name of Governor of Bombay vide Indenture of Lease dated 21 January 1953. The moment contractual lease was created on 21 January 1953, the lessee secured statutory protection under the provisions of the Bombay Rent Act, which was in vogue as on 21 January 1953. That therefore the contractual tenancy was converted into statutory tenancy and the Governor of Bombay accordingly became a statutory tenant. That this position continues upto 1960. That under the provisions of Section 60 of the States Reorganisation Act, 1965, the statutory right of Governor of Bombay in respect of the suit premises got vested in the State of Maharashtra, after its formation. That this is how State of Maharashtra continues to be a statutory tenant in respect of the suit premises from 1960 onwards. This position continued from 1960 till 31 March 2000 until MRC Act came into existence by repealing the Bombay Rent Act. Under the MRC Act also the State of Maharashtra continued to remain a tenant. That statutory tenancy cannot be terminated by mere service of notice. It can be brought to an end only by way of a decree passed under the provisions of Sections 12 or 13 of the Bombay Rent Act or Sections 15 or 16 of the M.R.C. Act, alternatively, it can be brought to an end by way of express surrender of tenancy. That in the present case, there is nothing to indicate that the statutory tenancy of the State of Maharashtra has come to an end. He would further submit that the theory of implied surrender of tenancy has not been pleaded by the Plaintiff nor any evidence is led in regard thereto. Therefore, Plaintiff cannot expect Courts to deliver a finding of implied surrender of tenancy by Governor of Bombay/State of Maharashtra and MSEB

acquiring tenancy rights in absence of foundational pleadings. Admissions whether judicial or evidentiary do not bring the tenancy in favour of the State of Maharashtra to an end.

18) Mr. Anturkar would submit that the Defendant-MSEB had raised a specific contention in paragraph 22 of the written statement that the State of Maharashtra is a necessary party to the suit and since the objection goes to the root of the matter, it alone, would render the suit as not maintainable. That controversy that whether State of Maharashtra or MSEB is the tenant cannot be decided in absence of State of Maharashtra and even this Court cannot decide the same while exercising jurisdiction under Article 227 of the Constitution of India in absence of State of Maharashtra. That in light of concurrent findings of the Trial and the Appellate Courts holding the suit to be not maintainable, no interference is warranted by this Court while exercising jurisdiction under Article 227 of the Constitution of India.

19) Mr. Anturkar would further submit that what Plaintiff expects, is a ruling from the Rent Court that State of Maharashtra no longer remained a tenant in respect of the suit premises. That in view of admitted execution of lease-deed in favour of Government of Bombay/State of Maharashtra, it became incumbent for the Plaintiff to plead and prove that the tenancy rights got transferred from Governor of Bombay to MSEB. For recording this finding, the Court will have to ultimately hold that the tenancy of Governor of Bombay/State of Maharashtra has been terminated. That such a finding cannot be recorded behind the back of State of Maharashtra and that therefore the State of Maharashtra was a necessary party to

Plaintiff's suit. He would further submit that mere payment of rent by MSEB from 1954 and acceptance thereto by the Plaintiff does not make MSEB a tenant. In support, he would rely upon judgment of the Apex Court in ***Karnani Industrial Bank Limited Versus. Prafulla Chandra Ghose and others***[9] and ***S.R. Radhakrishnan and others Versus. Neelamegam***[10].

20) Mr. Anturkar would rely upon provisions of Section 116 of the Transfer of Property Act in support of his submission that even after expiry of the tenure of lease on 30 June 1954, the Governor of Bombay admittedly continued holding on to the premises and the rent thereof is paid. Therefore, there is automatic renewal of the lease. Alternatively, he would submit that even if the contractual lease is deemed to have come to an end, the tenancy would then be governed by the provisions of the Bombay Rent Act followed by M.R.C. Act. That in either of the cases, termination of the lease/tenancy is impermissible. Mr. Anturkar would further submit that any admission given by the Manager of MSEB cannot be considered for recording a finding of tenancy of Governor of Bombay/State of Maharashtra coming to an end and MSEB becoming the tenant of the Plaintiff. He would also rely upon Section 91 of the Indian Evidence Act in support of his contention that surrender of tenancy has to be in the form of a written document and the presumption of surrender of tenancy cannot be raised only on account of MSEB paying rent in respect of the suit premises. Mr. Anturkar would submit that if Petitioner's contention of MSEB being the tenant after 1999 after introduction of MRC Act is to be accepted

9 (1953) 1 SCC 603
10 2003 10 SCC 705

then provisions of Section 106 read with Section 111 of the Transfer of Property Act would come into effect under which the lease has to be by registered document and admittedly there is neither pleading nor documentary evidence to that effect.

21) Lastly, Mr. Anturkar would submit that concurrent findings are recorded by the Trial and the Appellate Courts and in the absence of element of perversity or exercise of jurisdiction with material irregularity, this Court would be loathe in interfering with such concurrent findings in exercise of extra-ordinary jurisdiction under Article 227 of the Constitution of India. He would accordingly pray for dismissal of the petition.

22) Rival contentions of the parties now fall for my consideration.

23) Plaintiff's suit for eviction of Defendants filed under the provisions of Section 41 of the PSCC Act hinges on the issue as to who exactly is the tenant in respect of the suit premises. If Defendant No.1-MSEB is held to be the tenant in respect of the suit premises, there is no dispute to the position that MSEB does not enjoy protection of its tenancy under the provisions of M.R.C. Act and the suit filed by the Plaintiff for its eviction after service of notice under Section 106 of the Transfer of Property Act, 1882 will have to be decreed. If on the other hand, the State Government is held to be the tenant in respect of the suit premises, provisions of Section 3(1)(a) of the M.R.C. Act would come into play and State Government's tenancy would have protection under the provisions of the M.R.C. Act, in which case, the suit filed under the provisions of Section 41

of the PSCC Act would not be maintainable, particularly having regard to the provisions of sub-section (2) of Section 41 which seeks to exclude suit for recovery of possession of any premises governed by the provisions of Rent Control legislation. Therefore, the moot issue for determination in the present petition is whether the Plaintiff has established that Defendant No.1-MSEB is the real tenant in respect of the suit premises.

24) While answering the issue as to who exactly is the tenant in respect of the suit premises, the objection raised by Mr. Anturkar about State Maharashtra being necessary party would also get decided. Decision of that objection is necessary as it is the contention of Defendant-MSEB that by holding it to be the real tenant, this Court would in fact be declaring that the tenancy of the State Government has ended/got terminated and such a declaration cannot be issued in absence of State Government being made a party-Defendant to the suit.

25) In its Plaint, Plaintiff did not narrate the history of creation of tenancy in favor of Defendant-MSEB. It made a plain averment that it owns the HSBC building and that the Defendant-MSEB has been a tenant in respect of the premises on 3rd and 4th floor on payment of rent of Rs.17,763.93/- per month. The relevant averments in paras-2 and 3 of the Plaint read thus:

> 2. The Plaintiff owns and is otherwise well entitled to inter alia a building known as HSBC Building wherein the Defendants have been the tenants of premises on the 3rd floor admeasuring 17,957.22 sq.ft. and on the 4th floor admeasuring 14,877.22 sq.ft. The said premises are hereinafter collectively referred to as "the premises in suit".

> 3. The Plaintiff says that Defendants as such tenants of the premises in suit, have been paying monthly rent to the Plaintiff, amounting to Rs.17,763.93 per month in respect of the premises in suit.

26) True it is that the Petitioner-Plaintiff ought to have been slightly clearer in disclosing the manner in which Defendant-MSEB started possessing and paying rent to it. The effect of not doing so is being considered in latter part of the judgment. However, before considering the effect of non-disclosure of history of tenancy creation, it would be necessary to examine as to why Petitioner-Plaintiff felt it unnecessary to make the said disclosure. For this purpose, it would be necessary to go through the conduct and correspondence between the parties before institution of the Suit.

27) The first relevant and admitted fact is about possession of the suit premises by MSEB since 1954 and payment of rent by it directly to Plaintiff. Thus there is no dispute to the position that Defendant-MSEB paid rent in respect of the suit premises to the Plaintiff after it started occupying the premises. Plaintiff produced and proved before the Trial Court various letters of Respondent-MSEB paying rent in respect of the suit premises. When Plaintiffs served notice dated 1 August 2000 terminating the tenancy of Defendant-MSEB, following response was given on 16 August 2000:

> Our clients has referred to us your letter dated 1.8.2000 addressed on behalf of your clients. The Hongkong and Shanghai Banking Corporation Ltd. regarding the abovementioned premises **which is in possessed and occupation of our client since 1954**. we are taking instructions from our client and shall write to you before long. In the meantime please note that our client should not be deemed to have admitted any of the statements contained in your letter. **Our client specifically denies that the tenancy was terminated as alleged or at all.**
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> *(emphasis and underling added)*

28) Thus, Defendant-MSEB specifically admitted that it is in possession of the suit premises since 1984 and its further statement that *'our client specifically denies that the tenancy was terminated'* contains an implied admission that MSEB is the tenant in respect of the suit premises. Later, a detailed response was issued by MSEB on 11 September 2000 in which MSEB stated in para-1 as under:

> 1. With reference to para 1 of your letter, your clients are aware that the premises referred to in your letter has been in the continuous and uninterrupted possession and occupation of our client and its predecessor in title since prior to June 1954. The premises was originally let out by the Mercantile Bank of India Ltd to the Governor of Bombay prior to June, 1954. **Since October 1958, it was let out by Mercantile Bank Ltd to Bombay State Electricity Board. The lease was continued thereafter in favour of our client since 1961. Our client Board thus has been using and occupying the said premises since August 1961**.
>
> *(emphasis and underling added)*

29) Thus, there is specific admission in the letter dated 11 September 2000 that *'Since October 1958, it was let out by Mercantile Bank Ltd. to Bombay State Electricity Board. The lease was continued thereafter in favour of our client since 1961'*. The letter admits tenancy of Defendant-MSEB in letter dated 11 September 2000. Defendant's witness admitted during cross-examination that contents of letter dated 11 September 2000 are correct. At no point of time prior to filing of the suit, Defendant-MSEB ever raised a contention that State of Maharashtra is the real tenant or that it was occupying the premises on behalf of the State of Maharashtra or that payment of rent was also being made on behalf of the State Government. On the contrary, MSEB specifically admitted in the correspondence that though originally the Governor of Bombay was the lessee, after 1961, the lease has been continued in favour of MSEB.

30) It is the above conduct and correspondence between the parties, which led Plaintiff-Petitioner to believe that there was no dispute about tenancy of Defendant-MSEB and therefore it felt unnecessary to plead the entire history as to how MSEB came in possession and was treated as a tenant of the suit premises by the Petitioner-Plaintiff. Both the Trial and the Appellate Courts have however accused Petitioner of suppressing the fact that the Governor of Bombay was initially inducted as a tenant in respect of the suit premises. In fact, the Trial Court has recorded a finding that *'They have suppressed above material facts and have committed fraud upon the court. Therefore, on that ground also plaintiffs are not entitled to any relief'*. Mr. Khambatta has urged that for seeking eviction of the Defendant-MSEB, who had admitted landlord-tenant relationship for over five decades, it was not necessary for the Plaintiff to disclose the history leading to tenancy of Defendant-MSEB. He has rightly relied upon correspondence between the parties prior to filing of the suit to demonstrate absence of any dispute between the parties about existence of landlord-tenant relationship. In my view, criticism by the Trial Court about Plaintiff's action of not disclosing the history of creation of tenancy of MSEB was unwarranted and in any case, such non-disclosure should not have been the factor for ruling against Plaintiff. What was not disclosed was not material to the core issue involved in the case. In any case, even after admission of its own tenancy in the correspondence prior to the suit, the Defendant-MSEB still chose to take mutually destructive plea of State of Maharashtra being the real tenant, raising of such plea (which itself was impermissible as held in latter part of the judgment) cannot be a reason for non-suiting the Plaintiff by accusing it of suppression.

31) In my view, the Trial and the Appellate Courts have erroneously accused Petitioner of suppression of facts, without even appreciating as to whether what was not disclosed was really material to the issue at hand or not. As held by the Apex Court in ***Arunima Baruah*** (supra) every suppression would not disentitle a party to obtain relief and in refusal to exercise discretionary jurisdiction, suppression must be of material fact. The Apex Court held in para-12 as under:

> **12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact.** What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.
>
> *(emphasis added)*

32) While dealing with the issue of suppression, admissions made by Defendant-MSEB in correspondence about its tenancy are already noted. Now I proceed to examine the pleadings filed by Defendant-MSEB. It filed written statement raising following pleadings:

> 2. Defendants further state that it is the contention of the Plaintiff that premises let to the Defendants is exempted from protection of the Maharashtra Rent Control Act, 1999. Defendants state that the said provision of the Maharashtra Rent Control Act is arbitrary, capricious and discriminatory as well as in violation of Article 14 of the Constitution of India, and as such, there is no equality before the law and equal protection of law and the discrimination is not based on economic consideration in as much as the exemption to the paid up share capital is discriminatory and violative of Article 14 of the Constitution of India. Defendants

further state that the said provisions are required to be considered as to whether the same is ultra virus of fundamental rights of the Company under Constitution of India as well as provisions contrary to the Central Act known as the Companies Act. This Hon'ble Court is therefore required to make reference to the Hon'ble High Court for deciding virus of fundamental rights on the following amongst other grounds:-

(i) Provision is not based on economic consideration.

(ii) The provision discriminates amongst various companies incorporated under the provisions of the Constitution of India.

(iii) Criteria of paid up share capital is arbitrary, unjust, unfair and against equity and therefore is capricious and violative of fundamental rights guaranteed under the Constitution of India.

(iv) Protection given to the Defendants was vested right under Repealed Bombay Rent Act and taking away of such protection of vested right is not binding upon the Defendants.

(v) The criteria fixed up on the basis of the paid up share capital itself is arbitrary and not related to the profit or income of the Company as a result thereof. There is discrimination between the tenants and the same is violative of fundamental rights guaranteed under the Constitution of India.

6. **Defendants further submit that the tenant who has sub-let in violation of the provisions of the Bombay Rent Act, prior to 01.05.1959 and 01.02.1973 as also the licencee of such tenant whose license was subsisting prior to 01.02.1973 has been protected along with the respective tenants.** In other words, the tenant as well as the sub-tenant, both were protected under the provisions of the Bombay Rent Act, 1947 and continued to be protected under the Maharashtra Rent Control Act, 1999. However, the tenants who have sub-let the premises to a class of persons described in Section 3(1)(b) of the Maharashtra Rent Control Act, 1999, though came into possession either prior to 1959 or 01.02.1973 or at any time even thereafter with the permission of the landlord, lost the protection under the provisions of the present Act. The Defendants therefore submit that this classification is discriminatory and is in violation of Article 14 of the Constitution of India.

14. The Defendants state that it was agreed between the Plaintiff and the Defendants that if the Defendants would bear all the expenses for repair and maintenance of the suit premises, in consideration thereof, the Plaintiff agrees not to terminate the tenancy so long as the Defendants continue to pay the agreed rent. His understanding was arrived at between the Plaintiff and the Defendants and acted upon by both the parties. In pursuance

thereof, the Plaintiff has been sending the demands which have been honoured and paid by the Defendants. Beside this, the Plaintiff was charging more than the standard rent and it was also agreed between the parties that if the Defendants continue to pay the agreed rent, which is more than the standard rent, the Plaintiff will not terminate the tenancy of the Defendant.

15. The Defendants further state that the Plaintiff is not entitled to terminate the tenancy arbitrarily without any rhyms or reason. The Defendants therefore submit that the termination is illegal and bad in law and not binding upon the Defendants.

19. With reference to para 3 of the plaint, Defendants deny that they are paying monthly rent of Rs.17,763.93 per month as alleged. Defendants state that rent of both the premises are different. Originally rent in respect of premises on 3rd floor was Rs.7,182.89 ps and rent of premises on 4th floor was Rs.2,139.60 ps. Besides the separate rents, Plaintiffs were charging sum of Rs.225/- towards Lift charges in all aggregating to Rs.9,547.49ps. The said fact has been recorded by the Plaintiff through their advocate's letter dated 16-3-1992. Defendants crave leave to refer to the said letter when produced. Defendants therefore state that there are separate rent for 3rd floor and 4th floor premises and therefore suit is liable to be dismissed on the ground of mis-joinder of causes of action, one suit having been filed for 2 separate premises and 2 separate tenancies and different amount of rent being recovered.

20. With reference to para 4 of the plaint, the said letter is referred hereinabove and the Defendant submits that the said notice was bad in law, improper, invalid and not binding upon the Defendants. In the said letter itself the Plaintiffs have admitted that there are 2 separate premises having 2 amounts of rent, and therefore the same was not proper termination of 2 separate tenancies by one notice. Without prejudice, Defendants state that said letter is of no consequence, as the Defendants have continued as contractual monthly tenant in respect of both the as even after the purported notice, the Plaintiffs have continued to accept the rent every month. Defendants state that said letter was replied by the Defendants through their Advocates letter dated 06.04.1992 setting out correct facts and disputed their alleged requirement and pointed out that the same was neither reasonable nor bonafide. On the contrary, it was also pointed out in the said letter by the Defendants that whole building was centrally air conditioned and Defendants were charged for their air conditioning facility separately since October, 1990. Plaintiffs have unreasonably, high handedly, arbitrarily, illegally and without any reasonable cause withheld and cut off the said facility and since then Plaintiff have not provided new central Air Conditioning facility. Defendants emphatically deny that they are statutory corporation or body corporate having a paid up Share Capital of over Rs.1 Crore as falsely alleged or at all. As aforesaid, Defendants are state within meaning of Article 12 and 13 of the

Constitution of India. Apart from the premises are let to the Governor of Maharashtra, who is successor of the then Governor of Bombay and as such premises are let to the Government and therefore the same is protected under the provisions of Section 3(1)(a) of the Maharashtra Rent Control Act. Defendants emphatically deny that by reason of provision of Section 13(1)(b) of the Maharashtra Rent Control Act, premises are excluded from the purview of the said Act as falsely alleged. The provision relating to exemption is under Section 3(1)(b) of the said Act and not Section 13(1)(b) of the said Act. However, Defendants deny that premises let to the Governor of Bombay, now to Governor of Maharashtra is exempted or excluded from the purview of the said Act and further denies that status of the Defendants have been that of tenant at sufferance or that, Defendants are in wrongful possession of the suit premises or without having any right, title or interest to occupy the same as falsely alleged. The premises let to Governor of Bombay is not covered by Section 3(1)(a) of the said Act, and is fully protected under the Maharashtra Rent Control Act.

21. With reference to para 5 of the plaint, Defendants state that by Plaintiff's on admission in para under reply it is clear that there are 2 tenancies in respect of 2 separate premises, and therefore they were required to issue 2 separate notices. The Defendants state that however, purported notices referred in para under reply are not binding upon the Defendants at all inasmuch as the said notice has not been issued to the Governor of Maharashtra nor such notice is binding upon Governor of Maharashtra. The said notice appears to have been issued to the Defendants and not to the Governor of Maharashtra nor to the State of Maharashtra. It is further pertinent to note that those notices are not in consonance with Section 80 of the Code of Civil Procedure nor in accordance with Deed of Lease nor addressed to the tenant, to whom the premises were demised and as such notices are bad in law, illegal, void ab-initio improper and invalid. Defendants state that as notices were invalid and improper, the Defendants were neither bound to reply the same nor were required to comply with the same. Defendants deny that they have wrongfully continued in use or occupation thereof as alleged. Defendants also deny that they are not only liable to be evicted from the suit premises, but also liable to pay mesne profit or compensation to to the Plaintiff from 01.03.2001 as falsely alleged or at all.

22. With reference to para 6 of the plaint, Defendants deny that Plaintiff is entitled to file the present suit against the Defendants without joining State of Maharashtra and Governor of Maharashtra. Defendants are not aware that Plaintiffs have been advancing its business activities in the city of Mumbai or that they want to reach the common people through its Banking demands or that they have been striving to maximize the Banking Operations to the people at large and put the Plaintiff to strict proof thereof. Defendants also deny that Plaintiff is adopting different projects

> from time to time as alleged in para under reply. Defendants also deny that Plaintiffs have project of expansion of business activities, or recruiting the staff or opening the Branch or employing the staff for the purpose of meeting with their alleged demand as alleged. Defendants state that on the contrary, Plaintiffs are reducing staff and retrenching services of various employees and have also applied voluntary retirement scheme for their employees. The said act of the Plaintiff falsifies the case of the Plaintiff in para under reply. Defendants emphatically deny that Plaintiffs need suit premises reasonably or bonafide for their own use or that assertion of the Plaintiff is at all correct or that it is not necessary for the Plaintiff to establish any ground to recover possession of the suit premises from the Defendants as falsely alleged or at all.
>
> *(emphasis and underling added)*

33) Thus, there are specific admissions in the written statement that Defendant-MSEB is the tenant in respect of the suit premises. MSEB proceeded on a footing that it is the real tenant and questioned the right of the Plaintiffs to terminate its tenancy. MSEB went to the extent of raising a constitutional challenge to the provisions of Section 3(1)(b) of the M.R.C. Act to protect its tenancy. MSEB was well advised with regard to the provisions of Section 3 of the M.R.C. Act and was fully conversant with the position that State of Maharashtra was covered by the provisions of Section 3(1)(a) and accordingly if State of Maharashtra was the real tenant, its tenancy would be protected under the M.R.C. Act. The written statement however proceeds on a clear admission that MSEB alone is the tenant which is the reason why MSEB thought it necessary to raise challenge to the constitutional validity of Section 3(1)(b) of the M.R.C. Act in para-2 of its written statement. It also took an alternative stand that being a licensee in possession of the premises as on 1 February 1973, MSEB became a protected tenant in respect of the suit premises.

34) Defendant-MSEB filed additional written statement after Defendant Nos.2 to 5 were impleaded to the suit. In the additional written statement, MSEB sought to rely upon Notification dated 4 June 2005 for raising a plea that the suit premises stood vested in the State Government. The relevant pleadings in the additional Written Statement are as under :

> 2. ….
> (A)…
> (B)…
>
> (C) The Governor of Maharashtra permitted the Defendant No.1 to use and occupy both the premises.
>
> (D) Once again in exercise of power conferred by sub section (2) of Section 131 of Indian Electricity Act 2003, the Government of Maharashtra issued a Notification No. Reform 1005/CR 9061/(1) NRG-5 dated 4th June 2005 directed that with effect from 4th June 2005 all property, interest in property, rights and liabilities which immediately before the said date vested in the Defendant No.1 shall be vested with the State Government.
>
> (E) By the said Notification the State of Maharashtra made a Scheme for providing and giving to the Transfer of Properties Interests Rights Liabilities, Obligations, Proceedings and Personal of the Defendant No.1 to the Transferees and for that purpose framed a scheme called as "The Maharashtra Electricity Reform Transfer Scheme 2005".
>
> (F) by virtue of Rule 4 of the said scheme the State Government decided to transfer to and vest in the State Government for the purpose of further transfer under such Scheme. Accordingly, the suit premises remain with the State Government and even if the same was transferred to the Defendant No.1 stands retransferred by operation of law in favour of the State Government i.e. the State of Maharashtra.
>
> 3. …
>
> 4. Thee Defendants repeat, reiterate and confirm each and every statement made in the previous written statement dated 20th april 2002 as part and parcel of this Written Statement.

35) The very fact that the plea of vesting of the tenancy rights in suit premises in State Government in accordance with Notification dated 4 June 2005, constitutes an admission that MSEB is the real tenant of the suit premises. Thus, even the additional written statement seems to suggest that MSEB continued to be the tenant till 4 June 2005 when the tenancy rights got vested in the State Government.

36) According to Mr. Khambatta, these are judicial admissions given in the written statement which stand a higher pedestal than evidentiary admissions. Reliance in this regard on the judgment of the Apex Court in ***Nagindas Ramdas*** (supra) in para-27 of the judgment which reads thus:

> 27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court *could* be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. **Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof**. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.
>
> *(emphasis added)*

37) Thus, admissions given in pleadings, which become judicial admissions and which are admissible under Section 58 of the

Evidence Act, would stand a higher footing than evidentiary admissions. In my view, these judicial admissions given by Defendant-MSEB that it is the real tenant would completely bind it and would constitute a waiver of proof. Therefore it was not even necessary for Plaintiff to lead any evidence to prove that Defendant-MSEB is the tenant in respect of the suit premises.

38) However, in addition to judicial admissions, Defendant-MSEB has also made evidentiary admissions that it is the tenant in respect of the suit premises. Defendant's witness has admitted in his cross-examination that MSEB's Books of Accounts reflect payment of rent in respect of the suit premises made to the Plaintiff. As observed above, he stated that contents of the letter dated 11 September 2000 admitting tenancy of MSEB are correct. I have already made reference to the correspondence containing admissions by MSEB about its own tenancy. Since the evidential admissions are not withdrawn or proved erroneous, even such evidentiary admissions would be the best evidence that Plaintiff can rely upon. Here reliance by Mr. Khambatta on judgment of the Apex Court in ***Narayan Bhagwantrao Gosavi Balajiwale*** (supra) is apposite in which it is held in para-12 as under :

> **12.** In the present case, the burden of proof need not detain us for another reason. It has been proved that the appellant and his predecessors in the title which he claims, had admitted on numerous occasions that the public had a right to worship the deity, and that the properties were held as Devasthan inams. To the same effect are the records of the Revenue Authorities, where these grants have been described as Devasthan, except in a few cases, to which reference will be made subsequently. **In view of all these admissions and the revenue records, it was necessary for the appellant to prove that the admissions were erroneous, and did not bind him.** **An admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous.** We shall now

> examine these admissions in brief and the extent to which they went and the number of times they were repeated.
>
> *(emphasis and underling added)*

39) As held by the Apex Court in ***Nagindas Ramdas***, judicial admissions are fully binding on parties and constitutes a waiver of proof. Judicial admissions can be made a foundation of rights of the parties. Therefore, once MSEB admitted that it is the tenant in respect of the suit premises, it was not necessary for the Plaintiff to lead any evidence to prove MSEB's tenancy. Thus there exist both, judicial as well as evidentiary admissions in the present case that about tenancy of Defendant-MSEB in respect of the suit premises.

40) Though not really necessary in the light of judicial and evidentiary admissions made by MSEB about its own tenancy, the act of payment of rent by MSEB coupled with possession of suit premises and acceptance of rent by Plaintiff would automatically create landlord-tenant relationship in the present case. It would ne apposite to consider definition of the term '*tenant*' in Section 5(11) of the Bombay Rent Act, which reads thus:

> (11) "tenant" means any person by whom or on whose account rent is payable for any premises and includes-
>
> (a) such sub-tenants and other persons as have derived title under a tenant [before the 1st day of February 1973;]
>
> [(aa) any person to whom interest in premises has been assigned or transferred as permitted or deemed to be permitted, under section 15;]
>
> (b) any person remaining after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or his predeccessor who has derived title [before the first day of February 1973;]

(bb) such licensees as share deemed to be tenants for the purposes of this Act by section 15A]

(bba) the State Government, or as the case may be, the Government allottee, referred to in sub-clause (b) of clause (1A), deemed to be a tenant, for the purposes of this Act by section 15B;]

[(c) (i) in relation to any premises let for residence when the tenant dies, whether the death has occurred before or after the commencment of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1978, any member of the tenant's family residing with the tenant at the time of his death or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court;

(ii) in relation to any premises let for the purposes of education, business, trade or storage, when the tenant dies, whether the death has occurred before or after the commencment of the said Act, any member of tenant's family using the premises for the purposes of education of carrying on business, trade or storage in the premises, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court.

Explanation : The provisions of this Clause for transmission of tenancy, shall not be restricted to the death of the original tenant, but shall apply, and shall be deemed always to have applied, even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last precedeing tenant.

41) Similar definition is continued under Section 7(15) of the MRC Act, which reads thus:

(15) "tenant" means any person by whom or on whose account rent is payable for any premises and includes,-

(a) such person,-
(i) who is a tenant, or
(ii) who is a deemed tenant, or
(iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord, or
(iv) who has derived title under a tenant, or
(v) to whom interest in premises has been assigned or transferred as permitted, by virtue of, or under the provisions of, any of the repealed Acts;

(b) a person who is deemed to be a tenant under section 25;

> (c) a person to whom interest in premises has been assigned or transferred as permitted under section 26;
>
> (d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who,-
>
> (i) where they are let for residence, is residing, or
> (ii) where they are let for education, business, trade or storage, is using the premises for any such purpose,
>
> with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the court.
>
> *Explanation.--* The provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.

Thus, a person or entity by whom, or on whose behalf, the rent is payable for any premises becomes a tenant. In the present case, there is no pleading much less proof that the rent was paid by MSEB on behalf of the State Government. Thus even going by definition of the term 'tenant', MSEB is otherwise required to be treated as a tenant in respect of the suit premises having undisputedly paid the rent to Plaintiff-landlord for several decades.

42) Mr. Anturkar has relied upon judgments in ***Karnani Industrial Bank Limited*** (supra) and ***S. R. Radhakrishnan*** (supra) in support of his contention that mere payment of rent does not make a person a tenant. However, both the judgments are rendered in the facts of those cases. In ***Karnani Industrial Bank Limited***, the bank was a mortgagee, who took possession of the tenanted premises and continued paying rent to the landlord and later claimed status of a tenant. The Apex Court held the landlord was not a party to the arrangement between the tenant-mortgagor and bank-mortgagee and

that the rent was paid by the bank to the landlord only on behalf of the original lessee. Mr. Khambatta has rightly distinguished the judgment by contending that the rent was being paid by the Bank on behalf of the lessors concerned and not independently. In the present case, payment of rent by Defendant-MSEB is on its own account and for itself and not on behalf of the State Government. In ***S. R. Radhakrishnan***, the tenant had included two of his brothers in running of the business in the suit premises and latter executed release deed in favour of his two brothers who started claiming tenancy in respect of the suit premises and had paid rent to the landlord. In those circumstances, the Apex Court held that payment of rent did not elevate the status of the brothers as that of tenant. In that case, the landlord had never recognised the brothers as tenants. In the present case, however, Plaintiff always recognised Defendant-MSEB as its tenant.

43) Turing to the objection of Mr. Anturkar about presence of State of Maharashtra as a necessary party to the suit, in my view, his objection needs to be considered in the light of admissions given by MSEB and non-requirement of proof on the part of the Plaintiff about tenancy of MSEB. Plaintiff came out with a plain contention that Defendant-MSEB is the tenant in respect of the suit premises and that it pays Plaintiff the rent. This position is never disputed by MSEB either before filing of the suit or in the written statement. In that view of the matter, how State Government becomes necessary party to the suit becomes incomprehensible. This is not a case where MSEB adopted a defence that the real tenant in respect of the suit premises is the State Government nor State Government ever made any attempt to press its claim of tenancy in respect of the suit

premises at any point of time. Thus, there was no necessity for conducting a factual enquiry about subsistence of alleged tenancy right of the State Government. In my view, therefore State of Maharashtra is not a necessary party to the suit on the account of judicial and evidentiary admissions given by Defendant-MSEB that it alone is the tenant in respect of the suit premises.

44) MSEB has adopted inconsistent and mutually destructive pleas in the present case. In one breath, it asserts that it is the real tenant in respect of the suit premises. However, with a view to overcome the effect of provisions of Section 3(1)(b) of MRC Act, it seeks to suggest that the State Government is the real tenant in respect of the suit premises. It first tried its hand by raising challenge to constitutional validity of Section 3(1)(b) of the MRC Act by asserting that it is the tenant and would continue to enjoy rent control protection. Then it thought of raising the contention of State Government being the tenant to somehow save the tenancy. Later, in additional written statement, it sought to walk back on its original stand of its own tenancy by raising alternate plea that even if it was the tenant upto 4 June 2005, the tenancy rights got vested in State Government by virtue of the Transfer Scheme. All these pleas are mutually destructive. As held by the Apex Court in ***Gautam Sarup*** (supra), a party can be permitted to raise alternative plea, but not mutually destructive pleas. The Apex Court in para-28 as held as under:

> **28.** What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It

> may be that a defendant is entitled to take an alternative plea. **Such alternative pleas, however, cannot be mutually destructive of each other.**
>
> *(emphasis added)*

45) Mr. Anturkar has strenuously submitted that the Governor of Bombay was a contractual tenant and there is no pleading nor proof to indicate that the contractual tenancy was either terminated or surrendered. He has submitted that even after expiry of the contractual tenancy, the Governor of Bombay and subsequently the State of Maharashtra, after coming into effect of the State Reorganisations Act, became a statutory tenant under the provisions of the Bombay Rent Act and continues to be the statutory tenant under the provisions of the M.R.C. Act as well. In my view, it is not really necessary to even consider these submissions in absence of any dispute being created by MSEB about its tenancy. MSEB never contended that State Government is the tenant in respect of the suit premises. On the contrary, it always asserted that it alone is the tenant. However, since Mr. Anturkar has strenuously raised the contentions with regard to impermissibility to bring to an end a contractual and/or statutory tenancy, it would be necessary to quickly deal with his submissions. In support of contention that the contractual tenancy continued even after expiry of tenure thereof, he has placed reliance on provisions of Section 116 of the Transfer of Property Act which provides thus :

> **116. Effect of holding over.—**
> If a lessee or under-lessee of property **remains in possession** thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative **accepts rent from the lessee** or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to

> the purpose for which the property is leased, as specified in section 106.
>
> *(emphasis added)*

46) In the present case, automatic renewal of lease Governor of Bombay/State of Maharashtra under provisions of Section 116 is not the pleaded case. It was in fact not even argued before the Trial and the Appellate Court and arises really out of ingenuity of Mr. Anturkar through his submissions canvassed across the bar. Even if the technicality of absence of pleading or non-raising of the issue before the Trial and Appellate Courts is momentarily ignored, in my view, reliance by MSEB on provisions of Section 116 of Transfer of Property Act does not make its case any better. Continuity of possession by the lessee and payment of rent by the lessee is *sine qua non* for application of provisions of Section 116 of the Transfer of Property Act. However, there is nothing to indicate that the Governor of Bombay or State of Maharashtra either remained in possession of the suit premises or paid rent to the Plaintiff. MSEB never contended that it held possession of the suit premises or paid rent on behalf of the Governor of Bombay or the State Government.

47) On the contrary, provisions of Section 107 of the Transfer of Property Act provide for creation of oral agreement of lease accompanied by delivery of possession. Section 107 reads thus :

> **107. Leases how made.—**
> A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.
> **All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.**
> Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments

> than one, each such instrument shall be executed by both the lessor and the lessee:
> Provided that the State Government may, from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.
>
> *(emphasis added)*

48) In the present case, once possession of the suit premises was secured by the Defendant-MSEB and it started paying rent to the Plaintiff, the relationship between landlord-tenant got created between Plaintiff and MSEB. Therefore, reliance by Defendant-MSEB on provisions of Transfer of Property Act, far from assisting its case, actually militates against it. Though termination/surrender of tenancy by Governor of Bombay is not really the issue in the present case, the same is dealt with to quell any doubts about State of Maharashtra continuing to remain a tenant and necessity for its impleadment. Surrender of tenancy can be express or implied. The contractual tenancy created in favour of Governor of Bombay came to an end on 30 June 1953. The contractual lessee stopped paying rent to the lessor. According to admission given by Defendant-MSEB in the correspondence, Bombay State Electricity Board took over possession of the premises and started paying rent to the lessor. In such circumstances, surrender of tenancy by the Governor of Bombay must necessarily be inferred. In doing so, this Court is not adjudicating the issue of continuation leasehold rights, if any, of Governor of Bombay or State of Maharashtra. What is being done essentially is to find out as to whether Defendant-MSEB continued as a tenant and whether it had statutory protection of its tenancy as on the date of institution of the Suit. For this limited purpose, the inference of implied surrender of tenancy by Governor of Bombay

can be drawn, though it is not really necessary to do so in the light of express judicial and evidentiary admissions given by Defendant-MSEB that it is the tenant of Petitioner-Plaintiff. Mr. Khambatta has relied upon judgment of the Apex Court in ***Pushpa Rani*** (supra) in support of his contention that there can also be implied surrender of tenancy. The Apex Court has held in para-9 as under :

> **9.** On a consideration of the evidence, the High Court concurring with the findings of fact on the point recorded by the Rent Controller and the Tribunal, held that after the death of Chaman Lal it was Sushil Kumar alone who continued in occupation of, and was carrying on the business in, the premises and that in the circumstances of the case the other heirs must be held to have surrendered their rights to tenancy. **This implied surrender was inferred from the evidence as to the conduct of the other heirs.** The principle in *Gian Devi case* [*Gian Devi Anand* v. *Jeevan Kumar*, (1985) 2 SCC 683 : 1985 Supp (1) SCR 1] as to the heritability of a non-residential tenancy relied upon by Shri Gupta does not detract from, and is not inconsistent with, **the principle of implied surrender**. The finding on implied surrender, in our opinion, is supported by the evidence on record. Both the Rent Control Tribunal and the High Court, in our opinion, were right in not countenancing the claim of the heirs which incidentally came through the challenge on the executing side. So far as the appeal of Sushil Kumar is concerned, there is hardly anything that can be said in support of it.
>
> *(emphasis added)*

49) The judgment of ***Pushpa Rani*** has been followed by the Division Bench of this Court in ***Urmi Deepak Kadia*** (supra) in which it is held in paras-12, 13 and 15 as under:

> **12.** We are of the view that the area and field covered by the MRC Act is entirely different-The provision such as definition of the term 'tenant' appearing in section 7(15) must be read in the backdrop of the object and purpose sought to be achieved by the MRC Act. It is not to create a separate class or to carve out a distinct rule of succession but to merely enable somebody to step in in place of the deceased tenant until the rights under the general law are determined that such a provision has been inserted and for protection of the interests of both, the landlord and tenant.

> **13.** We do not find that there is anything contrary to this principle which is laid down in the case of *Vasant Pratap Pandit* (*supra*). There, the question was about a tenant (Tarabai) of the disputed premises dying issueless. She left behind the Will bequeathing the properties including tenancy rights to her sister's son Gopal and appointing the Appellant her brother's son as Executor of the Will. The respondent/defendant, who happened to be the grandson of a sister of the Legatee and his wife were staying with Tara Bai in the disputed premises. After her death, the Appellant called upon the Respondent to vacate the premises and on his refusal, instituted a Suit for eviction in the City Civil Court, Bombay. The Suit was resisted principally on the ground that the bequest of the tenancy rights amounted to transfer and it was impermissible under section 15 of the Act. That is how the Respondent claimed that he cannot be evicted. This contention was negatived by the trial Court and the Suit came to be decreed. The respondent preferred an Appeal in the High Court and while allowing the Appeal and dismissing the Suit, the High Court held that the word 'heir' appearing in section 5(11)(c) of the Act did not include legatee and that the words 'assign' and transfer' appearing in section 15 of the Act were used in a generic sense to include bequest. Therefore, the Suit itself would not lie.
>
> **15. In a decision in the case of (*Pushpa Rani* v. *Bhagwanti Devi*), reported in 1994 Supp (3) SCC 76 : A.I.R. 1994 S.C. 774 the Hon'ble Supreme Court held that when a tenant dies, it was the person who continued in occupation of and carried on business in the business premises alone with whom the landlord should deal and other heirs must be held to have surrendered their right of tenancy.** ……
>
> *(emphasis added)*

50) In my view, it is not really necessary to delve any further into the aspect of implied surrender of tenancy. What is required to be noted here is that the State Government has never staked its claim of tenancy in respect of the suit premises. There is not even a single letter on record to suggest that the State Government ever staked its claim that it continued as a lessee under the Indenture dated 21 January 1953. State of Maharashtra never applied for being impleaded in the suit. Therefore, Mr. Anturkar is not right in contending that by decreeing the suit of the Plaintiff, this Court would be giving a declaration that the tenancy right of the State Government has come to an end.

51) Thus, in the present case there is no unilateral action of payment of rent by Defendant-MSEB. The rent was accepted by Plaintiff-landlord by treating Defendant-MSEB as the tenant. Therefore, there existed clear relationship of landlord and tenant between Plaintiff and MSEB.

52) Much reliance is placed on the Notification dated 4 June 2005 to suggest that there is statutory vesting of tenancy rights in favour of State Government and that therefore the State Government would continue as a tenant on the strength of the Transfer Scheme. In my view, the subsequent event of issuance of Notification dated 4 June 2005 does not have any effect on right of the Plaintiff to seek possession of the suit premises from the original Defendant-MSEB. Mr. Khambatta has urged that the suit premises did not fall under Schedules A to D of the 2005 Notification and thus fell in Schedule E, which was property retained by MSEB under the 2005 Notification. However even if it is assumed that the Transfer Scheme has the effect of vesting of tenancy rights in favour of State Government, that event has occurred on 4 June 2005, after the date of institution of the suit. If the Suit was to be decided before 4 June 2005, tenancy of MSEB itself would be non-existent and there was no question of vesting of tenancy rights in favour of the State Government. Therefore the supervening event of implementation of Transfer Scheme w.e.f. 4 June 2005 cannot affect the decision of the Suit instituted in the year 2001.

53) In fact, the argument of MSEB about vesting of tenancy rights in State Government contains an implied admission that MSEB was the real tenant as on 4 June 2005. Unless MSEB was the

tenant, there was no question of State Government being vested with tenancy rights and further revesting of the tenancy rights in favour of Defendant Nos.2 to 5. If State Government itself was the tenant in respect of the suit premises, there is no question of any vesting happening in the name of the State Government by Notification dated 4 June 2005. Therefore reliance by Defendant-MSEB on Notification dated 4 June 2005 actually militates against it.

54) It cannot escape the attention of this Court the exact reason why MSEB subsequently started pressing the defence of State Government being the tenant in respect of the suit premises. MSEB always enjoyed the tenancy rights so long as it remained the protected tenant during the Bombay Rent Act regime. After the MRC Act came into force on 31 March 2000, MSEB lost protection of its tenancy under the provisions of Section 3(1)(b) of the M.R.C. Act, it being a Public Sector Undertaking and statutory corporation. MSEB therefore first made a feeble attempt of questioning the constitutional validity of Section 3(1)(b) of the M.R.C. Act. In ***Leelabai Gajanan Pansare*** (supra), the issue before the Apex Court was whether a Government Company falls within the compendious expression *'any public sector undertakings or any corporation established by or under any Central or State Act'* appearing under Section 3(1)(b) of the M.R.C. Act. The Apex Court answered the issue in the affirmative and held that Government Companies would fall within the purview of Section 3(1)(b) of the M.R.C. Act. Once MSEB realised that it could no longer enjoy rent control protection, it thought of pressing an alternative and mutually destructive plea of State Government being the tenant in respect of the suit premises, since tenancies of Government are protected under the provisions of Section 3(1)(a) of the M.R.C. Act. Thus, the desperate and lame attempt on behalf of

MSEB to portray State Government as the tenant is essentially an outcome of a design to somehow get over the provisions of Section 3(1)(b) of the M.R.C. Act. This Court does not appreciate such plea being raised by MSEB, which is a Government Company, which is trying to somehow latch on to the possession of tenanted premises even after it has statutorily lost the rent control protection. In ***Leelabai Gajanan Pansare*** (supra), the Apex Court has applied the test of 'affordability to pay rent' and held that every entity who can afford to pay the rent at market rate, is sought to be excluded as a sort of 'economic package' to the landlords while enacting the M.R.C. Act. The Apex Court has held in paras-58 and 59 of the judgment as under:

> 58. Therefore, the legislature was required to keep in mind the vulnerability of fixing standard rent as on 1.9.1940. At the same time, the legislature had to keep in mind two aspects, namely, tenancy protection and rent restriction. The problem arose on account of economic factors. **However, the legislature found the solution by evolving an economic criterion.** The legislature evolved a **package** under which the prohibition on receiving premium under Section 18 of the 1947 Act stood deleted. In other words, landlords were given the liberty to charge premium. The second package was to exclude **cash-rich body corporates** and **statutory corporations** from the protection of the Rent Act. This part of the economic package helps the landlords to enhance the rent and charge rent to the entities mentioned in Section 3(1)(b) **who can afford to pay rent at the market rate**. This was the second item in the economic package offered to the landlords under the present Rent Act. The third item of the Rent Act was to give the benefit of annual increase of rent @ 5% under the present Rent Act. All three items constituted one composite package for the landlords. The underlying object behind the said economic package is to balance and maintain the two-fold objects of the Rent Act, namely, tenancy protection and rent protection. The idea behind excluding cash-rich entities from the protection of the Rent Act is also to continue to give protection to tenants who cannot afford to pay rent at market rate.
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> 59. The above discussion is relevant because we must understand the reason why Section 3(1)(b) came to be enacted. As stated above, in our view, with the offer of an economic package to the

> landlords, the legislature has tried to maintain a balance. The provisions of the earlier Rent Act, as stated above, have become vulnerable, unreasonable and arbitrary with the passage of time as held by this Court in the above judgment. The legislature was aware of the said judgment. It is reflected in the report of the Joint Committee. In our view, the changes made in the present Rent Act by which landlords are permitted to charge premium, the provisions by which cashrich entities are excluded from the protection of the Rent Act and the provision providing for annual increase at a nominal rate of 5% are structural changes brought about by the present Rent Act, 1999 vis-à-vis the 1947 Act. **The Rent Act of 1999 is the sequel to the judgment of this Court in the case of *Malpe Vishwanath Acharya*.**
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> *(emphasis and underlining supplied)*

55) In ***Leelabai Gajanan Pansare***, the Apex Court has held that M.R.C. Act is a sequel to its judgment in ***Malpe Vishwanath Acharya and others Versus. State of Maharashtra and another***[11]. It would not be out of place to refer to the observations of the Apex Court in para-31 of the judgment in ***Malpe Vishwanath Acharya*** where the Apex Court held that the provisions of the Bombay Rent Act relating to determination and fixation of standard rent could no longer be considered reasonable. The Apex Court was about to strike down the provisions of the Bombay Rent Act being unreasonable and arbitrary but it was prevented by the State Government from doing so under the promise that the concern expressed by the Apex Court would be taken care of in new Rent Act, which the State Government was mulling to introduce. This is the reason why the Apex Court in ***Leelabai Gajanan Pansare*** has held that M.R.C. Act is the sequel to the judgment in ***Malpe Vishwanath Acharya***. The Apex Court has held that the golden thread that runs through all the entities enumerated under Section 3(1)(b) of the M.R.C. Act is their capacity to pay rent at market rate. If this objective behind enacting Section 3(1)(b) of the M.R.C. Act is taken in consideration, the action of the Defendant-

[11] (1998) 2 SCC 1

MSEB in latching on to the possession of the suit premises by trying every possible trick is not appreciable. Being a Public Sector Undertaking, MSEB ought to have graciously given up possession of the suit premises by appreciating the legislative intent behind enactment of Section 3(1)(b) of the MRC Act.

56) This Court therefore cannot turn blind eye to the fact that by raising plea of the State Government being the tenant in respect of the suit premises, MSEB actually wants to continue possession of the suit premises on payment of paltry standard rent. This is exactly what the provisions of M.R.C. Act do not permit. The legislative intent is that MSEB cannot occupy any premises as a statutory tenant because it can afford to pay rent at market rate. Though not fully relevant to the present case, a useful reference can be made to the judgment rendered by this Court in ***Depe Global Shipping Agencies Pvt. Ltd.*** (supra) which involved the issue of permissibility for an entity to regain the lost rent control protection. In that case, the Defendant-company had lost rent control protection on account of its paid up share capital being in excess of Rs.1 crore as on the date of coming into effect of the M.R.C. Act. The company reduced its paid up share capital through a Scheme of Arrangement sanctioned under the provisions of Sections 391 and 394 of the Companies Act, 1956. This Court however took into consideration the legislative objective behind incorporation of Section 3(1)(b) of the M.R.C. Act and held that it would be impermissible for an entity enumerated in Section 3(1)(b) of the M.R.C. Act to regain lost rent control protection by voluntarily reducing its paid-up share capital. While holding so, this Court applied the criterion of 'affordability to pay market rent' for

ensuring that no entity who gets covered by the provisions of Section 3(1)(b) of the M.R.C. Act can claim rent control protection in any manner. Applying the same logic to the present case, this Court cannot permit MSEB to hold on to the possession of the suit premises by raising technical objection of non-impleadment of State of Maharashtra as a party to the suit. As observed above, permitting MSEB to retain possession of the suit premises would be against the legislative spirit of enacting the M.R.C. Act, particularly the provisions of Section 3(1)(b) thereof. It is therefore necessary that MSEB, who is in a position to fend for itself, goes out in the market and secure premises by paying market rent. The MRC Act has taken away protective umbrella from rent escalation and eviction *qua* MSEB and the same cannot be permitted to be indirectly reinstated, as such an action would virtually tantamount to frustrating the entire legislative intention.

57) The conspectus of the above discussion is that Defendant-MSEB was the tenant in respect of the suit premises as on 31 March 2000 when MRC Act came into effect. On account of inclusion of MSEB under the provisions of Section 3(1)(b) of the M.R.C. Act, it lost protection of the provisions of M.R.C. Act and its tenancy became terminable by service of simple notice under Section 106 of the Transfer of Property Act. In the present case, due notice under the provisions of Section 106 of the Transfer of Property Act has been served on Defendant-MSEB on 13 January 2001 and the suit has thereafter been instituted on 3 May 2001. The suit filed by the Plaintiff under the provisions of Section 41 of the PSCC Act for ejectment of MSEB, who longer enjoyed protection of the M.R.C. Act was perfectly maintainable and the Trial and the Appellate

Courts have committed fundamental error in holding that the suit was not maintainable.

58) In my view, therefore the Trial and the Appellate Courts have patently erred in holding the suit to be not maintainable and dismissing the same. The findings recorded by the Trial and the Appellate Courts suffer from the vice of perversity. There is a jurisdictional error committed by the Trial Court in exercising the jurisdiction vested in it. In my view, therefore both on grounds of perversity, as well as failure to exercise jurisdiction vested in it, this Court would be justified in interfering in the impugned decree by the Trial Court and as upheld by the Appellate Court.

59) Writ Petition accordingly succeeds, and I proceed to pass the following order:

(i) Judgment and decree dated 26 April 2018 passed by the Small Causes Court at Mumbai in T.E. & R. Suit No.346/366 of 2001 as confirmed by the Appellate Bench of the Small Causes Court by Judgment and order dated 5 July 2023 in P. Appeal No. 213 of 2018 is set aside.

(ii) T.E. & R. Suit No.346/366 of 2001 is decreed with costs.

(iii) Defendants are accordingly directed to handover possession of the suit premises to the Plaintiff on/or before 31 March 2025.

(iv) A separate enquiry be conducted into mesne profits under the provisions of Order 20 Rule 12 of the Code w.e.f. the date of termination of tenancy of the Defendants.

60) With the above directions, the Writ Petition is **allowed.** Rule is made absolute.

[SANDEEP V. MARNE, J.]