Smt. Kiran Arya and Another Vs Ambalal Sarabhai Enterprises Ltd. and Others

Court: Calcutta High Court

Date of Decision: Aug. 12, 2013

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Advocate: Moloy Ghosh, Mr. Anuj Singh, Ms. Shrayashee Saha and Mr. Partha Banerjee, for the Appellant;Shyama Prosad Sarkar Mr. Swarnendu Ghosh, Deep Nath Roy Chowdury and Ms. Tannistha Lahiri, for the Respondent

Judgement

Soumen Sen, J.
The plaintiffs are the owners of an office space on the first floor at premises No. 24, Park Street, Kolkata, measuring

2625 sq. ft. together with the parking space in the courtyard (hereinafter referred to as the suit premises). The plaintiffs have instituted the suit

against the defendants for recovery of possession of the suit premises and for mesne profits from May, 1986 till possession. The plaintiffs

purchased the suit premises from its erstwhile owner, Calcutta Credit Corporation Limited, which had let out the same to one Standard

Pharmaceuticals Limited (hereinafter referred to as the original tenant). There was an attornment of tenancy in favour of the present plaintiffs, on

16th May, 1977 prior to the purchase of the suit premises by the plaintiffs and thereafter, the rents were being paid by the original tenant to the

present plaintiffs. According to the plaintiffs, in or about November, 1988 the plaintiffs for the first time noticed that the original tenant has been

describing itself as a division of the defendant No. 1, Ambalal Sarabhai Enterprises Limited. The plaintiffs upon enquiry could discover that

pursuant to a scheme of amalgamation the said original tenant has merged with the defendant No. 1 and have thereafter being dissolved without

winding up. Inasmuch as the same amounted to an assignment of the tenancy of the original tenant without consent of the landlord, the plaintiffs filed

the instant suit seeking, inter alia, eviction of the defendants from the suit premises as a consequence of amalgamation of the original defendant with

the defendant No. 1. The defendants had come to occupy the said premises on the basis of such order sanctioning the scheme of amalgamation.

The plaintiffs could also ascertain that the original defendant had merged with the defendant No. 1 in or about 1983. The plaintiff had never

consented to transfer of such tenancy in favour of the defendants. The plaintiffs were advised to file the instant suit for eviction of the defendant No.

1 on the ground of illegal transfer/assignment of the said premises by the original tenant, the defendant No. 1. The plaintiffs prior to obtaining such

legal advice were not aware of their right to initiate the present action against the defendant No. 1.

2. The plaintiffs contended that in the events that have happened the defendant No. 1 is under an obligation to make over the suit premises as the

defendant No. 1 is in occupation of the property as a trespasser without having any semblance of right to occupy the suit premises. The said

transfer/assignment is illegal, as the plaintiffs never had given any consent to the original tenant within the meaning of Section 14 of the West Bengal

Premises Tenancy Act, 1956. The plaintiffs could further ascertain that the defendant Nos. 2, 3 and 4 are also having their offices and are carrying

on their business on the said premises. The plaintiffs, at no point of time, had ever given any permission or consent to the continuous occupation of

the said defendants or use of the said premises or any portion thereof. The plaintiffs had duly served on the said defendants two notices dated

February 8, 1989 (Exhibit K) calling upon them to hand over possession of the suit premises to the plaintiffs. The defendants and each of them

however has refused to make over a vacant possession of the suit premises. The occupation of the defendant in the suit premises from May, 1986

is illegal and the plaintiffs are entitled to mesne profits. On these facts, the suit was filed by the plaintiffs.

3. The defendants contested the proceeding and have filed the written statement. The defendants contended that the defendants are protected by

Clause 5 and Clause 11 of the tenancy agreement entered into on 22nd January, 1973. Pursuant to a scheme of amalgamation made by and

between Standard Pharmaceuticals Limited and the defendant No. 1 sanctioned by this Hon''ble Court and the Gujarat High Court by orders

dated 22nd January, 1983 and 7th May, 1983 respectively, all assets, liabilities, rights and respectively, all assets, liabilities, rights and obligations

including the aforesaid tenancy vested in defendant No. 1, the said Standard Pharmaceuticals Limited stood dissolved without winding up by an

order dated 22nd January, 1983 passed by this Court in the amalgamation proceeding. The said order ultimately attained finality in September,

1983 after a SLP challenging the order of the Division Bench of Gujarat High Court approving the amalgamation was dismissed as withdrawn.

Pursuant to the aforesaid, all the rights and obligations contained in and arising out of the said agreement of tenancy dated 22nd January, 1973, in

so far as it related to Standard Pharmaceuticals Limited, vested in the defendant No. 1. Standard Pharmaceuticals Limited duly communicated

confirmation and/or sanction of the said scheme of amalgamation to the plaintiffs whereupon the plaintiffs by actual acceptance and/or

acquiescence recognised the defendant No. 1 as a tenant in respect of the suit premises. Moreover, the plaintiffs had actual notice of the petition

for confirmation of the said scheme of amalgamation through advertisements published in newspapers. The plaintiffs actually and by their conduct

became bound by the tenancy agreement and, in fact, had started accepting rents and issued rent receipts in favour of defendant no 1.

4. In view of the aforesaid a fresh tenancy is created in favour of the defendant No. 1 adapting all the terms and conditions of the said tenancy

agreement dated 22nd January, 1973. In view of such recognition of the defendant No. 1 as a tenant under the plaintiff, the defendant No. 1

should necessarily be substituted in place of Standard Pharmaceuticals Limited so far as the application and interpretation of the said agreement

dated 22nd January, 1973 is concerned. In view thereof and particularly Clause 11 of the said tenancy agreement dated 22nd January, 1973, the

defendant No. 1 would be entitled to use the said premises for any company which will be managed or associated with the defendant No. 1 in

which its directors have substantial interest. The parties have also disclosed their documents. Before commencement of the trial the following issues

were settled:

1. Is the suit maintainable?

2. Is the suit barred by limitation?

3. Was the transfer/assignment of the tenancy right by virtue of the amalgamation order to the defendant No. 1 illegal within the meaning of West

Bengal Premises Tenancy Act, 1956 as alleged in paragraph 7 of the plaint?

4. Are the defendants trespassers in respect of the suit premises?

5.(a) Was any rent paid to the plaintiffs by or on behalf of defendant No. 1 after its amalgamation with the Standard Pharmaceuticals Limited in

1982?

(b) If so, has the defendant No. 1 become a direct tenant under the plaintiffs?

6. Are the plaintiffs entitled to get decree for possession of the suit premises as prayed for?

7. To what other reliefs, if any are the plaintiffs entitled?

5. Mr. Shyamaprosad Sarkar, learned Senior Counsel, appearing on behalf of the defendants submitted that the cause of action in the suit is based

on the ratio of M/s. General Radio and Appliances Company Limited and Ors. versus M.A. Khader (dead by Lrs) reported in 1986 (2) Supreme

Court Cases 656, to the effect that since an order of amalgamation was passed by the Court on the basis of a scheme submitted by the parties, the

transfer of assets and liabilities of the transferor company to the transferee company happens or occurs at the instance of transferor company;

hence, if its assets including a tenancy right, it must be regarded to have been transferred to the transferee company by the transferor company and

again if such transfer was without prior consent in writing of the landlord, such tenancy, being in violation of Section 14 of the West Bengal

Premises Tenancy Act, 1956, such transfer provides the landlord a good ground for eviction of the tenant u/s 13(1)(a) of the said Act.

6. It was argued that it is a matter of significance that in the instant case, the plaintiffs do not seek eviction of the transferor company as tenant and

with it, its transferee company Ambalal Sarabhai Enterprises Limited, the alleged illegal subtenant.

7. As a matter of fact, Standard Pharmaceuticals Limited is not even a party. They seek to evict Ambalal Sarabhai Enterprises Limited and its

other associates as illegal trespassers.

8. Mr. Sarkar has questioned the legal basis of the claim of the plaintiffs on various separate and independent grounds.

9. First since transferor company is not a party in the suit as noted in the preceding paragraph that the ratio of General Radio cannot have any

manner of application.

10. Second, the tenancy right in respect of the suit premises stands transferred to Ambalal Sarabhai Limited by operation of law, regardless of the

fact it was brought about at the instance of Standard Pharmaceuticals Limited, the transferor company the tenant. The fact that such transfer was

effected allegedly without previous consent of the landlords, the plaintiffs, the transfer per se is not illegal and hence it does not provide an

independent ground beyond provision of West Bengal Premises Tenancy Act to treat Ambalal Sarabhai, the defendant No. 1 the transferee

company as an illegal occupier or a trespasser.

That this is so clear from the following circumstances:

(a) The Hon"ble Supreme Court in their judgment in Radio Engineer clearly described the transferee there as a tenant: The transferee become a

tenant, by operation of special law, i.e. Companies Act overriding the general law which contemplates that a tenancy can be created only by an

agreement between parties express or implied.

(b) Even in general law, a transfer of tenancy without previous consent of landlord, though exposes a tenant to the risk of eviction such transfer

itself is neither illegal nor void.

11. Thirdly, on factual score, the defendants would contend that by virtue of Clause 11 of the Tenancy agreement dated 22nd January, 1973 the

Hon"ble Court should be pleased to hold that consent of landlord permitting the tenant to sublet the tenanted premises to its associate companies

was implicit in the said clause and did not require any fresh or further consent in writing in terms of Section 14 of the West Bengal Premises

Tenancy Act.

12. In the alternative, it was argued that by reason of Clause 11 of the tenancy agreement, the parties have contracted out of the West Bengal

Premises Tenancy Act, 1956 which is permissible. Mr. Sarkar referred to the evidence of Tapan Nandan Bhattacharya, the defendant"s witness,

to establish that Ambalal Sarabhai Limited was an associate of Standard Pharmaceuticals Limited and the plaintiffs have knowingly received rents

from the transferee company. It was further argued on the basis of Clause 11 and by way of an alternative argument that the defendants following

such amalgamation have become direct tenant under the plaintiffs by contract.

13. Mr. Sarkar has relied upon the following decisions to show that a tenancy can be created by conduct, what is important, is that a relationship

of landlord and tenant is established:

1) Ram Kumar Das Vs. Jagadish Chandra Deb Dhabal Deb and Another,

2) Sm. Durgesh Nandini Devi Vs. Aolad Shaikh,

14. It is argued that the plaintiffs have consciously accepted the rent from Ambala Sarabhai with actual or constructive notice of such

amalgamation. It was argued that the order of amalgamation operated in rent because of wide publicity. The plaintiffs ought to have known or

could have ascertained with reasonable diligence that the original tenant company has been amalgamated with the defendant No. 1. The

acceptance of such rent and retention of the money even after discovery of the fact that the original tenant stood dissolved are the most telling

aspect of the matter which requires a serious consideration and clearly disproves the claim of the plaintiffs that the defendant is a trespasser.

15. Avishek Goenka Vs. Union of India (UOI) and Another, and the following unreported decisions for the proposition that order of amalgamation

is operative in Rem because of wide publicity:

(1) Sanjib Banerjee, J. in CP No. 629 of 2011

(TLP Electricals Pvt. Ltd. & Ors. Dated August 6, 2012)

(2) Subhro Kamal Mukherjee J. in CA No. 209 of 2006 CA No. 667 of 2006 CA No. 96 of 2007

CA No. 689 of 2009 CP No. 594 of 2002 Castron Technologies Ltd. & Anr. Vs. Castron Mining Ltd. dated December 2, 2011

16. Question Nos. 5, 15, 18, 22, 30, 41, 42, 43, 46, 48, 49, 51, 52, 65, 66, and 68 were put to Tapan Nandan Bhattacharyya in examination in

chief, to show that Standard Pharmaceuticals is a subsidiary of Ambalal Sarabhai Enterprises and the plaintiff had the knowledge of merger. In

order to establish that rent used to be collected from Standard Pharmaceuticals, a Division of Ambalal Sarabhi Enterprises Limited, with

knowledge of amalgamation, question Nos. 12, 13, 18, 20, 23, 24, 25, 44, 48, 49, 54, 55, 56, 57, 58, 59, 60, 61, 65, 66, and 67 were put to

Tapan Nandan Bhattacharyya in examinationÃ¯Â¿Â½in-chief. Mr. Sarkar submitted that it would appear from the evidence of Tapan Nandan

Bhattacharyya that after the amalgamation, it was Ambalal Sarabhai Enterprises Ltd. who used to issue cheques in the same manner as Standard

Pharmaceuticals Limited used to issue and the cheques were drawn in the name of Standard Pharmaceuticals, a division of Ambalal Sarabhai, by

their constituted attorneys, but two attorneys had to sign such cheques. The cheques were issued with a rubber stamp which used to bear the

impression ""For Standard Pharmaceuticals, A Division of Ambalal Sarabhai Enterprises Ltd., by their constituted attorneys"" and Mr.

Bhattacharyya used to sign the cheques as one of the constituted attorneys.

17. In answer to Q Nos. 16 and 17 Mr. Bhattacharya deposed that he worked from the said premises till 1991. In answer given to question Nos.

29 and 30 in examination-in-chief. Mr. Bhattacharyya deposed that a signboard displaying the name of four companies in which the first name was

Standard Pharmaceuticals, a Division of Ambalal Sarabhai Enterprises Ltd., the second was OPEC Innovation Limited, the third was Symbiotics

and the forth was Sarabhai International and in the bottom it was written ""24, Park Street, Calcutta Ã¯Â¿Â½ 700 016"" was visible.

18. Mr. Sarkar has referred to the evidence of Ramesh Kumar Arya, the husband of plaintiff no 1 and plaintiffs" witness No. 1 to show that the

landlord used to collect the rent from Standard Pharmaceuticals, a division of Ambalal Sarabhai Enterprises Limited with knowledge of

amalgamation. He criticized the evidence of Ramesh Kumar Arya (question no 195 in cross-examination) when the witness says that at the end of

1988, or early 1989, he came to know that cheques were being paid by Ambalal Sarabhai Enterprises instead of Standard Pharmaceuticals Ltd.

According to Mr. Sarkar, the evidence of Mr. Ramesh Arya with regard to the discovery of the defendants in the suit premises and feigning

ignorance of their existence earlier to the filing of the suit should be disbelieved.

19. It was argued that the evidence would show that at the top of the receipt, the name of ""Standard Pharmaceuticals"" is prominently mentioned

and accordingly there could not be any doubt in the mind of either of the Aryas as to the real identity and existence of the original tenant.

20. Mr. Malay Ghosh, learned counsel appearing on behalf of the plaintiffs submitted that the order sanctioning the scheme of amalgamation has

resulted in merger of Standard Pharmaceuticals with the defendant and subsequently the said company was dissolved without winding up, which

goes to show that the entry of the defendant No. 1 in the suit premises is illegal. Inasmuch as the said order sanctioning the scheme of

amalgamation amounted to assignment of tenancy of Standard Pharmaceuticals Ltd. without the consent of the landlord, the plaintiffs filed the

instant suit seeking inter alia eviction of the defendants from the suit premises as, consequent on amalgamation of the said Standard

Pharmaceuticals Ltd. with the defendant No. 1, the defendants have come to occupy the suit premises. No notice terminating the tenancy of

Standard Pharmaceuticals Ltd. could be served and no suit for eviction of Standard Pharmaceuticals Ltd. could be filed as, upon being

amalgamated with the defendant No. 1, Standard Pharmaceuticals Ltd. had dissolved without winding up and thus ceased to exist. This fact is not

denied by the defendants in their written statement.

21. In fact, in paragraph 4(e) of the written statement, the defendants have admitted the said position. In the circumstances, as the defendant No. 1

or the other defendants could not have acquired and did not acquire any right to occupy the suit premises, the plaintiffs have filed the suit for

eviction of the defendants as trespassers occupying the same without having the authority to do so. Mr. Ghosh has referred to Exhibit K being the

two notices to quit both dated 8th February 1989 issued on behalf of the plaintiffs to the defendants calling upon the said defendants to hand over

possession of the suit premises to the plaintiffs. Mr. Ghosh, relying upon General Radio (supra), submitted that in the said decision the Hon''ble

Supreme Court held that a transfer of tenancy consequent on amalgamation of a company with another amounted to a transfer without the written

permission or consent of the landlord and as such the transferee in possession of the tenanted premises cannot be deemed or considered to be a

tenant in respect of the same. It is submitted that following the case of General Radio (supra), in the case of Cox and Kings Ltd. and Another Vs.

Chander Malhotra (Smt), the Hon''ble Supreme Court held that where by reason of operation of FERA a foreign company had wound up its

business and had assigned its leasehold interest to an Indian Company to carry on the same business in the tenanted premises, the same amounted

to subletting without the written consent of the landlord.

22. Thereafter in the case of Singer India Ltd. Vs. Chander Mohan Chadha and Others, the Hon''ble Supreme Court held that in an amalgamation

even if there is an order of a court sanctioning the scheme of amalgamation under Sections 391 and 394 of the Companies Act, whereunder lease,

rights of tenancy or occupancy of the transferor company got vested and become the property of the transferee company, the same amount to

subletting or assignment or otherwise parting with possession of the premises by the tenant (Paragraphs 6, 7, 8 & 11).

23. Mr. Ghosh argued that in the written statement the defendants have essentially contended that Standard Pharmaceuticals Limited came to

occupy the suit premises under and in terms of the agreement dated 22nd January 1973, clauses 5 and 11 whereof provide as follows:

5. The tenant shall not sublet any portion of the premises to anyone without the prior consent in writing of the landlord except as specified in Clause

11 of this letter, but the tenant shall continue to be liable to the landlord for the rent for the portion so sublet.

11. The tenant will however have the right to use the said premises for any company which may be managed or associated with Standard

Pharmaceuticals Ltd. in which its Directors have substantial interest.

24. Mr. Ghosh refers to the answers given by Ramesh Arya to Q Nos. 75 and 76 in examinationÃ¯Â¿Â½in-chief on 9th August, 2002 to show that the

agreement dated 22nd January, 1973 between Calcutta Credit Corporation Limited and Standard Pharmaceuticals Limited has not been tendered

as an Exhibit in the present suit and the copy of the same has been marked as ''X'' for identification.

25. Mr. Ghosh further submits that the defendants should not be allowed to rely on any of the clauses of the said agreement dated 22nd January,

1973 which has not been tendered as an exhibit in the present suit. Mr. Ghosh points out that the submissions made by him in answer to the

contentions raised on behalf of the plaintiffs in respect of Clause 5 and Clause 11 of the agreement dated 22nd January, 1973 are without

prejudice to the contentions that the defendants should not be allowed to rely on any of the clauses of the said agreement dated 22nd January,

1973, which has not been tendered in evidence as an Exhibit in the present suit. He has referred to paragraphs 4(l), 4(m), 4(f), 4(g), 4(h) and 4(k)

of the written statement and submitted that each of the grounds taken in defence of continued occupation of the suit premises is untenable in law

and in fact.

26. It was submitted that the transfer of the suit premises to the defendant No. 1 by virtue of the scheme of amalgamation amalgamating Standard

Pharmaceuticals Ltd. with the said defendant amounted to assignment or subletting of the suit premises without the consent of the landlord in

writing and as such could not and did not create any interest in the suit premises in favour of the defendant No. 1 is now settled law in view of the

decision of the Hon''ble Supreme Court in the matter of General Radio (supra) and other decisions following the same namely Cox and Kings Ltd.

and Another Vs. Chander Malhotra (Smt), and Singer India Ltd. Vs. Chander Mohan Chadha and Others,

27. It was submitted that the claim made in paragraph 4(m) of the written statement that the defendants are group companies is completely false.

The falsity of such allegations would be evident from the admissions made by the defendants in paragraph 4(e) of the written statement that by an

order dated 22nd January 1983 passed in the amalgamation proceedings, Standard Pharmaceuticals Ltd was dissolved without winding up.

Although in answer to question No. 65 put to Tapan Nandan Bhattacharyya the said witness stated that standard Pharmaceuticals Ltd was a

subsidiary of the defendant No. 1, the court should not take note of the same as the said contention is de hors the pleadings in the written

statement. In any event, on harmonious reading of Clause 5 and Clause 11 of the agreement dated 22nd January 1973, it is evident that the said

clauses only permitted subletting by Standard Pharmaceuticals Ltd. to a company managed by or associated with Standard Pharmaceuticals Ltd.

or to a company in which the directors of Standard Pharmaceuticals Ltd. were substantially interested. In this context, it is relevant to note that

Clause 5 expressly provided that notwithstanding such subletting, Standard Pharmaceuticals Ltd. would continue to be liable to the landlord for

rent of the portion sublet. This clearly contemplates that the right of Standard Pharmaceuticals to sublet the suit premises would survive only so

long as Standard Pharmaceuticals itself remained in existence. In the instant case, the admitted position is that Standard Pharmaceuticals Ltd. has

ceased to exist. Furthermore, the transfer of the suit premises by virtue of scheme of amalgamation did not amount to subletting but a virtual

assignment which attempted to establish a new privity between the defendant No. 1 and the plaintiffs. Such an assignment in any event is bad

inasmuch as it is now settled law that even when the rights under an agreement may be assigned, the obligations under the same may not be

assigned, except with the consent of the person with which the assignor has privity.

28. In this context, Mr. Ghosh relied on Section 108(j) of the Transfer of Property Act, 1882 and the following decisions:-

a) Khardah Company Ltd. Vs. Raymon and Co. (India) Private Ltd.,

b) ICICI Bank Limited Vs. Official Liquidator of APS Star Industries Ltd. and Others,

29. Mr. Ghosh submitted that the true effect and character of amalgamation has been considered in Saraswati Industrial Syndicate Ltd. Vs.

Commissioner of Income Tax, in which in paragraph 6, the Hon''ble Supreme Court has stated that:-

The true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But undoubtedly when two companies

amalgamate and merge into one the corporate entity of the transferor company loses its entity from the date of amalgamation as it ceases to have its

business. However, their respective rights or liabilities are determined under the scheme of amalgamation.

30. Mr. Ghosh submitted that the defendants, by reason of the aforesaid, became trespassers and in this regard he has referred to the decision

reported in Laxmi Ram Pawar Vs. Sitabai Balu Dhotre and Another,

31. Mr. Ghosh has also relied upon the decision reported in Sadashiv Shyama Sawant [D] through L.Rs. and Others Vs. Anita Anant Sawant, to

show that the suit in absence of Standard Pharmaceuticals Ltd. could be maintainable since the plaintiffs always retain possession in law over the

suit property and the defendants even if unable to protect their interest in the suit property and is dispossessed by a third party, the plaintiff always

have a right to file a suit for eviction of the party who has entered the suit premises illegally.

32. Mr. Ghosh has also relied on an unreported judgment delivered by me in C.S. 297 of 1989 (In re: Rajiv Daga vs. Ambalal Sarabhai

enterprises Limited & Ors.) and he submits that on similar facts the defendants raised identical defence on question of law, which has been

considered and rejected in the said case.

33. Mr. Ghosh accordingly submitted that the defendants should be directed to be evicted from the suit premises and should be made liable to pay

mesne profits to the plaintiffs from the date of amalgamation of Standard Pharmaceuticals Ltd. with the defendant No. 1 at such rates as may be

decided by this Court. On the basis of the evidence adduced by Sundarlal Mitra, a chartered valuation surveyor and plaintiff"s witness no 2. He

relies on the answers given by Mr. Mitra the Q Nos. 1, 2, 3, 5 to 15, 20, 24-35, 37 to 42. Mr. Ghosh submits that in cross examination (Q No.

48 to 118). Mr. Mitra has explained the basis of his report (Exhibit L) Mr. Ghosh submits that it is recorded in the valuation report dated 16th

December, 2002 of Mr. Mitra that he could not enter the suit premises as it was under lock and key. Mr. Ghosh further submits that in the terms

of the order dated 22nd November, 1996 passed by the Hon''ble J. Barin Ghosh in suit no CS 323 of 1989 (Premlata Arya vs. Ambalal Sarabhai

enterprises Ltd & Ors. The Receiver has put a padlock on the door of the suit premises of both suit no CS 323 of 1989 and the present suit. Mr.

Ghosh further submits that a decree for mesne profits may be passed on the basis of the said valuation report dated 16th December, 2002.

34. Mr. Sarkar, in reply to the argument advanced by Mr. Ghosh, submitted that the decision of General Radio (supra) is grossly misunderstood

and according to him that case established two distinct and clear principles as follows:

(I) First, since amalgamation of two companies is brought about at the instance of the transferor company (the appellant No. 1 in that case) by

which all properties including tenancy right of the transferor company are transferred to the transferee company and such transfer of tenancy right is

made without the consent of the landlord and the transferor (tenant) is liable to be evicted being in violation of the relevant provisions of the

Premises Tenancy Act (in the instant case sections 14 and 13(1) of the West Bengal Premises Tenancy Act).

(II) Second, the transferee company (the appellant No. 2 in the case) is ""now the tenant"".

35. According to Mr. Sarkar, the first principle is clearly inapplicable to the instant case. In that case, the tenant (appellant No. 1) was made a

party and it was liable to be evicted and as a consequence the sub-tenant (appellant No. 2) was liable to be automatically evicted. Incidentally, it

was not even necessary to make the sub-tenant a party. In the instant case, the tenant (transferor company) Standard Pharmaceuticals Ltd. has not

been made party and hence the question of evicting the defendant No. 1 cannot arise.

36. Mr. Sarkar also finds fallacy in the argument made by Mr. Ghosh with regard to the effect of the order of dissolution of the Standard

Pharmaceutical''s case on amalgamation. It was argued that the argument that the transferor company, Standard Pharmaceuticals, was dissolved on

amalgamation and as such it could not be made a party, is neither correct nor relevant.

37. As a matter of law, the transferor company does not automatically dissolve on passing of amalgamation order for following such order; the

official liquidator has to file a report on the transferor company and forward the same to the Registrar of Companies. Only then the name of the

company can be struck off the Register. Until then a transferor company is available to be made a party. That there is invariably a time gap

between the order of dissolution and the fact of dissolution is apparent from General Radio''s case itself where the amalgamation order was passed

on 27th March, 1978 and the company stood dissolved from 16th April 1968.

38. Here there is no evidence that the Standard Pharmaceuticals Ltd. stood finally dissolved when the suit was filed. The onus was clearly on the

plaintiff to establish such fact but it failed to do so. In any event, if the tenant cannot be made a party for having been dissolved, such special

statutory remedy simply cannot be availed of. The sins of the tenant cannot be vested on the sub-tenant. In such a situation the only option open to

a plaintiff is to establish that such transferee is a trespasser.

39. The second principle of General Radio that a transferee company on amalgamation becomes a tenant, makes it quite clear that defendants here

cannot be regarded as trespassers. Mr. Ghosh contends that without landlord''s consent a tenant cannot be thrust on him willy nilly. A tenancy

agreement, Mr. Ghosh says, can arise in either of two ways. Either two parties must themselves agree or a party to an existing agreement assigns

such agreement in favour of a third party. Again, in case of assignment, Mr. Ghosh rightly says, that as a rule of ordinary law the benefits of a

contract can be assigned but not its liabilities. But there are exceptions to this general rule. The most prominent of those is an order passed under

the sections 391 and 394 application. The effect of such order override ordinary law. That rights and obligations of a contract can dissolve on a

transferee company or on a new company emerging by virtue of an amalgamation order, is also recognized in sections 15(g) and 19(d) of the

Specific Relief Act, 1963.

40. In referring to clause 11 of the tenancy agreement, it was argued that the first thing to be noticed in the tenancy agreement is that the expression

''tenant'', meaning thereby Standard Pharmaceuticals Ltd., includes the successor and assigns. There cannot be any question that after

amalgamation, Ambalal Sarabhai Enterprises has become a successor or assign of the transferor tenant. On that footing and by express term in the

said tenancy agreement, the defendant No. 1 as a lawful successor or assign of Standard Pharmaceuticals Ltd. has become a tenant without

requiring any further approval of or a fresh agreement with the landlord-plaintiff.

41. Secondly, on a true construction of the provisions of clause 11 of the agreement, it is clear that the said provision embodies a built in consent to

sub-let. The contention that the tenant shall continue to be liable to the landlord for the rent for the portion so sub-let as mentioned in clause 5, is

misplaced. Such obligation is clearly meant to operate either as an indemnity clause or a guarantee clause and not as a provision for splitting of

obligations of the tenancy agreement. The question whether the transferee company is managed by or associated with the transferor company is of

course a question of fact. Such question would have to be examined at the point of transfer, i.e. the date of amalgamation and not at any later

stage.

42. Mr. T.N. Bhattacharjee''s evidence dwell on situation obtaining at a later stage and therefore not particularly pertinent. The order of

amalgamation in its narrative part however makes the inter relationship of the transferor, the transferee and the other associated companies within

the group quite clear.

43. It was further argued that the details of correspondence exchanged between the parties have been mutually misdescribed. The fact that the rent

receipts and payments of cheques drawn and received apparently with equal indifference could not be disregarded. These events clearly justify the

acceptance of the defendants by the plaintiffs as tenants.

44. Those apart, there has been meeting between the plaintiffs and the defendants in 1984, i.e. after passing of the amalgamation order on 7th May

1983 for enhancement of rent. The plaintiffs husband, Ramesh Kumar Arya, the principal witness, admittedly visited the suit premises after

amalgamation more than once; yet, to say he did not notice the sign board displaying the names of all the defendants is incredible. It is difficult to

believe that in none of the circumstances and situations, the presence of a new entity, Ambalal Sarabhai Enterprises has dawned on him.

45. Bearing in mind that the said state of affairs in their various facets continued for a period of six years (1983 to 1989), the question is whether

even allowing for some benefit of doubt, this Hon''ble Court would believe the plaintiffs'' assertion that they were not aware of the amalgamation

order and its consequence. Significantly, no offer has been made by them to return the rents received by them since 1983.

46. Taking all the circumstances into consideration and on an objective view of the matter, it was submitted that this Hon''ble Court would be

pleased to accept the defendants'' case that a new tenancy agreement has come into existence by conduct.

47. Duality of existence and/or the real identity of the defendant No. 1 is the decisive factor in this proceeding. Although elaborate arguments have

been advanced by the parties but the moot point appears to be the entry of the defendant No. 1 in the suit premises. The written statement filed on

behalf of the defendants clearly shows that the entry of the defendant No. 1 in the suit premises is by virtue of the order sanctioning the scheme of

amalgamation. By virtue of the said order of amalgamation, the original tenant company stood dissolved as it merged with the defendant No. 1.

This Hon''ble Court by sanctioning of the scheme, only considered the agreement entered into between the parties and the rights and liabilities inter

se that may form part of the scheme sanctioned by the court cannot bind the third party, namely the landlord.

48. In General Radio (supra), the Hon''ble Supreme Court has dealt with this aspect and held that this act of amalgamation by reason whereof the

interest, rights of the transferor company in all its properties including leasehold interest, tenancy rights and possession were transferred and vested

in the transferee company voluntarily and the transferor company was dissolved and it ceased to exist for all practical purposes in the eye of law

would amount to sub-letting. Even in case of an involuntary transfer or transfer for tenancy right by virtue of a scheme of amalgamation sanctioned

by the court by its order under sections 391 and 394 of the Companies Act, 1956, such transferor would come within the mischief of parting with

possession without consent of the landlord. The order of amalgamation shows that Standard Pharmaceuticals Ltd. has transferred all its assets and

liabilities including the tenancy right in favour of the transferee company, namely the defendant No. 1. The landlord is not a party to the said

proceeding. No right of tenancy could be created in favour of any third party dehors the agreement of tenancy subsisting between the plaintiffs and

the original tenant.

49. The defendant No. 1 is attempting to justify its continuation in the suit premises on the basis that in the absence of the original tenant, the case

of sub-tenancy based on section 14 of the West Bengal Premises tenancy Act cannot survive. The original tenant is lost in the horizon and

completely invisible and untraceable. It had ceased to exist it would appear from the written statement that Standard Pharmaceuticals Ltd., after its

merger with the defendant No. 1, was thereafter dissolved without winding up. This dissolution is a civil death to the said original tenant company.

The consequence of such dissolution and civil death is surrender of tenancy in favour of the plaintiffs and repossession by the plaintiffs.

50. The tenancy comes to an end. The plaintiffs cannot be asked to sue a nonexistent company. The plaintiffs can only sue the person who claims a

right under the original tenant. The entry of such person or entity, if not lawful, is that of a trespasser since inception. The concept of ''trespass'' has

been elaborately discussed in Laxmi Ram Pawar (supra) in paragraphs 12 to 16, which are reproduced hereinbelow:-

12. A ''trespass'' is an unlawful interference with one''s person, property or rights. With reference to property, it is a wrongful invasion of another''s

possession. In Words and Phrases, Permanent Edn. (West Publishing Company), pp. 108, 109 and 115, in general, a ''trespasser'' is described,

inter alia, as follows:

A ''trespasser'' is a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor''s

consent or otherwise. (Wimmer''s Estate, In re, P2d at 121.)

A ''trespasser'' is one entering or remaining on land in another''s possession without a privilege to do so created by the possessor''s consent,

express or implied, or by law (Keesedker vs. G.M. Mckelvey co. NE at 226, 227

* * *

* * * A ''trespass'' is a transgression or wrongful act, and in its most extensive signification includes every description of wrong, and a ''trespasser''

is one who does an unlawful act, or a lawful act in an unlawful manner, to the injury of the person or property of another. (Carter v. Haynes, Tex.,

SW at 220.)

13. In Black''s Law Dictionary (6th Edn.), 1990, p. 1504, the term ""trespasser"" is explained as follows: ""Trespasser. Ã¯Â¿Â½ One who has committed

trespass. One who intentionally and without consent or privilege enters another''s property. One who enters upon property of another without any

right, lawful authority, or express or implied invitation, permission, or licence, not in performance of any duties to owner, but merely for his

purpose, pleasure or convenience.

14. In Halsbury''s Laws of England, Vol. 45 (4th Edn.), pp. 631-32, the following statement is made under the title ""What Constitutes Trespass to

Land"": ""1384. Unlawful entry.- Every unlawful entry by one person on land in the possession of another is a trespass for which an action lies, even

though no actual damage is done. A person trespasses upon land if he wrongfully sets foot on it, rides or drives over it or takes possession of it, or

expels the person in possession, pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes

anything on it or in it, or if he erects or suffers to continue on his own land anything which invades the airspace of another, or if he discharges water

upon another''s land, or sends filth or any injurious substance which has been collected by him on his own land onto another''s land."" In the same

volume at p. 634, under the title ""Trespass ab initio"", the legal position is stated thus: ""1389. Trespass ab initio.- If a person enters on the land of

another under an authority given him by law, and, while there, abuses the authority by an act which amounts to a trespass, he becomes a trespasser

ab initio, and may be sued as if his original entry were unlawful. Instances of an entry under the authority of the law are the entry of a customer into

a common inn, of a reversioner to see if waste has been done, or of a commoner to see his cattle.

To make a person a trespasser ab initio there must be a wrongful act committed; a mere nonfeasance is not enough."" The aforesaid statement takes

into consideration Six Carpenters'' case wherein the general rule given is this, ""when an entry, authority, or licence, is given to any one by the law,

and he doth abuse it, he shall be a trespasser ab initio

15. In Law Lexicon, the encyclopedic law dictionary by P. Ramanatha Aiyar, 2nd Edn., Reprint 2000 p. 1917, the word ""trespass"" is explained

by relying upon Tomlin''s Dictionary of Law Terms as follows: ""Trespass,. In its largest and most extensive sense, signifies any transgression or

offence against the law of nature, of society, or the country in which we live; whether it relates to a man''s person or his property. Therefore beating

another is a trespass; for which an action of trespass in assault and battery will lie. Taking or detaining a man''s goods are respectively trespasses,

for which action of trespass on the case in trover and conversion, is given by the law; so, also non-performance of promises or undertakings is a

trespass, upon which an action of trespass on the case in assumes it is grounded: and, in general, any misfeasance, or act of one man, whereby

another is injuriously affected or demnified, is a transgression, or trespass, in its largest sense; for which an action will lie.

16. In Salmond on the Law of Torts, 17th Edn. by R.F.V. Heuston, 1977, p. 41, the expression, ""trespass by remaining on land" is explained in

the following manner: ""Even a person who has lawfully entered on land in the possession of another commits a trespass if he remains there after his

right of entry has ceased. To refuse or omit to leave the plaintiff"s land or vehicle is as much a trespass as to enter originally without right. Thus, any

person who is present by the leave and licence of the occupier may, as a general rule, when the licence has been properly terminated, be sued or

ejected as a trespasser, if after request and after the lapse of a reasonable time he fails to leave the premises.

Under the title ""Continuing trespasses""" at p. 42, it is stated:

That trespass by way of personal entry is a continuing injury, lasting as long as the personal presence of the wrongdoer, and giving rise to actions

de die in diem so long as it lasts, is sufficiently obvious. It is well settled, however, that the same characteristic belongs in law even to those

trespasses which consist in placing things upon the plaintiff"s land. Such a trespass continues until it has been abated by the removal of the thing

which is thus trespassing; successive actions will lie from day to day unit it is so removed; and in each action damages (unless awarded in lieu of an

injunction) are assessed only up to the date of the action whether this doctrine is either logical or convenient may be a question, but it has been

repeatedly decided to be the law.

51. Although there may be various situations on the basis of which a person and/or entity could be regarded and held as a trespasser, but it is not

necessary to go into the details of all such situations but confine only to the enquiry as to the status of the defendants.

52. Clauses 5 and 11 of the said agreement, on true, proper and meaningful interpretation, would only mean that the original tenant, without prior

consent in writing by the landlord except as specified in clause 11, shall not sub-let any portion of the premises without prior consent in writing of

the landlord and irrespective of such sub-letting, the original tenant would be liable to the landlord for the rent for the portion so sub-let. Clause 11

is a permissive clause by reason whereof the tenant could permit the use of the said premises for any company which may be associated with

Standard Pharmaceuticals or its directors having substantial interest.

53. The witness on behalf of the defendants in his evidence made an attempt to justify that the original tenant was an associate company of the

defendant No. 1 or they are group companies. However, there is no evidence on record to show that the defendants and the original tenant are

group companies. Even if the argument based on clause 11 is accepted but that by itself would not justify the claim of the defendants to continue its

occupation after the original tenant ceased to exist. They have no right to be in possession. These clauses 5 and 11 would continue so long the

tenancy subsists. A person entering the premises on the basis of such a permissive clause cannot elevate his status to a contractual or statutory

tenant. The agreement itself comes to an end with the dissolution of the original tenant. Moreover it is clear from clause 5 of the tenancy agreement

that Standard Pharmaceuticals Ltd. should not sub-let any portion of the premises without prior consent in writing or the landlord. The entry of the

defendant No. 1 is attempted to be justified on the basis of the order of amalgamation which amounts to sub-letting and contraventions of section

14 of the West Bengal Premises Tenancy Act as well as the terms and conditions of the tenancy agreement.

54. Mr. Sarkar argued that in the absence of Standard Pharmaceuticals Ltd., the plea based on sub-letting cannot subsist. He further argued that

even if the original tenant ceased to exist but the defendant No. 1 cannot be recorded as a trespasser because his entry to the suit premises is on

the basis of the order of amalgamation and by operation of law it has become the tenant. Mr. Sarkar had strongly relied on paragraph 10 of the

General Radio (supra) vis-a-vis the observation made in the said judgment that the appellant No. 2 company is now the tenant in respect of the suit

premises.

55. The Hon''ble Supreme Court in General Radio (supra) ultimately held that there has been a transfer of the tenancy in respect of the premises in

question to the appellant No. 2 in utter contravention of the provisions of the Andhra Pradesh Building (Lease rent and Eviction) Control Act,

1960 and the terms and conditions of clause 4 of the agreement dated January 12, 1959 executed by the appellant No. 1 in favour of the

respondent landlord and upheld the judgment of the Andhra Pradesh High Court whereby the Andhra Pradesh High Court upheld the eviction of

the appellant No. 2 from the suit premises.

56. In General Radio (supra), the question that arose before the Hon''ble Supreme Court for consideration was whether voluntary amalgamation of

the first and the second appellant companies amounts to a transfer of the first appellant''s right under the lease within the meaning of section 10(ii)

(a) of the Andhra Pradesh Act of 1960.

57. Similar arguments were made with regard to the operation of the said order of amalgamation as a judgment in rem and binding on all parties

including the landlord even though the landlord was not a party to the said proceeding. Such arguments were negatived by the Hon''ble Supreme

Court.

58. The order sanctioning the scheme of amalgamation, whereby transferring the leasehold interest to the transferee was held to be subletting in

General Radio (supra) and the appellant No. 2 became the tenant of the respondent landlord by reason of sanctioning of the scheme of

amalgamation. The only distinction that is sought to be made by Mr. Ghosh is the absence of Standard Pharmaceuticals Ltd. in the instant case. If a

company brought about its own death and ceased to exist, any person claiming through him has to establish that the said company is entitled in law

to continue in occupation although the landlord may not recognise him as its tenant. A tenancy is created by agreement or conduct. However, such

relationship has to be established.

59. There is no dispute that Standard Pharmaceuticals Ltd. was a tenant in respect of the suit premises. On the death of Standard Pharmaceuticals

Ltd., could the defendant No. 1 enter the premises and claim tenancy right on the basis of the order sanctioning the scheme of amalgamation. In my

considered opinion, it cannot, irrespective of the fact whether Standard Pharmaceuticals Ltd. is on record or not. Standard Pharmaceuticals could

not have been on record by reason of the fact the said company had died its natural death. The pleadings of the defendant No. 1 clearly show that

it is claiming through Standard and it has been categorically stated in the written statement that Standard should be substituted by the defendants. It

is the positive case of the defendants that they are to be substituted in place and stead of the original tenant by virtue of the order of amalgamation.

The said defendants are harbouring, no doubt, as to their status in the suit premises and they want to justify their continuation in the suit premises on

the basis of the order sanctioning the scheme of amalgamation in which the tenancy rights have been assigned to the defendant No. 1.

Unfortunately this creation of rights by a party is dehors the provisions of the tenancy laws and in breach of the tenancy agreements and cannot

bind the plaintiffs/landlords.

60. If the entry of the defendants is not lawful, the only inevitable conclusion is that they are rank trespassers. An argument is made on behalf of

defendants that a legal relationship of landlord and tenant would be discernible from the conduct of the parties. This is just to remind that if a party

is under a duty to disclose facts material to the issue, non-disclosure would visit such party with same consequences. In such situation, the

inevitable inference would be that the said party is trying to conceal and hide something from the other party. The exchange of letters and

documents would clearly show that the said plaintiffs have all throughout regarded Standard Pharmaceuticals Ltd. to be the actual tenant. In fact

late Mathuranath Bhattacharyya, a member of the Bar, who was the special officer in respect of the suit premises also used to address letters in

connection with the suit premises to Standard Pharmaceuticals Ltd. and such letters were received and relied on by the defendants without any

protest.

61. In order to establish that a tenancy is created by conduct, mere acceptance of rent is not enough, more particularly in a situation where such

rent is accepted on a mistaken identity. A conscious mind accompanied by conduct Ã¯Â¿Â½ a total synchronization of the mind and the action Ã¯Â¿Â½ in

accepting the rent may give rise to a strong presumption of a landlord-tenant relationship. The evidence of Ramesh Kumar Arya on behalf of the

plaintiffs would establish that such acceptance of rent or enhancement of rent was on a complete mistaken identity of the present defendants.

62. The plaintiffs were all throughout unaware of the change of the identity and character of the defendants. Any and every unmindful act or

conduct cannot constitute estoppel. It has to be a relinquishment of a known right. If the identity of the defendants are unknown to the plaintiffs,

any such acceptance of rent or enhanced rent cannot create a relationship of landlord and tenant. The principle of holding over would also not

apply. R.S. Iron Industries Pvt. Ltd. Vs. Calcutta Pinjrapole Society, There is no assent of the plaintiffs to the defendants'' continuing in possession

after change of character and identity of the original tenant. The onus is on the defendants to establish that a fresh relationship of landlord and

tenant is created after such amalgamation and the plaintiff had due notice of it. The plaintiff thereafter had knowingly accepted such rent or

enhanced rent. It remained unexplained as to why the said defendants maintained a stoic silence, remained mute and maintained secrecy in not

informing the plaintiffs about such change of character and identity of the defendants. It would have been different if the plaintiffs with such notice

and knowledge accepted the rent and assent the defendants'' continuing in possession.

Halsbury defining ''estoppel'' writes:-

There is said to be an estoppel where a party is not allowed to say that a certain statement of fact is untrue. Whether in reality it is true or nor.

(Halsbury''s Laws of England, 4th Ed. Vol 16, Page 1023, Paragraph 1501) Estoppel, or ""conclusion"" as it was frequently called by the older

authorities, may, therefore, be defined as a disability where by a party is precluded (In the older phraseology, concluded) from alleging or proving

in legal proceedings that a fact is otherwise than it has been made to appeal by the matter giving rise to that disability. Estoppel is often described

as a rule of evidence, but the whole concept is more correctly viewed as a substantive rule of law (Halsbury''s Laws of England, 4th ed. Vol. 16

Page 1023 Paragraph 1501).

According to Phipson:-

An estoppel is a rule whereby a party is precluded from denying the existence of some state of facts which he was previously asserted. It was

formerly said to be only a rule of evidence because at common law (so the argument ran) an action could not be founded thereon (Phipson On

Evidence, 14th Edi., Page 96, Paragraph 6-01); both at law and in equity, not only a defence but also an action may indeed be founded on an

estoppel. (Phipson On Evidence, 14th Edi., Page 96, Paragraph 6-01) Similarly, estoppels must be pleaded, whereas it is improper to plead

evidence. It is not the admission of evidence, which is directly prohibited by an estoppel. It is simply the conclusion, which is to be reached on the

basis of the evidence. It therefore appears that true or legal estoppels are essentially substantive in effect, and the courts now recognize this.

(Phipson On Evidence, 14th Edi., Page 96, Paragraph 6-01)

Cross writes:-

When an estoppel binds a party to litigation he is prevented from placing reliance on or denying the existence of certain facts. This justifies the

treatment of estoppel as an exclusionary rule of evidence. So regarded, it is less rigorous than the rules governing the exclusion of evidence on the

ground of public policy because estoppels only operate if they are pleaded, but, like the exclusion of evidence on that ground, and unlike the

exclusion of evidence under the rule relating to similar facts, estoppels operate without reference to the purpose of which reliance is placed on a

particular fact. From the point of view of the party in whose favour they operate, estoppels could be regarded as something which renders proof of

certain facts unnecessary; also it is possible to argue that estoppel is better regarded as a matter of pleading or substantive law, rather than a rule of

evidence. (Cross ON EVIDENCE, 6th Ed. Page 72)

63. In order establish that the plaintiffs are estopped by conduct in denying the relationship of landlord and tenant, it has to be established that the

plaintiff having knowledge of such amalgamation have conducted themselves in such a manner which induced a belief in the mind of the defendants

that the plaintiffs have accepted the defendants as tenants.

64. Estoppel by conduct means a party is prevented from relying on true facts on account of his conduct or language. 23 CWN 466 (Privy

Council) Durga Prasad Singh Vs. Tata Iron and Steel Co., Ld.). If a man, either by words or by conduct, has intimated that he consents to an act

which has been done, and that he will offer no opposition to it, although it could not have been lawfully done without his consent, and he thereby

induces others to do that from which they otherwise might have abstained, he cannot question the legality of the act he had so sanctioned to the

prejudice of those who have so given faith to his words, or to the fair inference to be drawn from his conduct. Union of India (UOI) Vs. K.P.

Mandal, (DB); Union of India Vs. K.P. Mandal) The principle of estoppel by conduct has been succinctly put by Phipson when he writes:-

Estoppels by conduct. Ã¯Â¿Â½ Estoppels by conduct, or, as they are still sometimes called, estoppels by matter in pais, were anciently acts of notoriety

not less solemn and formal than the execution of a deed, such as livery of seisin, entry, acceptance of an estate and the like; and whether a party

had or had not concurred in an act of this sort was deemed a matter which there could be no difficulty in ascertaining, and then the legal

consequences followed. (Phipson On Evidence, 14th Edi., Page 103, Paragraphs 6-12) The doctrine has, however, in modern times, been

extended so as to embrace practically any act or statement by a party which it would be unconscionable to permit him to deny. The rule has been

authoritatively stated as follows: ""Where one by his words or conduct willfully causes another to believe the existence of a certain state of things

and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a different

state of things as existing at the same time."" (Phipson On Evidence, 14th Edi., Page 103, Paragraphs 6-12) And whatever a man''s real intention

may be, he is deemed to act willfully ""If he so conducts himself that a reasonable man would take the representation to be true and believe that it

was meant that he should act upon it."" (Phipson On Evidence, 14th Edi., Page 103, Paragraphs 6-12)

Where the conduct is negligent or consists wholly of omission, there must be a duty to the person misled. (Phipson On Evidence, 14th Edi., Page

103, Paragraphs 6-12) This principle sits oddly with the rest of the law of estoppel, but it appears to have been reaffirmed, at least by implication,

by the House of Lords comparatively recently. (Moorgate Mercantile Co. Ltd. v. Twitchings; 1977 A.C. 890 (H.L.) The explanation is no doubt

that this aspect of estoppel is properly to be considered a part of the law relating to negligent representations, rather than estoppel properly so-

called. If two people with the same source of information assert the same truth or agree to assert the same falsehood the same time, neither can be

estopped as against the other from asserting differently at another time."" (Phipson On Evidence, 14th Edi., Page 103, Paragraphs 6-12)

65. The estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and on that

unequivocal assurance the other party has altered his position of status. Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others,

66. The evidence of the witness is that at the end of 1988 or early 1989 he came to know that the cheques are being paid by Ambalal Sarabhai

Enterprises Ltd instead of Standard Pharmaceuticals Ltd. and he was informed by Mr. Daga who said that an amalgamation has taken place and

the Standard Pharmaceuticals Ltd has lost its identity and he relied on the enquiries made by Mr. Daga regarding the amalgamation (Q Nos. 195-

207 of cross examination of Ramesh Arya).

67. That no communication of the amalgamation was ever made by Standard Pharmaceuticals Limited or by the Defendant No. 1 to the Plaintiff is

evident from the deposition in the suit (Qs. 66, 67, 68, 69, 70, 73, 74, 75, 76, and 77 Qs. 43, 51, 52, 53, 61, and 63 of Tapan Nandan

Bhattacharya). Although it has been contended by the Defendants that the name plates of the Defendant companies wee displayed at the entrance

of the suit premises and as such the Plaintiffs were aware that the suit premises was being occupied by the Defendants, it is clear from the cross

examination of the Defendants'' witness Mr. Tapan Nandan Bhattacharjee that no name plate of any of the Defendant companies were in fact

displayed at the entrance of the suit premises (Qs. 66, 67, 69 and 70 of Tapan Nandan Bhattacharjee).

68. It would appear from all the documents exhibited that all the letters (Exbt. E) have been addressed by the plaintiffs only in the name of

Standard Pharmaceutical Limited. All the bills and rent receipts have also been raised by the plaintiffs in the name of Standard Pharmaceutical

Limited.

69. It is pertinent to mention that the defendant No. 1 never raised any objection to the rent bill dated 26th October, 1980 and 25th August, 1984

(Exbt. C) being raised by the plaintiffs in the name of the Standard Pharmaceuticals Limited. The original plaintiff and the present plaintiffs have all

through out regarded Standard Pharmaceuticals Limited as actual tenant.

70. It is also pertinent to mention here that in addition to the fact that no objection was ever raised by the defendant No. 1 to the letters which

were addressed, bills which were raised and rent receipts which were issued by the plaintiffs only in the name of Standard Pharmaceuticals Ltd.,

the defendant No. 1 had also acted upon such letters and also made payments to such bills and rent receipts. Had the intention on the part of the

defendant No. 1 been to represent itself as a direct tenant of the plaintiffs, there would have been no need whatsoever on its part to use the name

standard Pharmaceuticals either in the letters addressed to the plaintiffs or in the cheques issued to the plaintiffs. The very fact that the defendant

No. 1 has written letters on behalf of Standard Pharmaceuticals through their constituted attorneys and have issued cheques for Standard

Pharmaceuticals, a Division of Ambalal Sarabhai Enterprises Ltd. in itself clearly manifests an intention on the part of the defendant No. 1 to

clandestinely pass itself off as Standard Pharmaceuticals Ltd. or an associated company of Standard Pharmaceuticals Ltd. The said defendants

have never informed the plaintiffs that Standard Pharmaceuticals Ltd. has ceased to exist and no explanation has come forth from the said

defendants for not intimating the plaintiffs and the Special Officer about the order sanctioning the scheme of amalgamation. The dissolution of

Standard Pharmaceuticals Ltd. is within the special knowledge of the defendants. Wittingly or unwittingly, whatever might have been the reason,

this communication was not made and, on the contrary, the plaintiffs and the Special Officer considered the defendant No. 1 as Standard

Pharmaceuticals Ltd. That the order sanctioning the scheme would operate as a judgment in rem is of no consequence. The fact remains that by

such voluntary agreement, such tenancy right is sought to be assigned to the defendant No. 1 and the law on this aspect has already been settled in

General Radio (supra). Moreover, tenancy is not an asset of the company and is not transferable Krishna Gopal Saha Vs. Nityananda Saha and

Others . These are the matters which raise serious credibility about the defence raised by the defendants with regard to its status as a tenant or that

fresh tenancy is created by reason of acceptance of the rent by the landlords-plaintiffs as made out in the written statement.

71. In such circumstances, in my view, it cannot be contended that the plaintiffs either accepted the defendant No. 1 as direct tenant or assented to

the continuance of the defendant No. 1 as a direct tenant in the suit premises or otherwise waived their right to object to the continuance of the said

defendant as a tenant in the suit premises and if any reference is required, the following decisions are referred to:-

1) Shila Roy Choudhury and Others Vs. Nimai Charan Rakshit,

2) Firm Sardarilal Vishwanath and Others Vs. Pritam Singh,

3) Radha Gobinda Chandra Vs. Nritya Gopal Karmakar,

72. In view thereof, the plaintiffs are entitled to a decree for eviction from the suit premises. There shall accordingly be a decree for recovery of

khas possession of the suit premises as more fully described in Schedule A to the plaint.

73. Since the defendants are in wrongful occupation of the suit premises since 1986, the plaintiffs shall be entitled to mesne profits from May 1986

till recovery of possession. In a connected suit being C.S. No. 297 of 1989 (Rajeev Daga & Anr. Vs. Ambalal Sarabhai Enterprises Ltd. & Ors.)

Mr. Samrat Sen, a member of the bar, was appointed as special officer to compute the mesne profits and submit the report before this Court. The

suit shall appear on 23rd September, 2013 for determination of mesne profits. Mr. Sarkar, learned counsel for defendants, prayed for stay of

operation of the judgment and decree. The same is considered and rejected.