(2009) 04 AP CK 0067

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 5156 of 1999

Chekka Raghuram		APPELLANT
	Vs	
Dendukuri Murali Raju		RESPONDENT

Date of Decision: April 18, 2009

Acts Referred:

- Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Section 12, 12(1), 8
- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 9, Order 32 Rule 7, 115
- Constitution of India, 1950 - Article 227
- Hindu Minority and Guardianship Act, 1956 - Section 8(1), 8(2)
- Legal Services Authorities Act, 1987 - Section 20, 20(4), 21, 25

Citation: (2009) 4 ALD 232 : (2009) 4 ALT 546

Hon'ble Judges: Vilas V. Afzulpurkar, J

Bench: Single Bench

Advocate: D.V. Sitharam Murthy, for the Appellant; J. Prabhakar and K. Raghavacharyulu, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Vilas V. Afzulpurkar, J.

This revision though preferred u/s 115 of the Code of Civil Procedure, 1908, is, in fact, a revision seeking to challenge the order of the learned Rent Controller cum Junior Civil Judge, Tuni in E.P. No. 63 of 1999 in R.C.C. No. 10 of 1998. Under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act (for short ''the Act'') a revision is provided u/s 22 of the Act. This revision is, therefore, being treated as one u/s 22 of the Act.

2. The petitioner herein is the landlord whereas the respondent herein is the tenant of the premises bearing No. 4-11-39, Tuni, East Godavari District and carrying on business in running a sweet shop since 1989. The petitioner and the respondent are hereinafter referred to as landlord and tenant respectively.

3. The facts, which gave to rise to the present proceedings, are as follows:

(a) The landlord sought eviction of the tenant and called upon the tenant to vacate the premises under legal notice dated 21.05.1998. The tenant replied to the said notice on 10.06.1998 denying all allegations. The tenant apprehended highhanded eviction and therefore, filed O.S. No. 85 of 1998 before the Junior Civil Judge, Tuni for injunction. The tenant, thereafter, filed R.C.C. No. 5 of 1998 before the Junior Civil Judge cum Rent Controller, Tuni u/s 8 of the Act seeking to deposit the rents. The landlord, thereafter, filed R.C.C. No. 10 of 1998 seeking eviction of the tenant u/s 12(1) of the Act seeking directions to deliver the possession of the petition schedule premises. The said R.C.C. No. 10 of 1998 was referred to Lok Adalat and as both parties consented, on 19.12.1998 the Lok Adalat passed an award u/s 21 of the Legal Services Authorities Act, 1987.

The terms of the award are as follows:

Award u/s 21 of the Legal Services Authorities Act, 1987

1. The respondent agreed to vacate the premises on 31.12.1998. The Petitioner agreed to re-allot the premises with 40'' x 15'' shop by 31.03.1999.

2. The new construction measurements were reduced in view of the plan approved by the Municipality.

3. The respondent agreed to pay previous rent for 3 years.

4. In view of the compromise in R.C.C. No. 5 of 1998 is withdrawn. The petitioner agreed to receive future rents by enhancing 20% on the rent existed for continuously 3 years.

As per the award, the tenant vacated the premises on 31.12.1998 and thereafter, the landlord has carried out the construction, which now comprises of several shops as per the plan.

(b) While taking upon the said reconstruction, however, it is common case of the parties that the place where the tenant''s shop existed earlier is now left out as open space for parking and in the rest of the area, shopping complex is constructed. Since the tenant was to be put in possession of reconstructed shop of the dimension 40'' x 15'' as per Clause (1) of the award of the Lok Adalat, by 31.03.1999, the tenant filed execution petition in E.P. No. 63 of 1999 on 18.06.1999 requesting the executing Court/learned Rent Controller to appoint an Advocate Commissioner to take possession of the property and to direct to reconstruct the building under the supervision of the Advocate Commissioner at the cost of the tenant and restitute the

possession of the tenant. Questioning the maintainability of said EP the landlord filed CRP. No. 3049 of 1999 before this Court under Article 227 of the Constitution of India. In the said CRP the landlord urged the contention that in view of G.O.Ms. No. 636 dated 29.12.1983 any building on construction is exempted from the provisions of the Act for a period of 10 years and as such the executing Court had no jurisdiction. The said CRP was contested and by order of this Court dated 27.09.1999 the CRP was dismissed leaving it open for the landlord and the tenant to raise their respective objections before the executing Court and directing the executing court to dispose of the EP. Though time was stipulated by the said order the impugned order herein came to be passed on 20.11.1999 by allowing the EP. Questioning the said order the present revision is preferred by the landlord.

4. I have heard Sri D.V. Sitharam Murthy, learned Counsel appearing for the landlord and Sri J. Prabhakar, learned Counsel appearing for the tenant.

5. The operative portion of the order impugned herein is questioned by the learned Counsel for the landlord on various grounds as mentioned below. In order to appreciate the contentions on either side, it would be appropriate to extract the operative portion of the impugned order.

1. Sri B. Kannayya Dora, Advocate is appointed as Commissioner to construct a shop in the petition schedule property with measurements of 40 ft x 15 ft. The Advocate Commissioner is directed to take possession of the petition schedule site, construct a shop thereon with the measurements of 40 ft x 15 ft, as per the plan approved by the Municipality and deliver possession thereof to the petitioner-D.Hr.

2. The Petitioner - D.Hr.is directed to supply all the required material and labour and meet the day to day expenditure as acquired by the Advocate Commissioner for construction of the shop in the petition schedule property.

3. The Advocate Commissioner shall give notice be both parties before going to execute the warrant.

4. The respondent J.Dr. is directed to submit the approved plan to the Advocate Commissioner, In case the respondent - J.Dr. failed to submit the approved plan the Advocate Commissioner is at liberty to get the copy of the approved plan from Tuni Municipality.

5. The Advocate Commissioner shall maintain day to day account as to the expenditure so incurred for construction of the shop in the petition schedule property.

6. The Advocate Commissioner''s fee is fixed at Rs. 5,000/- tentatively to be paid by the petitioner directly.

7. The petitioner-D.Hr. is entitled to recover the expenditure so incurred for construction of the shop from the respondent-D.Hr.

8. After completion of the construction of the shop in the petition schedule property, the Advocate Commissioner shall file a report into the Court.

6. It is contended by Mr. D.V. Sitharam Murthy that there could not have been directions by the executing Court to the Advocate Commissioner to take possession of the same portion on which the tenant''s shop existed earlier and a further direction to the Advocate Commissioner to take up construction at the same place is also erroneous inasmuch as the earlier proposed plan had undergone changes and the place where the shop earlier existed is now part of open space and used as parking. He, therefore, contended that even assuming that a tenant is entitled to construction of a shop in lieu of the one vacated by him, the same cannot be at the same place.

7. In addition to the above, he raised the following contentions:

1. The very compromise decree passed by the Lok Adalat is in violation of Order 32 Rule 7 CPC inasmuch as the landlord was minor on the date of the said decree and without leave of the Court the said compromise could not have been recorded. On the said ground the decree itself is void and not binding on the minor. The execution of the said decree equally does not bind on the minor. The provisions of the Legal Services Authorities Act cannot ignore the mandate of Order 32 Rule 7 CPC as the said provision is intended to safeguard the interest of the minor and in any case the principles therein equally apply to the adjudication by the Lok Adalat also.

2. u/s 8(2)(b) of the Hindu Minority and Guardianship Act, natural guardian cannot lease out the property existing 5 years or for a term more than one year beyond the date on which the minor attains majority. Thus, not only Section 8(1) and (2) are voidable at the instance of the minor there could not have bee any lease and the compromise which was recorded before the Lok Adalat does not bind the minor.

3. The date of birth of the landlord being 19.01.1981 (regarding which there is no controversy), the minor''s property could not have been dealt with by the mother as a guardian when the father of the minor is alive.

It is, therefore, seen that the learned Counsel for the landlord primarily attacks the award of the Lok Adalat, which is the basis for the impugned execution proceedings.

8. Per contra, Sri J. Prabhakar, learned Counsel for the tenant, contended that the conduct of the landlord in now taking up these hyper technical pleas are to be rejected outright in view of the fact that the landlord though minor represented by his mother filed the eviction petition being R.C.C. No. 10 of 1998. The same was referred to Lok Adalat and after recording consent of both parties and their counsel, an award was passed by the Lok Adalat on terms agreed to by and between the parties and compromise memo is duly signed by the parties and their respective counsel. Further, the landlord received possession of the tenant''s shop on 31.12.1998 in terms of Clause 3(a) of the compromise and as such, has already

derived benefit in the said award. The landlord, however, has taken up construction and has constructed a shopping complex and let it out to various tenants. More importantly the learned Counsel contends that questioning the execution proceedings the landlord had filed CRP. No. 3049 of 1999 wherein also he was shown as minor represented by his mother. The aforesaid revision petition was filed and disposed of after the landlord attained majority, therefore, he chose to abide by the award of the Lok Adalat and never questioned the award on the ground on which it is now sought to be questioned. The learned Counsel, therefore, submits that having received advantage under the award it is not open for the landlord to now contend that the provisions of Order 32 Rule 7 of CPC vitiate the award. Secondly, he contends that the said provision per se has no application in proceedings before the learned Rent Controller, which is governed by the Act and the Rules framed thereunder and the provisions of CPC has limited application. Further, under the Legal Services Authorities Act also, has no application of CPC and in fact, Section 20 of the Legal Services Authorities Act mandates that the Lok Adalat shall be guided by principles of equity and justice. He also contended that the landlord has not taken up reconstruction in accordance with the sanctioned plan and construction of the shops in the shopping complex, which exist, have already been let out by the landlord to various other tenants by wrongfully denying the benefit of award to the tenant. Thus, in short, the landlord having taken advantage of the award, taken possession of the tenant''s shop as per award, demolished and reconstructed the shopping complex, instead of redelivering the shop to the tenant the landlord has successfully dragged the proceedings for over 10 years and at the same time, he is being benefited by rental income from the tenants inducted in the complex.

9. Learned Counsel for the landlord relied upon two decisions of the Supreme Court in Kaushalya Devi v. Baijnath Sayal AIR 1960 SC 790 and Dhirendra Kumar Garg and Others Vs. Sughandhi Bain Jain and Others, for the proposition that the compromise entered into and decree passed in violation of Order 32 Rule 7 CPC is voidable against all parties other than the minor.

10. Learned Counsel for the tenant has relied upon Kondeti Suryanarayana and Others Vs. Pinninthi Seshagiri Rao, ; Smt. Parvatibai Subhanrao Nalawade Vs. Anwarali Hasanali Makani and others etc., ; Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas (Dead) by L.Rs., ; P.T. Thomas Vs. Thomas Job, and Pushpa Devi Bhagat (D) th. LR. Smt. Sadhna Rai Vs. Rajinder Singh and Others, , which are in support of his contentions with regard to the nature of the decree passed by the Lok Adalat and the interpretation of the provisions of the Legal Services Authorities Act.

11. It may also be mentioned that during the pendency of this revision petition before this Court on various dates and during the earlier hearings before different learned Judges, the parties were called upon and filed memos and counter memos showing the physical possession with regard to the shopping complex and number

of shops, if any, which are vacant and which can be allotted to the tenant in the event of his success. In the memos, so filed before this Court, the parties have stipulated their own respective terms while filing the said memos and it is apparent that on account of the fresh terms and conditions mentioned by either parties in their memos and counter memos there could not be an agreement between the parties and the amicable solution to the existing dispute could not be achieved. The several memos and affidavits filed on behalf of both sides are available on record and the learned Counsel on either side have taken me through the different memos and counter memos to contend that all possible steps were taken by the respective parties for peaceful resolution of the present dispute but the same could not materialize. Since most of the said memos were filed much earlier to the hearing of this revision before me, I had directed the parties to file fresh memos showing the present existing situation.

12. Learned Counsel appearing for the landlord has thereupon filed an affidavit of the landlord dated 22.03.2009 and the relevant portion of Para 2 thereof is as follows:

2. I submit that at present shop A3, A4 and B2 are readily available for occupation and A1 or A2 will be given to the respondent after evicting the present tenants who are in occupation of those shops. I am ready and willing to give any one of these shops to the respondent herein on usual terms and conditions and also on execution of lease deed. Hence this affidavit.

The counter affidavit to the said affidavit is filed by the tenant. Paragraphs 2 and 4 thereof are relevant and extracted hereunder:

2. I submit that Shop A3, A4 and B2 are not convenient for the proposed business of mine as they are on the rear side and there is a gunny bag repair market on the rear side. Sweet meat shop cannot be established at that place, the petitioner gave an affidavit dated 27.02.2004 in the above CRP before this Hon''ble Court that he will not make any constructions in the open place. In view of the same as already expressed in my replies, I am prepared to accept Shop No. 9 & 10 besides half of 8. However, if half portion of Shop No. 8 is granted I am prepared to pay for entire shop No. 8 and pay proportionate extra rent. If that is not possible I will accept shop No. 9 & 10.

4. I further submit that the Petitioner is always making the offer conditional and by imposing conditions contrary to the settlement Award/Decree. Even in the present affidavit he refers to giving of one shop on usual terms and conditions and execution of lease deed. One shop is not sufficient or equivalent to the area agreed to as ordered in the settlement. Further, the other terms including rents are already fixed in the Award. I am a statutory tenant and as such I am advised that no lease deed is required. The present offer also lacks bonafides.

13. However, though the parties were also present on the last date of hearing when the aforesaid affidavit and counter affidavit were exchanged, the efforts of both the learned Counsel to resolve the controversy by advising their respective clients also have failed and thereupon, it is necessary to decide this revision petition on merits.

14. So far as the contention of the learned Counsel for the landlord based on Order 32 Rule 7 CPC is concerned, the same has to be appreciated in the background of the crucial fact that the landlord has derived advantage and benefit of Clause 3(a) of the award of the Lok Adalat. The aforesaid eviction petition was filed by the landlord as minor represented by his mother. The landlord himself having filed the eviction case, in such a manner, cannot turn around to claim that mother had not authority to represent the minor especially when the landlord has received advantage of the aforesaid proceedings and received possession of the tenant''s shop within hardly 12 days of the award (the date of award is 19.12.1998 and the tenant vacated and handed over his shop premises to the landlord on 31.12.1998). Secondly, the landlord has constructed shopping complex by demolishing the tenant''s shop and has let out several shops, which are newly constructed, to various tenants and he is getting rental income wherefrom. Thirdly and most importantly, the landlord had questioned the maintainability of the execution proceedings by approaching this Court in CRP. No. 3049 of 1999 by which time he had already attained majority even according to the date of birth given by the landlord. The said revision petition, which came to be decided in July 1999, was also six months after attaining majority by the landlord. The said revision petition was, thus, filed by the landlord by showing as if he is minor and still represented by his mother. Further, in the execution proceedings the landlord filed a counter dated 11.11.1999 and for the first time plea was raised on the ground that his mother had no authority and he is not bound by the compromise decree and the award of the Lok Adalat is not enforceable against him. The said counter, however, is completely silent and there is no averment to show that the aforesaid acts of the mother, assuming that she was not authorized, has been to the detriment of the minor.

15. On the contrary, if one really has to ignore the filing of the eviction petition before the learned Rent Controller, the execution petition and the CRP. No. 3049 of 1999 referred to above on the above ground; the tenant also will have to be put back to the original position, as it existed at the time of filing of the eviction case by the landlord. The said situation, however, does not exist on the ground as the tenant had already vacated his premises on 31.12.1998 and the landlord having demolished the same; has constructed a shopping complex. The said plea of the landlord, therefore, cannot be countenanced and it is clear and apparent that an attempt on the part of the landlord is only to raise hyper technical pleas and to delay, if not, defeat the decree and deprive the tenant of the possession of the shop to which he would be entitled to under the award of the Lok Adalat.

16. Even otherwise, Order 32 Rule 7 of CPC has no application to the Act as well as to the Legal Services Authorities Act. In fact, Section 25 of the Legal Services Authorities Act has overriding effect and it cannot be said that the Lok Adalat has not followed the mandate of Section 20(4) of passing an award in accordance with equity and justice. So far as the decision in Kaushalya Devi''s case (1 supra) relied upon by the learned Counsel for the landlord is concerned it was a case where the decree for partition was questioned by the minor represented by his mother on the ground that the provisions of Order 32 Rule 7 of CPC have not been applied. Para 7 of the said decision is, however, relevant to notice and the same is extracted as under:

(7). The question as to the procedure which the minor should adopt in avoiding such an agreement or decree has been the subject-matter of several decisions, and it has been held that a compromise decree may be avoided by the minor either by a regular suit or by an application for review by the court which passed the said decree. The decision in Manohar Lal v. Jadu Nath Singh 33 Ind App 128 (PC), is an illustration of a suit filed by the minor for declaration that the impugned decree did not bind him. It is, however, not necessary for us to deal with this aspect of the matter in the present appeal any further.

In this case, it is evident that neither of the courses as mentioned above are adopted by the landlord. Obviously, he could not have gone back and asked that cancellation of the said compromise as he had derived advantage therein. Thus, having obtained benefit of one part of the said compromise; when the tenant demanded performance of the other part of the compromise the landlord has come up with the present plea. The lack of bonafides on the part of the landlord, therefore, is apparent from the record itself.

17. The learned Rent Controller, under the impugned order, has also gone into the said question from the standpoint of the settled principle that the executing Court cannot go beyond the terms of the decree. The learned Rent Controller also noticed that the mother of the landlord was his natural guardian and that it is she, who issued receipts to the tenant and in the injunction suit O.S. No. 85 of 1998 filed by the tenant no such plea was raised that the natural mother cannot represent the landlord and the executing Court, in any case, cannot decide the said aspect as it is bound by the said decree and cannot go beyond the same. Further, the landlord is estopped from raising such a plea after securing advantage out of the compromise.

18. As I have already mentioned above, no such plea is available to the landlord as the learned Rent Controller''s Court is not a civil Court and application of the provisions of CPC is not automatic and is only limited. Secondly, the Legal Services Authorities Act has overriding effect vide Section 20 thereof and thirdly even assuming that such a plea is tenable there is no allegation on the part of the landlord that the actions of his natural guardian mother are detrimental to his interest while, in fact, they have ultimately worked to his advantage. In the light of

the above, therefore, the said contention of the learned Counsel for the landlord is liable to be rejected.

19. Further contention of the learned Counsel that no lease for a term more than one year beyond the date in which the minor will attain majority can be granted etc. is also not sustainable for the reason that under these proceedings it is not as if the tenant is being granted a fresh lease. It is now well settled that when eviction of tenant u/s 12 of the Act is sought for the purpose of demolition and reconstruction, the landlord is bound to give an undertaking to redeliver, after construction, similar accommodation to the tenant. The pre-existing tenancy of the tenant, therefore, continues and it is only in the interregnum period, when he vacates the premises and receives back after reconstruction, that his tenancy remains under suspension. Thus, the tenant, who occupies the premises after reconstruction, continues to be a statutory tenant on the same terms and conditions. In the present case, by virtue of the compromise and agreements between the parties before the Lok Adalat it was agreed by the tenant to pay the enhanced rent by 20% on the rent existing continuously for the last three years. Thus, except the aforesaid modification, the statutory tenancy of the tenant continues even with respect to reconstructed premises. As fortiori the tenant cannot be compelled and saddled with new terms and conditions of lease as are enacted in the memos and affidavits filed on behalf of the landlord before this Court while proposing to allot alternate shops to the tenant. Once the tenancy of the tenant is held to be statutory, the same cannot be frustrated by making fresh terms of lease on the tenant. Since there is no lease for a fixed duration even with respect to the reconstructed portions, the contention of the learned Counsel for the landlord that a lease for a period of more than one year is being granted under the decree under execution and thereby the said decree violates Section 8(2)(b) of the Hindu Minority and Guardianship Act is equally misconceived and liable to be rejected.

20. Learned Counsel for the tenant has relied upon a decision in Kondeti Suryanarayana''s case (3 supra) wherein Section 12 of the Act was considered by the Honourable Supreme Court wherein it is held:

...Therefore, when a landlord requires a building to be demolished, necessarily he has to reconstruct the building on the same site of the building and on reconstruction of new building the tenant has a right to re-enter in the said premises.

In Parvatibai Subhanrao Nalawade''s case (4 supra) where the terms of the decree mention a right of the defendant to an identical area in the new building but after reconstruction the landlord did not deliver identical area to the tenant, whereupon the tenant filed an application for restoration of possession before the trial Court, which was dismissed as not maintainable and ultimately the tenant was directed to file EP. In the meanwhile, the landlord had inducted some third parties as tenants, who objected to the execution proceedings under Order 21 Rule 9 CPC. The said

proceedings were before the Honourable Supreme Court and it was held:

...In pursuance of a solemn compromise reached by the tenant (appellant''s father) and the landlord - respondent No. 3 the possession f the premises was handed over to the landlord in 1966 on the express stipulations that on the construction of the new building the tenant would get an identical area therein. The fresh construction was completed in 1967 and instead of honouring the pledge given by it in the form of an "undertaking" the respondent inducted the writ petitioners therein and did not make any offer to the tenant until the matter reached the High Court on the second occasion. We do not, therefore, think that there is any conceivable reason to condemn the appellant for an insistence to benefit under the concerned decree or for any sympathy with the landlord, who took advantage of the situation. The landlord was, therefore, made liable for making its undertaking good as well as for any suitable compensation for the gross delay of more than two decades.

21. In P.T. THOMAS''s case (6 supra) the provisions of the Legal Services Authorities Act were examined and the Honourable Supreme Court held that Lok Adalat will pass award with the consent of the parties, therefore there is nothing either to reconsider or to review the matter again. The award of the Lok Adalat is an order by the Lok Adalat under the consent of the parties and it shall be deemed to be a decree of the civil Court and therefore, the appeal would not lie from the award of the Lok Adalat as u/s 96(3) of CPC. The finality attached to the said decree cannot be permitted to be destroyed, especially under the Legal Services Authorities Act, as it would amount to defeat the very aim and object of the Act with which it has been enacted. Even this Court in the matter of Board of Trustees of the Port of Visakhapatnam Vs. Presiding Officer, District Legal Service Authority, Visakhapatnam and another, held:

...The award is enforceable as a decree and it is final. In all force, the endeavour is only to see that the disputes are narrowed down and make the final settlement so that the parties are not again driven to further litigation or any dispute. Though the award of a Lok Adalat is not a result of a contest on merits just as a regular suit by a Court on a regular trial, however, it is as equal and on par with a decree on compromise and will have the same binding effect and conclusive. Just as the decree passed on compromise cannot be challenged in a regular appeal, the award of the Lok Adalat cannot be challenged by any regular remedies available under law....

The last of the cases cited by the learned Counsel for the appellant in Pushpa Devi Bhagat''s case was, however, a converse case where the tenant attempted to defeat the compromise decree by raising several pleas against the compromise, which was deprecated by the Honourable Supreme Court. The same has no application to the facts of the present case.

22. As mentioned above, therefore, the landlord has resorted to the pleas as above only to avoid the execution and for reasons best known to him, has not taken any

steps to question the said award either on the ground of his mother being not empowered to represent him or on the ground that the said compromise is to the detriment of the landlord. In the absence of any such challenge to the decree even now, mere resisting the decree in execution is clearly untenable. The order of the Court below, therefore, cannot be said to either without jurisdiction, improper, irregular or otherwise perverse and as such, no interference under the revisional jurisdiction of this Court is called for.

23. This, however, leaves the last aspect to be considered namely, the direction given in the operative portion of the impugned order whereby the Advocate Commissioner was directed to reconstruct the shop for the tenant. It is not in controversy that though a tenant, who vacated the premises u/s 12 of the Act, cannot insist on reconstructing a shop at the same place, he is, however, entitled to similar accommodation on reconstruction. As per the compromise and award, it was agreed between the parties that landlord would allot premises with dimension 40'' x 15'' by 31.03.1999. Keeping in view the shopping complex constructed by the landlord and dimension of each shop, the allotment of 40'' x 15'' shop would amount to approximately 21/2 shops in the new complex. Even in the latest affidavit filed by the landlord, which is extracted above, it is mentioned that shops A3, A4 and B2 are readily available and A1 and A2 will be given to the tenant after the present tenants vacate the same. Earlier memos also show that the landlord is willing to give two shops in lieu of 40'' x 15'' shop mentioned in the compromise. The tenant, however, filed a counter affidavit saying that the said shops A3, A4 and B2 are not convenient as they are on the rear side and also close to the gunny bag repair market and as such sweet shop cannot be established at that place. The tenant, therefore, has offered to take shop Nos. 9 & 10 and half of shop No. 8 and to the extent of half of the shop, if it is not feasible, he is prepared to pay for the entire shop No. 8 and pay the proportionate extra rent. He has further offered to take shop Nos. 9 & 10 only if it is not possible to allot half or full of shop No. 8. No doubt, the landlord has filed a rejoinder memo denying intention to allot shop Nos. 9 & 10 to the tenant and offers shop Nos. B2 & B6 in lieu of shop Nos. 9 & 10.

24. It is evident from the aforesaid memos and counter memos; affidavits and counter affidavits and rejoinder on behalf of either of the parties that in lieu of the accommodation of 40'' x 15'' agreed to be allotted to the tenant as per the decree; the tenant would be entitled to 21/2 shops of the newly constructed shopping complex. Preference of the tenant to shop Nos. 9 & 10 and half of or entire shop No. 8 is not acceptable to the landlord on account of the tenants now existing. It is to be appreciated that though the tenant is entitled to 21/2 shops, keeping in view the compromise regarding accommodation of 40'' x 15'', he is prepared to take two shops as against 21/2 shops provided he is allotted shop Nos. 9 & 10. The contention of the landlord that the said two shops cannot be allotted on account of the tenants inducted therein cannot be accepted for the simple reason that all the said tenants are inducted pending the present litigation. The tenant herein had filed

EP on 18.06.1999 itself and though 10 years have elapsed, during this litigation even if the landlord has created any tenancy pending such litigation, the same is clearly covered by lis pendens and no overriding right can be claimed either by the landlord or by any person on his behalf when these execution proceedings are pending. The tenant, admittedly, is deprived of the use of the premises for the last 10 years. As already held by the Supreme Court in the decisions referred to above, the tenant would be justified in seeking compensation for the said period for which the tenant was deprived and on the contrary, the landlord was benefited by the rental income and other incomes.

25. Keeping in view all the circumstances and with a view to shorten the litigation; in lieu of the directions in the operative portion of the impugned order, I deem it appropriate to issue the following directions:

1. The tenant shall be entitled to restitution of equivalent premises in lieu of his entitlement to the area of 40'' x 15''. The executing Court shall, therefore, appoint an Advocate Commissioner to take possession of shop Nos. 9 & 10 and deliver the same to the tenant/decree holder in full and final satisfaction of the decree of the Lok Adalat dated 19.12.1998. The tenant shall be entitled to continue the tenancy of the said shops by paying rent at 20% over and above the last three years rent, which he paid for the earlier premises in terms of the agreed Clause 3(c) under the compromise decree of the Lok Adalat.

2. The tenancy of the decree holder/tenant shall be statutory tenancy on the same terms and conditions as the earlier tenancy prior to his vacation of Shop No. 4-11-39.

3. The tenant/decree holder shall also be entitled to appropriate damages/mesne profits for a period of 10 years i.e. from 31.03.1999 till the date he is put in possession of the shops, as aforesaid, at such rate as would be determined by the executing Court. The tenant shall be at liberty to make an appropriate application before the executing Court for the aforesaid purpose and after giving due opportunity to the landlord and after recording the evidence, if any, of either side, the executing Court shall pass appropriate orders thereon and the amount so determined shall be payable by the landlord together with costs of the execution proceedings and this CRP within a period of three (3) months from the date of determination by the executing Court.

4. The executing Court shall endeavour to pass appropriate orders restoring the possession of shop Nos. 9 & 10 to the tenant within a period of two (2) months from the date of receipt of a copy of this order and so far as determination of damages, as directed above, is concerned, the same shall be determined within a period of six (6) months from the date of application, if any, moved by the tenant for the aforesaid purpose.

5. It is made clear that if no such application is moved by the tenant with respect to the damages and compensation with four (4) weeks from today the direction in that respect given herein shall stand withdrawn.

With the aforesaid directions, the revision petition is dismissed with costs quantified at Rs. 25,000/- payable by the petitioner to the respondent.