KANCH. VINOD MAYEK.

2IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1158 OF 2002
ALONGWITH
INTERIM APPLICATION NO. 15385/2024
IN
WRIT PETITION NO. 1158 OF 2002

1) M/s. Economy Engineering Co.
2) M/s. Economy Refrigeration Pvt. Ltd.
3) The heirs of Y. D. Ahuja
all occupying Room Nos. 1 and 2, Indian Mercantile Insurance Building, otherwise known as Kirti Building, 31, Forbes Street, Mumbai – 400 001 ... Petitioners (Org. Appellants/ Opposite Parties)

V/s.

1) M/s. The Oriental Insurance Co. Ltd.
Regional office No.1, Oriental House, 7, J. Tata Road, Mumbai – 400 020
2) Estate Officer,
having office at the Oriental Insurance Company Limited, Oriental House, 2nd floor, 7, J. Tata Road, Mumbai – 20 ... . Respondents

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Adv. Sunny Shah a/w. Adv. Ashwin Ankhad, Adv.Akshay Suresh and Adv. Surya Das i/b. Adv. R. R. Sharma for the Petitioners/Appellants.

Adv. V. Y. Sanglikar a/w. Adv. Archana D. Gaware for the Respondents.

CORAM	:	**RAJESH S. PATIL, J.**
RESERVED ON		**4 MAY 2026**
PRONOUNCED ON		**28 SEPTEMBER 2026**

JUDGMENT :

1. The present petition has been filed under Article 226

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and 227 of the Constitution of India by three petitioners challenging the impugned judgment and order dated 30 September 1998 passed by the Estate Officer in Notice No. 17 and 17 (a) of 1994 and as confirmed by judgment and order dated 31 January 2002 passed in Miscellaneous Appeal No. 120 of 1998 by the Principal Judge of the Bombay City Civil Court at Bombay.

2. Mr. Sunny Shah appeared on behalf of the petitioner and Mr.Sanglikar on behalf of the respondent – Oriental Insurance.

3. Mr. Shah submitted that the premises was given on the tenancy basis to a proprietorship firm and the said proprietorship firm of Mr.Ahuja was thereafter converted into a partnership firm and from partnership it got converted into a private limited company of which Mr. Ahuja and his wife were the directors.

4. In the year 1957, the private limited company got dissolved and Mr.Ahuja again started running business in the name of the proprietorship firm. Subsequently from proprietorship firm, it got converted into partnership firm where Mr.Ahuja alongwith his son started doing the business. Thereafter from the partnership firm, in the year 1971, the business was transferred to a private limited company.

5. Mr. Shah submitted that there is no reason whatsoever

for termination. He submitted that in the notice at page no. 32, the only reason for termination is subletting of the premises.

6. Mr.Shah referred to the judgment of Supreme Court passed in case of ***Madras Bangalore Transport Co. (West) vs. Inder Singh & Ors., 1986 (3) SCC 62***. In the said judgment, while referring to subletting, the court held that though the company is a separate legal entity, actually it was only as an alter ego or corporate reflection of the tenant-firm and the two were one, for all practical purpose having substantial identity. This can't be said as subletting, assignment or parting with possession of the premises by the firm.

7. Mr.Shah submitted that the business was conducted always only by the family members. Mr.Shah further submitted that the evidence was not led by the insurance company. However, the respondent led evidence by examining their witness who was cross examined by the learned counsel appearing for the Oriental Insurance Company.

8. He submitted that under the Companies Act, for the partnership firm to convert into a private limited company, there has to be a deed of assignment. The petitioner followed the procedure of law. Before the Public Premises Act (for short P.P. Act)

came into force, the deed of assignment from the partnership firm to a private limited company was already executed. Therefore there cannot be a retrospective effect of subletting as pleaded by Respondent-Insurance Company.

9. Mr. V. Y. Sanglikar, appearing for the Respondents-Insurance Company submitted that the original opponent no.1 had subletted the premises to the opponent no.2. The respondents had granted tenancy rights of the suit premises to a proprietary firm by the name was M/s. Economy Engineering Co. of one Mr.Y.D.Ahuja before 1947. As per the case of the opponents, in the year 1948, the proprietary firm was converted into a partnership firm by name M/s. Economy Refrigeration and Engineering Company wherein initially son of Mr.Y.D.Ahuja, Ravish was added as a partner. And in the year 1957, second son of Mr.Y.D.Ahuja was also added as a partner and subsequently in the year 1964, third son of Mr. Y.D.Ahuja by name Suresh was added as a partner. Later in the year 1971, the partnership firm by way of Deed of Assignment was converted into a private limited company by name M/s. Economy Refrigeration Pvt. Ltd.

10. On 13 May 1971, the General Insurance (Emergency Provisions) Act, 1971 came into force. The deed of assignment as

per the petitioners' case was on 26 July 1971. Therefore, after the General Insurance (Emergency Provisions) Act, 1971 had come into force without permission of the custodian and/or the Insurance Company, the deed of assignment was executed. Therefore, it is a clear case of subletting.

11. He further submitted that there is an amendment to the P. P. Act in the year 2015 and for the present proceeding, relevant is Section 5 of the PP Act. The word 'may' which was in the old Act, has been replaced with the word 'shall' by the 2015 Amendment. The amendment to the Section 5 is retrospective. Therefore, there is no option now left for the Estate officer but to pass an eviction decree. Though in the present proceeding, the eviction application was decided before the year 2015 and the present writ petition has been filed in the year 2002, still the amendment would be applicable to the present proceedings and one has to read 'shall' in section 5. He relied upon few authorities in support of his submission.

12. Before dealing with facts of the present proceedings, the relevant judgments of Supreme Court and of various High Court needs to be considered.

13. A **Five-Judge Bench of the Supreme Court**, in **Ashoka**

Marketing Limited vs. Punjab National Bank, reported in **AIR 1991 SC 855**, held that the P. P. Act prevails over the Rent Act. The objects and purpose of the P. P. Act would give it an overriding effect over the provisions of the Rent Control Act, even though both the P. P. Act and the Rent Act contained non-obstante clauses. The scope of the provisions of the P. P. Act cannot be whittled down on the basis of the apprehension that corporations like nationalised banks or LIC are trading corporations interested in earning profits. They cannot be precluded from buying the properties in question which are in possession of tenants at a low price and thereafter vacating the tenants after terminating the tenancy and subsequently selling the property at a higher price.

14. In the case of **Akbarali A. Premji & Another V/s. LIC & Another**, Writ Petition No. 4992 of 2008, Single Judge of this Court, while considering a petition filed by a tenant challenging the judgment passed under PP Act, held that the application of principles of rent control legislation, the same cannot be used in a strict sense in favour of the petitioners. With regard to the guidelines and applicability of Articles 12 and 14 of the Constitution of India, <u>it is necessary for the authority to make out at least some ground for eviction. Strict interpretation of various</u>

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terms made under rent legislation cannot be used, though the grounds can be used by the authority for eviction purposes. In other words, in a strict sense, the grounds available under the Rent Act for terminating tenancy are also the grounds available in the PP Act for terminating tenancy and eviction of the tenant. It will be sufficient for the authority to prove that the original tenant had committed an act not permitted by the contract of tenancy. With this view, the Single Judge dismissed the petition filed by the tenant.

15. The Division Bench of this Court, in the judgment of **Subhash Phophale V/s. Oriental Insurance Company**, reported in **2010 (5) AIR Bom R 44**, held that the Rent Act would not be applicable to the Public Premises Eviction Act. Oriental Insurance Company became a public company with effect from 13 May 1971. The leave and licence agreement dated 20 December 1972 could not confer any higher rights upon the petitioner, who claimed to be a licensee from the original tenant. Once the original tenant had suffered a notice of termination issued as far back as 12 July 1980, at least from that date, the occupation of the original tenant and consequently, that of the petitioner, who claimed to be a licensee from the original tenant by virtue of the leave and licence

agreement, became “unauthorised Occupant” and was amenable to action for eviction as well as payment of damages. The order of eviction passed by the City Civil Court against the opposite parties was confirmed, and the petition filed by the licensee claiming rights under the leave and licence agreement was rejected.

15.1. The Supreme Court, in an appeal filed by the tenant, **Suhas Pophale**, challenging the judgment passed by the Division Bench of this Court, while allowing the appeal filed by the tenant Suhas Pophale, held that the Bombay Rent Act was exempted from its application to the premises belonging to the Government or a local authority from 16 September 1958, when the Public Premises Act, 1958 came into force. The said position has been reiterated under the P.P. Act, 1971, which replaced the 1958 Act. It was further held that the P. P. Act would not be applicable to premises where the tenancies were created before 16 September 1958, or such later date when the premises concerned became public premises upon the landlord becoming a Government company or public corporation.

16. A **three-Judge Bench of the Supreme Court**, in **LIC vs. Vita**, reported in **2025 SCC OnLine SC 2772**, was dealing with a reference concerning the ratio laid down by the two-Judge Bench

of the Supreme Court in **Suhas Pophale vs. Oriental Insurance Company** and the contrary decision of the Constitution Bench in **Ashoka Marketing vs. Punjab National Bank**.

16.1. The principal question which arose for consideration was whether, for the purpose of application of the P. P. Act, a valid distinction can be made between tenants who were in occupation of the premises prior to the enforcement of the Public Premises Act and those who entered into occupation subsequently thereto, but before such premises were taken over by the Government or by a Corporation, as the case may be, and whether, in such cases, the operation of the Public Premises Act is intended to be only prospective in nature.

16.2. The three-Judge Bench held that the view taken in **Suhas Pophale** by the Division Bench was palpably incorrect and unjustified. It further held that the provisions of the Public Premises Act shall override the provisions contained in the Rent Control Legislations.

16.3. The Public Premises Act, 1971 will apply to tenancies which may have been created and were in existence either before coming into force of the Act or which may have been created subsequent to the coming into force of the Public Premises Act.

16.4. Two conditions must be satisfied for the applicability of the Public Premises Act. Firstly, the tenanted premises must fall within the definition contained in **Section 2(e)** of the Public Premises Act and, secondly, the premises should have been in unauthorised occupation.

16.5. Termination of tenancy of public premises by issuing notice under Section 106 of the Transfer of Property Act is one of the modes which would render the occupation of the tenant unauthorised after the date specified in such notice. This would hold true in respect of tenancies created either before or after the coming into force of the Public Premises Act, 1971.

17. A **Division Bench of the Supreme Court**, in the judgment of **Jiwan Dass vs. LIC of India**, reported in **1994 Supp (3) SCC 694**, was dealing with facts where the appellant was inducted in the year 1949 as a tenant of premises admeasuring 408 sq. ft. in the city of Delhi, on a monthly rent of Rs.15/-. Notice was issued under Section 106 of the Transfer of Property Act and action was initiated under the Public Premises Act. An argument was advanced on behalf of the appellant that, before initiating action under the Public Premises Act, reasons should be assigned which must be just and germane for the purpose of exercise of

such power and that the reasonableness thereof must be tested on the touchstone of Article 14 of the Constitution of India.

17.1. The Bench held that Section 106 of the Transfer of Property Act indicates that the landlord is entitled to terminate the tenancy by giving 15 days' notice. It does not contemplate giving any reasons for terminating the tenancy. Equally, the definition of public premises under the Public Premises Act postulates that the tenancy has been determined for any reason whatsoever. Therefore, the powers are wide. The statute has advisedly empowered the authority to act in the public interest and determine the tenancy or lease or licence before taking action under Section 5 of the Act. If the rent is unrealistically low, the owner would be entitled to deal with his property in his own way and, with a view to revise the rent to an adequate market rate, the tenant becomes liable to be ejected.

18. The Supreme Court, in the judgment of **Singer India Ltd. V/s. Chander Mohan Chadha & Ors.**, reported in **(2004) 7 SCC 1**, was dealing with facts where Section 14(1) of the Delhi Rent Control Act, in relation to subletting, was considered. It was a case where the subject premises was let to a company called M/s. Singer Sewing Machine Company. The said company was

incorporated under the laws of USA. It was a case where the landlord alleged that there was parting with possession by the said company in favour of Indian Sewing Machine Company Limited, and the said company was then in exclusive possession of the premises and, therefore, was liable to be evicted. The eviction petition was contested on the ground that, as a direction was issued to the American company to reduce its share capital to 40% in order to carry on business in India in view of Section 29 of FERA, accordingly, a company petition for amalgamation was filed before the Bombay High Court under the provisions of Sections 391 and 394 of the Companies Act. In view of the said petition being allowed, there was amalgamation, and thereafter, the name of Indian Sewing Machine Company was changed to Singer India Limited.

18.1. The Supreme Court further held that it was not open to Singer India Limited to contend that, for the purpose of FERA, the American company had ceased to exist, but, for the purpose of the Delhi Rent Control Act, it was still in existence. It was the Indian company which was in occupation and carrying on business, hence the appellant was liable for eviction.

19. In the judgment of ***Madras Bangalore Transport***

Company v. Inder Singh and Others, reported in **(1986) 3 SCC 62**, the Supreme Court was dealing with proceedings under the Delhi Rent Control Act. Where the Supreme Court held that Madras Bangalore Transport Company, a partnership firm, became a tenant of the suit premises in July 1962. In 1967, disputes arose between the partners of the said partnership firm, pursuant to which a settlement was arrived at between them through arbitration. They thereafter formed two different partnership firms, namely, Madras Bangalore Transport Company **(West)** and Madras Bangalore Transport Company **(East)**. Thus, the business was divided between the same partners into two partnership firms on the basis of their respective territories, namely, West and East.

19.1. As the West company could not operate in the territory allotted to the East company, the partners of the West company founded a limited company styled as Caravan Goods Carrier Private Limited, in order to secure business in the territory where they were otherwise not permitted to operate. The West company appointed the newly incorporated private limited company as its agent. The landlord alleged that this arrangement amounted to subletting.

19.2. Considering the various authorities on the issue, the

Supreme Court held that there was substantial identity between the limited company and the partnership firm and that there was no subletting, assignment or parting with possession by the West company in favour of Caravan Goods Carrier Private Limited. Hence, the eviction decree was set aside.

20. In the latest judgment of the Supreme Court delivered in the matter of ***Sri M.V. Ramachandrasa v. Mahendra Watch Company***, reported in **2024 SCC OnLine SC 582**, the Supreme Court, while considering, the Karnataka Rent Act, dealt with amongst other judgments, the judgment passed in ***Associated Hotels of India Limited v. S.B. Sardar Ranjit Singh***, reported in **1967 SCC OnLine SC 93**, wherein the Supreme Court held that the landlord must first prove parting with possession. However, recognizing the inherent clandestine nature of subletting arrangements, courts have evolved a rule of evidence that once exclusive possession of a third party is established, the burden shifts to the tenant to explain the nature of such possession.

20.1. It further considered the judgment of ***Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar***, reported in **(2010) 1 SCC 217**, which considered the earlier judgment of ***Helper Girdharbhai v. Saiyed Mohammad Mirasaheb Kadri***, reported in **(1987) 3 SCC**

538, and thereafter the Division Bench laid down the legal position that emerges from all the earlier precedent decisions and summarized it in paragraph No. 25, which stated that:

> "(i) In order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established, (one) parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.
>
> (ii) Inducting a partner or partners in the business or profession of a tenant by itself does not amount to sub-letting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant."

21. The Division Bench of this Court, in the matter between **LIC v. Kuldeep Singh** (**Writ Petition No. 1564 of 2001**), by its order dated 5 June 2006, held in paragraphs 3 and 4 that the requirement under the Bombay Rent Act for eviction cannot be applied to eviction proceedings under the Public Premises Eviction Act.

22. A **Single Judge of this Court**, in **Smt. Indira Chetan Puri vs. LIC**, reported in **2008 (6) AIR Bom R 229**, held that, for the purpose of evicting a tenant under the provisions of the Public Premises Act, it is necessary for the authority to make out at least grounds for eviction. Strict interpretation of various terms contained in the Rent Legislation cannot be used, though such

grounds can be relied upon by the authority for the purpose of eviction.

22.1. In the said case, the tenant had constructed a shed without the permission of the authority. Though the tenant was asked to remove the said construction, he ignored the same and virtually constructed a shed of a larger size. The Court held that sufficient grounds were available to the authority to terminate the tenancy.

23. The Division Bench of this High Court, while deciding an LPA in the case of **Nandini J. Shah vs. LIC**, reported in **2013 (2) All MR 729**, held that, in a proceeding arising out of the Public Premises Act, if the tenant incorporated a private limited company with his close family members and was able to demonstrate that he had a controlling interest in the said company and had not parted with possession, then he could not be evicted from the premises merely on the ground of registration of the company.

23.1. In the changing commercial scenario, if the tenant found formation of a partnership firm and private limited company to be a more effective way of conducting tax and financial services, that was nothing but an extension of the existing business activities to remain in tune with the changing financial environment. Thus, by employing the principle of lifting the corporate veil and looking at the true nature of the companies, the tenant had not relinquished control of the business by creating these three companies and there was no subletting.

23.2. The tenanted premises were in occupation of the appellant for several decades. Therefore, it was concluded that there was no subletting and, hence, there was no question of the appellant paying any amount of compensation. Accordingly, the impugned order passed by the Estate Officer, the Bombay City Civil Court and the learned Single Judge of this Court was quashed and set aside.

23.3. The order passed by the Division Bench was carried in an SLP before the Supreme Court. A **three-Judge Bench of the Supreme Court**, while answering the question as to whether an LPA was maintainable before the Division Bench of the Bombay High Court, held that judicial orders of the City Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution. The jurisdiction under Article 227 of the Constitution is distinct from the jurisdiction under Article 226.

23.4. Hence, while allowing the SLP, the Supreme Court held that the preliminary issue regarding maintainability of the LPA had been answered in favour of LIC. However, it clarified that it was not expressing any opinion, either way, on the merits of the eviction order passed by the Estate Officer, the Bombay City Civil Court or the learned Single Judge of the Bombay High Court. The Supreme Court granted liberty to the tenant to challenge the decision of the learned Single Judge of the High Court, which was to be done within a period of six weeks.

24. In **M/s. Pankaj Industries and Another v. Oriental Insurance Company Limited**, reported in **(2012) 1 AIR Bom R 766**, the Division Bench was dealing with facts in PP Act proceedings, where the subject premises was let to M/s. Pankaj Industries, of which Mr. P.L. Shah was the sole proprietor, as was evident from the original lease deed. It was the case of Mr. P.L. Shah that the proprietorship concern was converted into a partnership firm with Mr. P.L. Shah and a new partner, namely Atul Desai being inducted. Thereafter, Mr. P.L. Shah resigned from the partnership firm and there was a retirement deed. Mr. P.L. Shah, as per the retirement deed, had mentioned that he had relinquished all his rights in the firm property as well as tenancy in respect of the subject premises, and Mr. Shah relinquished tenancy rights in favour of Mrs. Desai wife of Atul Desai. Further, Mrs. Desai inducted her sons as

partners in the firm and continued the business in the same name, i.e., M/s. Pankaj Industries. In such kind of facts, the Court held that there was sub-tenancy, and there was no contractual relationship between Atul Desai and P.L. Shah.

24.1. Therefore in Pankaj Industries, a third party was inducted by original tenant in the suit premises.

25. A Division Bench of the Delhi High Court in ***Prem Lata Bhatia v. Union of India and Others,*** reported in **2006 SCC OnLine Del 136**, while dealing with a case under the P. P. Act, considered a case where the appellant was allotted a shop in 1975 at a monthly rent and, hence, the appellant came into exclusive possession of the said shop.

25.1. In the month of November 1976, the appellant incorporated a company called **"Romika World Travel Private Limited"**, wherein the appellant, along with her husband, was holding more than 97.93% of the shares in the company. It was alleged that the shop continued to be managed by the appellant through the aforesaid company, which was running its business from the said shop right from 1976 onwards, to the knowledge of everyone, including the respondent, without any objection being raised. There was no change in the shareholding of the appellant,

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and the appellant continued to hold more than 97% of the shares along with her husband. After a lapse of about seven years, by a letter dated 22 August 1983, the respondent called upon the appellant to show the documents relating to the business being run from the premises. It was alleged that there was a violation of the terms and conditions of the tenancy. Thereafter, the respondent initiated proceedings under the PP Act against the petitioner.

25.2. The Estate Officer passed an eviction order on the ground of subletting. An appeal filed against the said eviction order was dismissed. Aggrieved by the orders passed by both the authorities, a Writ Petition was filed before the Delhi High Court, which was dismissed by the learned Single Judge. Hence, a Writ Appeal was filed before the Division Bench of the Delhi High Court. The Division Bench held that (1) it very often happens in the business world that when a person starts a business as a sole proprietor, he later on converts it into a partnership firm along with some family members, and thereafter the business further expands, it is incorporated as a private limited company, and thereafter on further expansion, it may also be made a public limited company. This is a very common feature in the business world. (2) In such cases, the doctrine of piercing the veil of corporate personality should be utilized. When the partnership firm converts into a private limited company with the said partners becoming shareholders and directors, it will not be a case of transfer of the property of the firm to the company. In fact, it is well settled that there is no transfer in such cases because in substance, the owner remains the same, though technically it becomes a different legal entity. Hence, the prayers in the Writ Petition was allowed by the Division Bench.

26. In the present proceedings, eviction is sought on the ground of tenant having sublet the suit premises. As per the case of the Respondent-Insurance Company, the premises was initially given in tenancy to a proprietary firm of Mr. Y.D.Ahuja by the name of M/s. Economic Engineering Company, which got subsequently converted into M/s. Economic Refrigeration and Engineering Company as a partnership firm whereas periodically, the sons of Mr.Y.D.Ahuja became the partners. The partnership firm by way of deed of assignment got converted into a M/s. Economic Refrigeration Private Limited. There is no doubt that apart from Mr. Y. D. Ahuja, himself, only his sons and wife had been added as partners to the partnership firm of Economy Engineering Company and thereafter the partnership firm was

converted into a private limited company wherein the father and the sons are the shareholders and the directors. Subsequently, the sons retired from the company as a shareholder and also as a director. Hence, the father went back, and from company to become a proprietary concern. Therefore, admittedly there is no third person who has been brought in the company. In my view, the concept of sub-tenancy has not been specifically mentioned in the P. P. Act. The said ground of sub-tenancy is available under the Maharashtra Rent Control Act or the erstwhile the Bombay Rent Control Act amongst the other grounds mentioned for eviction of the tenant. The law as laid down by the Supreme Court in Mahendra Watch Co. (Supra) as far as sub-tenancy is concerned, two things has to be mentioned by the landlord in the plaint, viz., that there is parting of the tenancy premises either fully or in part. Second, the tenant is profiteering after parting with the possession. As discussed above under the P. P. Act, the ground of sub-tenancy is not mentioned, but since in the present proceeding, that ground has been taken in order to end the tenancy of the Petitioner under the PP Act. One would have to look into the judgment of the Supreme Court passed in Mahendra Watch Co., (supra) which admittedly is under the Karnataka Rent Control Act. However, the law as laid down in the said judgment in my view can be applied even in the PP Act. In the present proceedings there is no third person who is brought in the partnership firm and/or in the private limited company by the original tenant. Therefore, the intention of original tenant was clear. He did not wanted a third person to be inducted for whatsoever reasons, hence did not intend to create a sub-tenancy. Neither there is an submission made in the eviction Application before the Estate Officer that the petitioner-tenant was profiteering after parting possession of the suit premises. Therefore in my view, the said judgment Mahendra Watch Co., (supra) would be squarely applicable to the present proceedings and hence the eviction decree passed against the petitioner needs to be quashed and set aside.

26.1. The law as laid down in Madras Bangalore (supra) by Supreme Court, will be applicable to the facts of present proceedings. So also the view taken in Prem Bhatia (Supra) by Delhi High Court is the correct view.

26.2. In Pankaj (supra) Delhi High Court, was dealing with the facts where a third person was inducted as partner. In Singer (supra) Supreme court was dealing with Delhi Rent Act, where there was amalgamation of a foreign firm with Indian Company.

Therefore, the ratio laid down in both these judgments will not be applicable to the present proceeding.

26.3. Supreme Court in Ashoka Marketing (supra) while dealing with group of petitions held that P. P. Act had overriding effect over the Rent Act. In the judgment of Vita (supra) while dealing with reference concerning ratio laid down in Suha Pophale and Ashoka Marketing held that there is no distinction of tenancies created and in existence before the enforcement of P. P. Act or created after enforcement of P. P. Act. The ratio laid down in both these judgments does not affect the merits of the present proceedings

27. As far as retrospective effect of any Act or section is concerned, in my view the same has to be specifically mention in the Act itself. In the PP Act, there is no such mention. It is presumed that the said amendment of 2015 has a prospective effect. Hence, As far as the provisions of Section 5 amendment of 2015 is considered, in my view, the same cannot be said to have an retrospective effect.

28. Therefore, as there was no sub-letting, the petitioners can't be called as “Unauthorised Occupants” under the provision of P. P. Act. Hence, the petitioners succeed in the present Writ Petition.

29. **'Rule'** is made absolute and the impugned judgment and decree passed by the Estate Officer on 30 September 1998 and as confirmed by the City Civil Court by the judgment and order passed dated 31 January 2002 passed in Misc. Appeal No.120 of 1998, both stand quashed and set aside.

30. Since the petitioner has succeeded in the present writ petition, in sequel, the Interim Application No. 15385 of 2024 filed by the petitioner, seeking direction to the Registrar of the High Court to return back the bank guarantee/58/2001-2002 filed in writ petition by the petitioner to comply with the direction given by this Court in its order dated 4 March 2002, stands **allowed in terms of prayer clause (a)**.So also, any other bank guarantee filed by the petitioners before the Registry of the High Court of Bombay shall also be returned back to the petitioners.

(RAJESH S. PATIL, J.)

31. Mr. Sanglikar, learned counsel for the respondents, at this stage seeks stay to the execution of this judgment.

32. Mr. Sunny Shah, learned counsel appearing for the petitioners, has opposed the request made by Mr. Sanglikar on the

ground that the eviction decree passed against the petitioners has been set aside, and there will no prejudice which would be caused to the respondents in case they want to challenge the present judgment before the Hon'ble Supreme Court.

33. Hence, the request made by Mr. Sanglikar stands rejected.

(RAJESH S. PATIL, J.)

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