Narendra Bachubhai Dave Vs Jethalal S. Dave

Court: Bombay High Court

Date of Decision: Oct. 30, 1974

Acts Referred: Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 â€" Section 12, 13, 15, 15A, 4 Transfer of Property Act, 1882 â€" Section 10

Citation: (1978) 80 BOMLR 196

Hon'ble Judges: R.M. Kantawala, C.J; Kania, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Kania, J.
This is an appeal from the judgment and order of Gandhi J. dismissing the Chamber Summons taken out by the appellants, in suit

No. 375 of 1962 in this Court, praying that appellant No. 1 should be relieved of certain undertakings given by him under the consent decree

passed in the said suit and for stay of all proceedings in execution of the said consent decree. The appeal raises some interesting questions under

the newly added Section 15A and Sub-section (4A) of Section 5 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947

(hereinafter referred to as ""the Bombay Rent Act"").

2. Appellant No. 1 before us was defendant No. 2 in Suit No. 375 of 1962 and all the appellants including appellant No. 1 are the heirs and legal

representatives of defendant No. 1, who has died after the disposal of the suit. It may be mentioned that the parties are related and belong to the

same family. The family is certainly no stranger to litigation. Respondent No. 1 before us was original plaintiff No. 1 and respondent No. 2 was

plaintiff No. 2, which is a firm consisting of some of the family members. There was an open plot of land at Santa Cruz belonging to one

Moisuddin. On August 17, 1944, by an indenture of lease, Moisuddin granted a lease of the said plot for a period of five years to one Ishwarlal

Desai. Ishwarlal Desai constructed certain structures on the plot, one of them being a theatre called Roop Talkies, and carried on the business of

exhibiting cinematograph films there. On October 23, 1951 there was an indenture of assignment by which the entire property was assigned to one

Hariprasad Dave, a brother of respondent No. 1 and the deceased defendant No. 1. It appears that the said Hariprasad purchased these

properties for the benefit of himself, defendant No. 1 and the three sons of respondent No. 1 viz. Krishnashanker, Ashwinkumar and

Kishorekumar. It further appears that the lease was renewed for a period of twenty years from August 15, 1951 in favour of the said Hariprasad

Dave. On February 27, 1953 a partnership firm was constituted of the five persons mentioned above viz. Hariprasad Dave, defendant No. 1 and

the aforesaid three sons of respondent No. 1 and this firm was known as M/s. Roop Talkies. This firm carried on its business till March 31, 1958,

when defendant No. 1 retired from the partnership. Jethalal Dave, respondent No. 1 (plaintiff No. 1), was taken as a partner in the place of

defendant No. 1, On May 8, 1958 an agreement of leave and licence was entered into by which the partners of M/s. Roop Talkies viz. respondent

No. 1 and his aforesaid three sons granted to defendant No. 1 leave and licence to enter the said theatre known as Roop Talkies and carry on the

business of exhibiting cinematograph films there. We shall come to this agreement in some detail a little later. After this agreement was entered into,

it appears that there were certain disputes between the parties and defendant No. 1 claimed tenancy rights and, according to respondent No. 1,

committed breaches of this agreement. It is not necessary to consider in detail these disputes. However, it appears that by the agreements dated

November 4, 1960 and June 16, 1961 defendant No. 1 accepted the position that he was a licensee under the agreement dated May 8, 1958. On

November 10, 1962 the aforesaid suit No, 375 of 1962 was filed by respondent No. 1 against defendant No. 1 for possession of the Roop

Talkies and of the articles described in Schedule "A" to the plaint. On October 1, 1964 respondent No. 2 viz. the firm of M/s. Roop Talkies, was

joined as plaintiff No. 2. In 1966 there was an amendment to the plaint whereby certain allegations were made against defendant No. 1 and

defendant No. 2, although at that stage defendent No. 2 (appellant No. 1) was not joined as defendant to the suit. These allegations were that

defendant No. 1, who was then carrying on the business in the name and style of M/s. Narendra and Co. had admitted his son, appellant No. 1 as

a partner in the said firm of M/s. Narendra and Co. without the consent of the respondents and that thereafter defendant No. 1 and appellant No.

1 were conducting the business of Roop Talkies together, it was alleged that by permitting appellant No. 1 to join in the conduct of the said

business, defendant No. 1 had committed a breach of the aforesaid leave and licence agreement. It appears that on September 16, 1969 this suit

reached hearing. At that stage, appellant No. 1 was added as a party defendant to the suit, and a consent decree was passed by the Court

pursuant to certain consent terms which were handed in by the parties. It appears that certain undertakings, to which we shall come presently,

were given and a consent decree was passed by the Court.

3. Since the disputes turn to a considerable extent on the construction and legal effect of this consent decree, we may set out briefly the relevant

provisions contained therein. The important provisions in the said consent decree dated September 16, 1969 run as follows:

...THIS COURT BY AND WITH SUCH CONSENT DOTH ORDER that the defendants do hand over to the 1st plaintiff or to his son

Kishorekumar Jethalal Dave possession of the suit premises together with the articles mentioned in the Schedule Exh. ''A'' to the plaint.... AND

THIS COURT BY AND WITH SUCH CONSENT DOTH DECLARE that the defendants shall however be at liberty to carry on the business

of exhibiting pictures in the suit premises and for that purpose will be entitled to give any person playing time rights or right to exhibit pictures of

other persons at the suit premises, provided that the period of such agreements will not extend beyond 30th day of September 1973, AND THIS

COURT BY AND WITH SUCH CONSENT DOTH ORDER that the defendants shall pay to the 1st plaintiff or to the said Kishorekumar

Jethalal Dave for the period upto 30th day of September 1970 a sum of Rs. 2,500 (Rupees two thousand five hundred) per month AND THIS

COURT BY AND WITH SUCH CONSENT DOTH FURTHER ORDER that the defendants shall pay to the 1st plaintiff or to the said

Kishorekumar Jethalal Dave for the period subsequent to 1st October 1970 a sum of Rs. 3,100 (Rupees three thousand one hundred) per month

on or before the 10th of every month in respect of their use of the suit premises and the articles mentioned in the Schedule Ex. ''A'' annexed hereto

until the defendants hand over to the 1st plaintiff or to the said Kishorekumar Jethalal Dave possession of the suit premises together with the said

articles. THIS COURT BY AND WITH SUCH CONSENT DOTH FURTHER RECORD that the plaintiffs agree and undertake to this

Hon''ble Court not to execute the decree passed in terms of clause hereinabove mentioned till 30th September 1973 or to disturb the possession

of the defendants in respect of the suit premises and the said articles and the defendants will be entitled to remain in possession of the suit premises

as licensees.... AND THIS COURT BY AND WITH SUCH CONSENT DOTH FURTHER RECORD that the defendants do agree with the

plaintiffs and undertake to this Hon''ble Court to hand over to the 1st plaintiff or the said Kishorekumar Jethalal Dave possession of the suit

premises together with the articles mentioned in Schedule Exh. A'' annexed hereto on or before the 30th day of September 1973 or such earlier

date that the plaintiffs may become entitled to execute the decree....

As far as the rest of the consent decree is concerned, it may be mentioned that the consent decree recites the prayers in the plaint and permits the

respondents to carry out the amendment joining appellant No. 1 as a party defendant to the suit. The consent decree records an undertaking on

behalf of the defendants that they will not part with the possession of the suit premises or with any of the articles mentioned in Schedule ''A''

annexed to the consent decree. The consent decree also provides for certain payments in respect of municipal and other rates, taxes and charges

to be made by the defendants and for the return of the deposit of Rs. 20,000 to the defendants, which amount was deposited under the terms of

the agreement dated May 8, 1958, on the handing over of possession by the defendants and provides for an indemnity by the plaintiffs

(respondents) to keep the defendants harmless against any claim that may be made against them by Hariprasad Someshwar Dave or

Krishnakumar Jethalal Dave and Ashvinikumar Jethalal Dave in respect of their handing over possession of the suit premises to respondent No. 1

or his son Kishorekumar Jethalal Dave. The Schedule ''A'' which is annexed to the consent decree, contains the description of the property of

Roop Talkies situated at Military Road (now known as Pandit Jawaharlal Road), Santa Cruz East, Bombay, and the latter portion of the said

schedule contains a description of the movable properties referred to in the consent decree, to which description we shall come a little later in some

detail.

4. On March 31, 1973 Maharashtra Act No. XVII of 1973 came into force, under which certain amendments were introduced into the Bombay

Rent Act. The ""Statement of Objects and Reasons"" to this Act shows that the mischief, which was intended to be remedied was that the provisions

of the Bombay Rent Act were being avoided by the expedient of giving premises on leave and licence for some months at a time, often renewing

the same from time to time at a higher licence fees. It was felt that the licensees were thus charged excessive licence tees and had no security of

tenure, and hence it was provided by Clause 14 of the Bill that certain licensees should be granted protection as statutory tenants. We may make it

clear that we have referred to the Statement of Objects and Reasons not as a guide to the interpretation of the provisions introduced by the new

Act but merely to show the circumstances under which the said provisions were introduced. On July 21, 1973 defendant No. 1 died intestate

leaving behind him the present appellants as his heirs and legal representatives. On July 25, 1973 appellant No. 1 received a letter addressed to

defendant No. 1 by the advocate of the respondents pointing out that both the defendants had given an undertaking to the Court not to part with

the possession of the aforesaid premises and articles and alleging that the defendants had repeatedly committed breaches of certain terms of the

consent decree regarding the payment of the amount of municipal and other rates, taxes and charges. By the said letter the attention of the

defendants was drawn to the undertaking given by them to hand over possession of the said cinema theatre premises with all articles therein on or

before September 30, 1973 and a hope was expressed that the defendants would observe the undertakings given by them. By the said advocate''s

letter the respondents expressed their desire to take over possession of the suit premises and the articles therein on September 30, 1973. On

September 12, 1973 the appellants took out a Chamber Summons praying that appellant No. 1 (defendant No. 2) should be relieved of the

aforesaid undertaking given by him under the consent decree dated September 16, 1969 and that pending the hearing and final disposal of the suit

filed by the appellants against the respondents in the Court of Small Causes at Bombay being R.A.N. Declaratory Suit bearing Stamp No. 7239 of

1973 all proceedings in execution of the consent decree should be stayed. It may be mentioned that prior to taking out this Chamber Summons the

appellants had filed the aforesaid suit in the Court of Small Causes for a declaration of their alleged rights as tenants in the suit premises.

Admittedly, the undertaking was not complied with and possession of the suit premises and the said articles was not handed over to the

respondents on September 30, 1973, nor has this been done till today.

5. This Chamber Summons reached hearing before Gandhi J. Briefly stated the case of the appellants in support of the Chamber Summons was

that the consent terms and the consent decree passed in the aforesaid suit No. 375 of 1962 amounted to a contract between the parties under

which a licence was granted by the respondents in favour of the defendants in respect of the suit premises, namely, the Roop Talkies with effect

from the date of the decree till September 30, 1973. It was contended that u/s 15A, which has been added to the Bombay Rent Act by the

aforesaid Maharashtra Act XVII of 1973, the appellants had become the tenants of the respondents in respect of the Roop Talkies from February

1, 1973, as they were in occupation of the Roop Talkies on February 1, 1973 as licensees. It was further contended that on the death of

defendant No. 1, the appellants became tenants protected under the provisions of the Bombay Rent Act as amended and that the appellants were

entitled to remain and continue in possession of the Roop Talkies notwithstanding the aforesaid decree. Averments were made regarding the filing

of the aforesaid suit in the Court of Small Causes. It was submitted that the respondents were not entitled to execute the decree against appellant

No. 1 or the other appellants or to enforce the undertaking given by appellant No. 1 or the deceased defendant No. 1 at the time of the passing of

the said consent decree. It was further prayed that in the said circumstances it was convenient, necessary and in the interests of justice that

appellant No. 1 should be relieved of the undertaking given by him. The contentions of the respondents were that the consent decree concluded

the position once and for all that the deceased defendant No. 1 was not a lessee, but was conducting the business of the Roop Talkies. It was

denied that the defendants were to remain in possession of the said suit premises till September 30, 1973 as licensees as alleged by them. It was

alleged that the defendants were merely given time to vacate and were permitted by the decree to continue to conduct the business till September

30, 1973. It was submitted that the appellants were not entitled to raise any plea of protection in breach of the undertaking given to the Court and

it was denied that the appellants or the defendants were licensees under any of the aforesaid agreements. It was submitted that the provisions of

Section 15A of the Bombay Rent Act had no application to the appellants.

6. By his judgment and order disposing of the Chamber Summons Gandhi J. held that he was not prepared to accept the submission made on

behalf of the appellants that a licence was created in respect of the Roop Talkies by the consent decree as alleged by them. It was observed that

the undertaking given by the defendants left no room for doubt that there was no intention to create any legal relationship between the respondents

and the defendants. It was further held by Gandhi J. that even assuming that a licence had been created, it was not a licence in respect of the

premises but it was a licence for conducting the business of M/s. Roop Talkies and to facilitate this business to use the premises, the building Roop

Talkies. It was held that as there was no licence much less a subsisting licence in favour of the appellants, they were not entitled to any benefit

under the provisions introduced by the amendments into the Bombay Rent Act as aforestated. It was further held by Gandhi J. that the appellants

had failed to make out any case for being relieved of the undertakings given by them. In view of these findings, the Chamber Summons was

dismissed by Gandhi J. This appeal has been preferred against that decision.

7. It may be mentioned that along with the Chamber Summons, there were also certain other proceedings, which were placed for hearing before

Gandhi J., but as these were not disposed of, we are not concerned with the same in this appeal.

8. As the contentions raised in this appeal turn largely upon the provisions of Sections 15A and 5(4A) introduced in the Bombay Rent Act by the

aforesaid Maharashtra Act XVII of 1973, it would not be out of place to set out these provisions here. Sub-section (4A) of Section 5 of the

Bombay Rent Act runs as follows:

''licensee'', in respect of any premises or any part thereof, means the person who is in occupation of the premises or such part, as the case may be,

under a subsisting agreement for licence given for a licence fee or charge; and includes any person in such occupation of any premises or part

thereof in a building vesting in or leased to a co-operative housing society registered or deemed to be registered under the Maharashtra Co-

operative Societies Act, 1960; but does not include a paying guest, a member of a family residing together, a person in the service or employment

of the licensor, or a person conducting a running business belonging to the licensor or a person having any accommodation in a hotel, lodging

house, hostel, guest house, club, nursing home, hospital, sanatorium, dharmashala, home for widows, orphans or like premises, marriage or public

hall or like premises, or in a place of amusement or entertainment or like institution, or in any premises belonging to or held by an employee or his

spouse who on account of the exigencies of service or provision of a residence attached to his or her post or office is temporarily not occupying

the premises, provided that he or she charges licence fee or charge for such premises of the employee or spouse not exceeding the standard rent

and permitted increases for such premises, and any additional sum for services supplied with such premises, or a person having accommodation in

any premises or part thereof for conducting a canteen, creche, dispensary or other services as amenities by any undertaking or institution; and the

expression ''licence'', ''licensor'' and ''premises given on licence'' shall be construed accordingly;

Section 15A runs as under:

15A. (1) Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any

contract, where any person is on the 1st day of February 1973 in occupation of any premises, or any part thereof which is not less than a room, as

a licensee he shall on that date be deemed to have become, for the purposes of this Act. the tenant of the landlord, in respect of the premises or

part thereof, in his occupation.

(2) The provisions of Sub-section (1) shall not affect in any manner the operation of Sub-section (1) of Section 15 after the date aforesaid.

Certain other provisions of the Bombay Rent Act may also be noted at this stage. Section 12(1) of that Act provides that a landlord shall not be

entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent

and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions

of that Act. Section 13 of the Act sets out the circumstances when the landlord would be entitled to recover possession of the premises.

9. The submission of Mr. Mehta, the learned Counsel for the appellants, was that on February 1, 1973 the appellants were in occupation of the

premises of Roop Talkies, which was admittedly not less than a room, as the licensees under the said consent decree, that on that day the said

licence was subsisting and it was given for a fee or charge and they have, therefore, become, for the purposes of the Bombay Rent Act, the tenants

of the respondents in respect of these premises. It was further submitted that in view of their becoming tenants of the suit premises, the respondents

were not entitled to recover possession of the premises notwithstanding anything contained in the consent decree, as the grounds set out in Section

13 had not been established to the satisfaction of any Court. In our view, and this is not disputed by the learned Counsel for the appellants, it is

clear that in order to claim protection as tenants u/s 15A of the Bombay Rent Act the appellants must be licensees in respect of ""premises"" as

denned in the Bombay Rent Act. This is clear from the very words of Sub-section (4A) of Section 5, which starts by defining the term ""licensees

as being in respect of any premises or any part thereof. Moreover, the provisions of Section 6 of the Bombay Rent Act clearly show that the

provisions of part II which includes Section 15A, apply only to premises let or given on licence for residence, education, business, trade or

storage. It is thus beyond dispute that before the appellants or appellant No. 1 can claim the protection afforded by Section 15A, they must

establish that they were the licensees under a subsisting licence on February 1, 1973 in respect of ""premises"" as defined under the Bombay Rent

Act. Section 5(8) of the Act defines ""premises"" thus:

''premises'' means-

(a) any land not being used for agricultural purposes,

(b) any building or part of a building let or given on licence separately (other than a farm building) including-

(i) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,

(ii) any furniture supplied by the landlord for use in such building or part of a building,

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof,

but does not include a room or other accommodation in a hotel or lodging house;

In this connection, the submission of Mr. Sorabjee, the learned Counsel for the respondents, was that even assuming that there was a licence

created in favour of the defendants or the appellants under the said consent decree, the said licence was not in respect of ""premises"" as denned in

Section 5(8) referred to above, as the subject-matter of the alleged licence was the running business of Roop Talkies and not the building or the

theatre known as Roop Talkies. It was urged by him that even assuming that the said consent decree created a licence in favour of the appellants, it

was clear that the dominant intention of the parties respectively was to grant and take a licence in respect of the cinema business conducted in the

said building of Roop Talkies and not the building by itself. In this connection, strong reliance was placed by him on the decision of the Supreme

Court in Uttamchand Vs. S.M. Lalwani, In that case, a lease had been executed by the respondent Lalwani in favour of the appellant in respect of

what was described as a Dal mill building with fixed machinery in sound working order and accessories on a certain annual rent. The question,

which arose was, whether this lease could be said to be a lease of an accommodation within the meaning of Section 3 of the M.P. Accommodation

Control Act, 1955. Section 3(a) of that Act defined the term ""accommodation"" as meaning:

(x) any land which is not being used for cultivation;

any building or part of a building, and it includes-

(1) garden, open land and outhouses, if any, appurtenant to such building or part of a building;

(2) any furniture supplied by the landlord for use in such building or part of a building;

(3) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof.

The question which arose before the Supreme Court was whether the lease was in respect of the accommodation as denned above. It was

observed by their Lordships of the Supreme Court that the character of the lease must be determined by ascertaining as to what was the dominant

intention of the parties in executing the document. The Supreme Court went on to observe as follows (p. 719):

...There can be no doubt that the fittings of the machinery in the present case cannot be said to be fittings which had been fixed for the more

beneficial enjoyment of the building. The fittings to which Section 3(a)(y)(3) refers are obviously fittings made in the building to afford incidental

amenities for the person occupying the building. That being so, it is clear that the fittings in question do not fall u/s 3(a)(y)(3).

It was held that the dominant intention of the appellant in accepting the lease from the respondent was to use the building as a Dal mill and that it

was not a lease whereby the appellant entered into possession for the purpose of residing in the building at all. It was a case where the appellant

entered into the lease for the purpose of running the Dal mill which was located in the building. On the basis of these findings, it was held that the

provisions of that Act were not attracted to the lease in. question. In the case before us, we find that under the consent decree, assuming that it

does grant a licence in favour of the appellants, this licence is in respect of not only the immovable property described in the schedule to the

consent decree, but also in respect of certain furniture and fittings. We need not concern ourselves with the items of furniture referred to in the

schedule to the consent decree. However, the description of the items, which certainly cannot be regarded as items of furniture, but which, it is

common ground, might be regarded as fittings, shows that a considerable amount of cinema equipment was covered by this alleged licence. This

equipment, inter alia, consists of two projectors, several spools, two Big Intensity arc-lamps with 14"" mirrors, a sound system, several amplifiers, a

supply unit and several other articles, which can conveniently be described as the usual cinema accessories. A detailed description of these items is

contained under the head ""Machinery"" in the said schedule. It appears to us that these fittings, which can by no stretch of imagination be regarded

as merely incidental, were not intended for the more beneficial occupation of the building of Roop Talkies but were clearly intended for the running

of the business of exhibiting cinema films therein. We may point out that under the provisions of Section 5(8) of the Bombay Rent Act, the fittings

which are included in the term ""premises"", are fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. The

definition of the term ""premises"" contained in the Bombay Rent Act is in part materia with the definition of the term ""accommodation"" in the M.P.

Accommodation Control Act, 1955, which was under consideration before the Supreme Court in the case referred to by us above. It appears to

us that if the principle laid down by the Supreme Court in that decision is to be applied, then only such fittings can be included in the term

premises"" as are intended for the beneficial enjoyment of the building as such and not such fittings as are intended for use in the running of any

particular business like the business of exhibition of cinematograph films in the building. As we have already pointed out, the fittings which are

covered by the schedule to the consent decree can, in no case, be said to be merely incidental or of no value. The provisions of the consent decree

show that substantially the same importance has been given to these fittings as to the building of Roop Talkies. As in the case before the Supreme

Court, it appears to us that under the consent decree, even assuming that it did create a licence, the same was not for residing in the building of the

Roop Talkies, but for the purpose of running the business of exhibiting of cinematograph films in the said building. We may make it clear that

although it is a little doubtful as to whether this cinema equipment can be covered by the term ""fittings"", both the parties have proceeded on that

footing and even if these are not held to be fittings, this in no way helps the appellants, because this equipment can never be said to be furniture. In

view of this, it appears to us that there is substance in the submission of Mr. Sorabjee that the appellants cannot be said to be the licensees as

defined in Section 5(4A) of the Bombay Rent Act at all. We may mention that Mr. Sorabjee also drew our attention to the decision of the Madras

High Court in Pals Theaters and Others Vs. B. Abdul Gafoor Sahib and Others, where it was held that the word ""building"" in Section 3(5) of the

Madras Buildings (Lease and Rent Control) Act, 1960, only includes fittings and fixtures in the nature of essential amenities for buildings let for

residential/non-residential purposes. In our view, this decision is not very helpful in the case before us, as the definition of the term ""building"" in the

said Madras Act is not in pari materia with that of the term ""premises"" in Section 5(8) of the Bombay Rent Act.

10. It was urged by Mr. Mehta, on the other hand, that the term ""premises"" as defined in Section 5(8) of the Bombay Rent Act would include the

fittings in question before us. It was submitted by him that a cinema theatre equipped with the usual cinema accessories should be included in the

term ""premises"" in Section 5(8) of the Bombay Rent Act. Our attention was drawn by Mr. Mehta to the decision in Mohammad Jaffer Ali Vs. S.

Rajeswara Rao and Others, ., where it has been held that the expression ""any fittings affixed by the landlord for use in such house"" includes

apparatus and machinery and that a cinema theatre is nothing but a large house with furniture supplied and cinema apparatus and other accessories

affixed therein. There the question arose under the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960. In that case, the

lease in question was in respect of a cinema theatre with the usual cinema accessories and a question arose as to whether this could be said as

lease of a building under that Act. We find, however, that the decision in that case does not support the contention of the appellants before us. In

the first place, it must be noticed that the definition of the term ""building"" contained in the A.P. Act is substantially different from that of the term

premises"" in the Bombay Rent Act, as far as fittings are concerned. The relevant portion of Section 2(iii) of the A.P. Act, which defined the term

building"", clearly shows that furniture and fittings affixed by the landlord for use in the house in question were included in the definition of the term

building"". The question before the Andhra Pradesh High Court, therefore, was whether the fittings in question were for use in the house or the

building. In that case, it could not be gainsaid that the cinema equipment was for use in the cinema building. It appears that it is in view of this

definition that the Full Bench of the Andhra Pradesh High Court took the view that if cinema apparatus is fixed in the building for use therein, it

becomes a fitting affixed in a building and is included within the term ""building"" in that Act. In the case before us, however, the word ""premises

includes only fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. As we have already pointed out, the

Supreme Court has held in Uttamchand v. S.M. Lalwani that this beneficial enjoyment is the beneficial enjoyment of the building as such viz. for

residential use or occupation as such and not for conducting any particular business therein. The word ""use"" employed in the Andhra Pradesh Act,

on the other hand, would include use even for the purpose of a particular business. In view of this material distinction in the definition of the term

building"" in the Andhra Pradesh Act and that of the term ""premises"" in the Bombay Rent Act, we are of the view that this decision will not be of

any help to Mr. Mehta in this case. It is significant that the Full Bench of the Andhra Pradesh High Court has in this decision taken note of the

decision of the Supreme Court in Uttamchand v. S.M. Lalwani, to which we have already referred, and has pointed out that that decision turns on

the definition of the term ""accommodation"" in Section 3(a) of the Madhya Pradesh Accommodation Control Act, 1955. The Full Bench has further

pointed out that the decision of the Supreme Court was in the light of the peculiar definition of the term ""accommodation"" and it was on that ground

that the Full Bench has distinguished that decision. In the case before us, as we have already pointed out, the definition of the term ""premises"" in

Section 5(8) of the Bombay Rent Act is in pari materia with the definition of the term ""accommodation"" in the M.P. Act, and hence, in our view,

the ratio of the Supreme Court decision is applicable to this case. Moreover, in the case relied on by Mr. Mehta, as it appears from para. 5 of the

judgment, the Full Bench has also taken into account the material provisions contained in the document of lease as showing that the lease was really

in respect of the theatre and not of any business.

11. Our attention was next drawn by Mr. Mehta to the decision in K. Kungu Govindan and Others Vs. Parakkat Kunhilekshmi Amma and

Others, , where it was held that the letting of a cinema theatre together with the furniture and other accessories supplied by the landlord for use in

such a building would amount to letting of a ""building"" within the meaning of Section 2(1) of the Kerala Buildings (Lease and Rent Control) Act,

1959 as amended by Kerala Act 29 of 1961. In this case again, it must be pointed out that the word ""building"" is so defined in Kerala Buildings

Act, 1959 as to include any furniture supplied by the landlord for use in the building or any part thereof. That Act was amended by Kerala Act 29

of 1961 and by that Act it was provided that any furniture supplied or any fittings affixed by the landlord for use in such building or part of a

building would be included in the term ""building"". This is clear from the contents of paras. 7 and 8 of the above report. This decision again turns on

the definition of the term ""building"" contained in the Kerala Buildings Act, which included the fittings affixed by the landlord for use in such building.

In fact, it is significant that in this decision the learned Judges of the Kerala High Court have considered the decision of the Supreme Court in

Uttamchand v. S. Lalwani and have pointed out that, the Supreme Court in that case had to consider the proper interpretation to be placed on the

expression ""accommodation"" in Section 3(a) of the M.P. Accommodation Control Act, 1955. The Full Bench of the Kerala High Court has

pointed out the difference in the definition of the word ""accommodation"" in the M.P. Act and that of the word ""building"" in the Kerala Act. The Full

Bench has indicated that it was by reason of the definition of the term ""accommodation"" contained in the M.P. Act that the Supreme Court came to

the conclusion that the items of machinery in question before it could not be considered to be fittings affixed for more beneficial enjoyment of the

building in question As we have already pointed out, the definition of the term ""premises"" in Section 5(8) of the Bombay Rent Act, particularly in

connection with fittings, is in pan materia with the definition of the term ""accommodation"" in the M.P. Act and is materially different from the

definition of the term ""building"" in the Kerala Act, 1959 as amended by Act 29 of 1961. In view of this, this decision also is of no assistance to Mr.

Mehta.

12. Mr. Mehta next referred to the decision of the Calcutta High Court in D.S. Jain v. Meghamala Roy (1964) 68 C.W.N . where it was held that

the lease of a furnished and well-equipped cinema house comprising a building with furniture and machineries etc. necessary for a cinema show

house would come within the purview of the West Bengal Premises Tenancy Act, 1956. This decision, however, is not of much assistance in the

case before us, because the definition of the term ""premises"" in the aforesaid Act has not been considered at all. Moreover, the relevant terms of

the lease, which have been referred to in the judgment show that a large part of the rent was for the use of things other than machinery. Moreover,

it appears from the decision of the Calcutta High Court in Residence Ltd. Vs. Surendra Mohan Banerjee and Others, that the word ""premises"" in

the West Bengal Premises Rent Control Act, 1950 was defined as including any furniture supplied or any fittings affixed by the landlord for use of

the tenant in such building or part of a building. It is common ground before us that there was no material difference in the definition of the term

premises"" under the West Bengal Premises Tenancy Act 1956 at the relevant time. But this definition, as we have already pointed out, is materially

different from the definition of the term ""premises"" in the Bombay Rent Act. Hence, this decision of the Calcutta High Court in D.S. Jain v.

Meghamala Roy is of no assistance to Mr. Mehta in his aforesaid submission. Reference was also made by Mr. Mehta to the decision of a division

Bench of the Gujarat High Court in M.R. Desai v. Alibhai (1960) 2 Guj. L.R. 102. In that case, it was held that a factory is not premises within the

operation of the Bombay Rent Act, 1947. There is, however, a passing observation in this decision to the effect that in a cinema theatre what is let

out is obviously the theatre and the mere fact that a projecting machine is part of the agreement would not convert a letting out of a theatre into a

letting out of something which is not premises. This, however, admittedly is not the ratio of the case. At best, it can be considered to be an obiter

but it really appears to us to be no more than a merely passing observation. Moreover, there is no discussion regarding the definition of the term

premises"" and hence, this observation is of little assistance in the present case.

13. In the light of the above discussion, we are of the view that even assuming that a licence was created by the consent decree in favour of the

defendants or the appellants, that licence was not in respect of ""premises"" as defined in the Bombay Rent Act. Hence the appellants cannot claim

to be the licensees of premises as defined in Section 5(8) of the Bombay Rent Act, and they cannot claim to be protected as tenants under the

provisions of Section 15A of that Act. We may point out that, in the view which we are taking, there is nothing in the provisions of Sections 15A

and 5(4A) of the Bombay Rent Act which would affect the excitability of the consent decree. The only case made out by appellant No. 1 for being

relieved from the undertakings given under the aforesaid consent decree is on the basis of the said consent decree having ceased to be executable,

and hence that case must also fail. In our view, therefore, the appeal of the appellants is liable to be dismissed on this ground alone. As however,

several other arguments have been advanced before us, we propose to refer briefly to some of them.

14. It was submitted by Mr. Mehta that on February 1, 1973 the appellants were in occupation of the Roop Talkies under the aforesaid agreement

of licence created by the said consent decree. This licence was not gratuitous, the occupation was admittedly of not less than a room, and the

agreement of licence was subsisting till September 30, 1973 and hence, the appellants became entitled to be considered as tenants under the

provisions of Section 15A of the Bombay Rent Act. The provisions of Sub-section (4A) of Section 5 of the Bombay Rent Act, to which we have

already referred, show that to be considered as a ""licensee"", it must be established that the person in occupation was in such occupation under a

subsisting agreement of licence. The first question, therefore, to be considered is whether the consent decree can be considered to be an

agreement. Mr. Mehta submitted that a consent decree was merely a contract between the parties to which was superadded a command of the

Judge. It was further submitted that a consent decree could bring about the relationship of landlord and tenant or lessor or lessee between the

parties thereto and that all consequences which flow from a contract will also flow from a consent decree or order embodying a contract between

the parties. On the other hand, it was submitted by Mr. Sorabjee that when a consent decree, although it has its origin in the consensus of the

parties, is passed, it bears the imprimatur of the Court and becomes the rule of the Court, and hence it cannot be equated with a mere contract

between the parties but it is something more than a contract. It was further submitted by Mr. Sorabjee that the expression ""subsisting agreement"" in

Sub-section (4A) of Section 5 of the Bombay Rent Act does not cover an undertaking to the Court or an order or decree of the Court. In this

connection, several authorities have been cited by the respective counsel. However, as we have already taken the view that the appellants are not

entitled to be considered as licensees u/s 5(4A) of the Bombay Rent Act for the reasons which we have set out earlier, we do not feel called upon

to refer to these authorities or to decide the question as to whether the said consent decree can be said to be a subsisting agreement for the

purpose of Section 5(4A) of the Bombay Rent Act.

15. The next question which was debated before us was as to whether it could be said that any licence was created by the said consent decree,

even assuming that it amounted to an agreement between the parties. In this connection also, we may make it clear that, in the view which we have

taken, we do not feel called upon to determine this question, because even assuming that such a licence was created by the consent decree, in our

view, the appellants are still not entitled to the protection of Section 15A of the Bombay Rent Act as the licence was not in respect of ""premises"".

We, however, propose to refer to some of the arguments advanced by the respective counsel in this connection. It was urged by Mr. Sorabjee

that the provisions of the consent decree considered in the light of the surrounding circumstances show that there could have been no intention on

the part of the respondents to create any relationship between them and the defendants. There was already a suit for possession filed by the

respondents against the defendants. The decree provided for possession of the suit property and the articles latest by September 30, 1973. In

these circumstances, it was submitted by Mr. Sorabjee that there could never be any intention on the part of the respondents to create any

relationship or right in favour of the appellants. In this connection, reliance was placed by both the parties on the decision in Ramjibhai Virpal Shah

Vs. Gordhandas Maganlal Bhagat, where it has been held by a division Bench of this Court that in a suit between the landlord and his tenant where

the tenant claims the protection of the Rent Restriction Act, it would be open to the landlord to enter into an agreement with the tenant by which

the relationship of landlord and tenant can be created afresh between the parties. Where the agreement is reduced to writing, the relationship

brought into existence by the writing must always be determined in the light of the words used by the parties in executing the document. The

substance of the transaction has to be determined, and if in substance the transaction appears to be one of lease, the fact that an effort is made to

clothe the transaction with an appearance of licence by the use of ingenious and clever words would not alter the essential character of the

transaction. In that sense the use of words such as ""mesne profits"" or ""compensation"" can have no material effect. But, this is a statement of one

aspect of the matter. It has been observed in that case that if the intention of the parties clearly appears to be not to create the relationship of

landlord and tenant between them, then in construing the words used in the document the Courts would have to bear that fact in mind. In this

connection, the contention of Mr. Mehta was that the words used in the consent decree must be interpreted in their plain and grammatical sense. It

was submitted by him that consent decree clearly provided that the respondents agreed and undertook not to execute the decree till September

30, 1973 or to disturb the possession of the defendants in respect of the suit premises and the said articles and recognized the right of the

defendants to remain in possession of the suit premises till September 30, 1.973 as licensees subject to certain eventualities. It was pointed out by

him that the consent decree in terms declared that the appellants would be at liberty to carry on the business of exhibiting cinematograph films in the

suit premises till September 30, 1973 except for certain eventualities. It was submitted by him that in the case of interpretation of a written

document the intention of the parties must be gathered from the written document. The function of the Court is to ascertain as to what the parties

meant by the words which they have used; to declare the meaning of what is written in the instrument, not of what was intended to have been

written; and to give effect to the intention as expressed, the expressed meaning being, for the purpose of interpretation, equivalent to the intention.

See Halsbury''s Laws of England, third edn., vol. 11, p. 382. Reliance was placed by Mr. Mehta on the decision in Smt. Kamala Devi Vs. Seth

Takhatmal and Another, where it has been observed in connection with construing the terms of a security bond that if the language is clear and

unambiguous and applies accurately to the existing facts, the Court shall accept the ordinary meaning, for the duty of the Court is not to delve deep

into the intricacies of the human mind to ascertain one''s undisclosed intention, but only to take the meaning of the words used by him, that is to say

his expressed intention. As against this, it is the submission of Mr. Sorabjee that the golden rule regarding construction of decrees or other written

instruments which the Court has to observe is to find out the substance of the transaction and to construe the words in the light of the intention of

the parties. It was submitted by him that in the present case the substance of the matter was that there was a final decree for possession, the

execution of which was conditionally postponed for some time and that the possession of a person under a conditional decree for eviction cannot

be regarded as that of a statutory tenant or a licensee. It was urged by Mr. Sorabjee that on the construction of the consent decree, no licence was

created but only a concession was granted to the defendants, as the judgment-debtors, to remain in occupation for some time under a decree for

eviction and that the use of the word ""licensee"" in the decree is not decisive. This word was used merely to obviate a possible contention of

tenancy by the defendants. Strong reliance was placed by Mr. Sorabjee on the decision of the Supreme Court in Bai Chanchal and Others Vs.

Syed Jalaluddin and Others, . In that case the lessors filed a suit against the lessees for recovery of possession. On July 8, 1946 on the basis of a

consent decree the suit was decreed against some of the occupants including the four appellants. The agreement on the basis of which the decree

was passed provided that the defendant-appellants would continue in possession of the property for a period of five years and would hand over

possession after the expiry of this period of five years. During this period they undertook to pay mesne profits at the various rates. It was held that

the terms of the agreement could not be interpreted as creating a new tenancy constituting the decree-holders as landlords and the judgment-

debtors as their tenants. It was observed that the terms of the consent decree neither constituted a new tenancy nor a licence. All that the decree-

holders did was to allow the judgment-debtors to continue in possession for five years on payment of mesne profits as a concession for entering

into a compromise. In our view, this decision would have been directly applicable had there been a mere decree for possession and the execution

thereof had been postponed for some time. But, in the decree before us there are certain other provisions to which we have referred earlier, and to

which our attention was drawn by Mr. Mehta, which might possibly make a difference. As we have already observed, we do not propose to

decide this question and we have merely referred to some of the arguments advanced and authorities relied on by the parties in this regard.

16. The next point on which some controversy was raised before us was as to whether, even assuming that the consent decree created a licence in

respect of premises under a subsisting agreement, the defendants or the appellants were not included within the meaning of the term ""licensee"" u/s

5(4A) of the Bombay Rent Act as they were persons conducting a running business belonging to the lessors viz. the respondents. It was submitted

by Mr. Sorabjee that the defendants, and now the appellants, were conducting the business belonging to the respondents and hence were not

included in the definition of the term ""licensee"" in Section 5(4A) of the Bombay Rent Act. On the other hand, it was submitted by Mr. Mehta that

there was nothing on the record to establish that the defendants or the appellants were conducting a running business belonging to the respondents

and that the record, on the contrary, showed that the running business belonged to the appellants. This is again a contention which we do not feel

called upon to decide in the view which we have already taken.

17. The next question, which we propose to consider is as to what would be the situation, if the defendants or the appellants must be deemed to

have become tenants in respect of the suit premises u/s 15A of the Bombay Rent Act. It was the submission of Mr. Mehta that once the appellants

are held to be tenants within the meaning of the Bombay Rent Act in respect of the premises of Roop Talkies u/s 15A, then it must follow that the

consent decree against them for possession has become inexecutable. The submission of Mr. Mehta is that u/s 12(1) of the Bombay Rent Act a

landlord is not entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the

standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy. In the present case, the defendant

No. 1 and, after his death, appellant No. 1 and the other appellants were ready and willing to pay the standard rent of the premises. Nor has it

been shown that they had committed any breach of the terms or conditions of the tenancy. Hence, notwithstanding the decree the respondents as

the landlords are not entitled to recover possession of the premises from the appellants. Mr. Mehta frankly conceded that it was not his contention

that the decree was a nullity or void at the time when it was passed. It was urged by him that a decree, though valid when passed may become

inexecutable by subsequent legislation and it is the duty of the executing Court to give effect to such subsequent legislation. It was submitted that a

decree can become inexecutable either if the right of the decree-holder under the decree is taken away or if statutory protection is given to the

judgment-debtor, which is inconsistent with the execution of the decree. Strong reliance was placed toy Mr. Mehta in this connection on the

decision of J.C. Shah J. (as he then was) in Gurupadappa Shivlingappa v. Akbar (1949) 52 Bom. L.R. 143. In that case the plaintiff was the

owner of certain premises in Belgaum of which the defendant was in possession as a tenant. The suit filed by the plaintiff against the defendant

ended, on July 11, 1947, in a consent decree under which the defendant admitted that he was a monthly tenant. The decree provided inter alia that

the defendant do deliver up possession of the suit property to the plaintiff before January 31, 1948. At the date of the decree, the Bombay Rent

Act, 1944, was in force. That Act was repealed by the Bombay Rent Act, 1947, which came into force on February 13, 1948. On February 16,

1948 the plaintiff applied to execute the consent decree by recovering possession of the demised premises. The defendant contended that he was

not liable to be evicted but was entitled to the protection afforded by Section 12(1) of the Bombay Rent Act, 1947. It was held by Shah J. that by

virtue of the consent decree the defendant became a contractual tenant of the plaintiff and was entitled to claim the benefit of Section 12(1) of the

Bombay Rent Act of 1947. There was no material on the record of the case to indicate that the plaintiff''s case fell within the terms of Section 13 of

the Bombay Rent Act and if the defendant was entitled to the benefit of Section 12(1) of that Act, then the execution darkhast was liable to be

dismissed. It was observed by Shah J. that a statutory provision may, either expressly or by implication, prevent execution of a decree according

to its terms. It is true that according to this decision, the protection of Section 12(1) of the Bombay Rent Act can be claimed even in respect of a

decree passed at a time when the provisions of the Bombay Rent Act were not applicable. It must be remembered, however, that this is a decision

of a single Judge of this Court and the persuasive authority of this decision is somewhat shaken by the decision in Ramjibhai Virpal v. Gordhandas.

In that case it has been held (at p. 380), in connection with Section 9(7) of the Bombay Rent Act, 1944, which was in pari materia with Section

12(1) of the Bombay Rent Act, 1947, that once a decree is passed, Section 9(1) of that Act cannot be invoked for the simple reason that the

executing Court will have no jurisdiction to go behind the decree and allow questions to be raised which affect the propriety of the decree itself. It

was held that Section 9(1) had no application to execution proceedings. The division Bench has also taken the view (see p. 382) that the

provisions of Section 12(1) of the Bombay Rent Act are inapplicable to the execution proceedings. It was on that footing that the contention of

Mr. Desai, in that case, that his client was entitled to claim the status of a tenant under the Bombay Rent Act of 1947 in execution proceedings and

rely for support on the provisions of Section 12(1) of the Bombay Rent Act was negatived. Moreover, the observations in Gurupadappa

Shivlingappa''s case (at p. 145), to the effect that an executing Court is not always bound to execute a consent decree according to its terms if

these are contrary to the terms of a statute, are negatived by another division Bench of this Court in Govind Waman v. Murlidhar Shrinivas where it

has been held that a compromise decree passed by a Court of competent jurisdiction which contains a term contrary to the provisions of Section

10 of the Transfer of Property Act, 1882, is not a nullity and is binding as between the parties unless it is set aside by proper proceedings. The

division Bench has further held that it is necessary to distinguish between decrees which are illegal and void and those that are contrary to law. The

decrees falling in the latter category are binding between the parties unless they are set aside in proper proceedings. In that case the question which

arose in the appeal also related to execution proceedings-the application for execution having been allowed to be converted into a suit. This

decision, therefore, shows that the division Bench has taken the view that even if a term of a consent decree is contrary to the provisions of Section

10 of the Transfer of Property Act, 1882, the decree is not rendered a nullity and is liable to be executed by the executing Court. Moreover, in

Gurupadappa Shivlingappa''s case the question as to whether, even at the time when the consent decree was passed, on July 11, 1947, the Court

could have regarded the compromise as a lawful compromise under Order XXIII, Rule 3 of the CPC and passed a decree for possession thereon

seems to have been overlooked. It clearly appears from the judgment that even at the time when the decree was passed, the relations between the

parties were governed by the Bombay Rent Act of 1944. Section 9(1) of that Act provided, inter alia, that the landlord shall not be entitled to the

recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, rent to the full extent allowable and performs the

other conditions of the tenancy. There is nothing in the judgment to show that any of the grounds which would have entitled the landlord, under the

Bombay Rent Act, 1944, to the recovery of possession had been established, and hence it is doubtful whether the decree passed for possession

was itself valid or whether it was a nullity. As far as we are concerned, we are bound by the decision in Ramjibhai Virpal''s case to the effect that

Section 12(1) of the Bombay Rent Act has no application to the execution proceedings.

18. It was next urged by Mr. Mehta that even apart from the provisions of Section 12(1) of the Bombay Rent Act, once the appellants are

deemed to have become tenants under the Bombay Rent Act by subsequent legislation, the Court seeking to execute the aforesaid consent decree

dated September 16, 1969 is bound to take into account such legislation and decline to execute the decree. In this connection strong reliance was

placed by Mr. Mehta on the decision in Haji Sk. Subhan Vs. Madhorao, . In that case the respondent filed a suit for possession of certain fields

including the fields in suit and based his claim on his proprietary right to recover possession. The suit was decreed and the decree was upheld by

the High Court of Madhya Pradesh by its order dated April 20, 1951. It appears that sometime before March 31, 1951, and the delivery of

judgment on April 20, 1951, the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 came into force.

This fact was not brought to the notice of the High Court. The respondent decree-holder filed an execution application praying, inter alia, for

delivery of possession. It was held by the Supreme Court that the provisions of Section 3(1) and (2) of the aforesaid Madhya Pradesh Act viz. Act

No. 1 of 1951, were sufficient to divest the respondent of his proprietary right over the lands. It was held that under the said Act the rights of the

respondent decree-holder ceased to exist on March 31, 1951 by virtue of Sections 3 and 4 of that Act and vested in the State thereafter. On the

other hand it was held that the appellant continued in possession and had, on the basis of the entries in the village papers which had to be presumed

correct for the purpose of assessment of compensation, secured a declaration of his being malik makbuza of such land from an officer of the State

in whom the land in suit vested. His right to occupy the land under this right was not adjudicated by the High Court in the judgment leading to the

decree sought to be executed. He could therefore object to the execution of the decree for the delivery of possession as the respondent had no

subsisting right and as he had secured from the State a good right to possess it as a malik makbuza, even though it be on the basis of a wrong entry

in the village papers. It was observed that the principle that the executing Court could not question the decree and had to execute it as it stood, had

no operation in the facts of that case. The objection of the appellant was not with respect to the invalidity of the decree or with respect to the

decree being wrong. His objection was based on the effect of the provisions of the aforesaid Act which had deprived the respondent of his

proprietary rights, including the right to recover possession over the land in suit and under whose provisions the respondent had obtained the right

to remain in possession of it. In these circumstances, the executing Court could refuse to execute the decree holding that it had become

inexecutable on account of the change in law and its effect. We find that although at the first glance this decision lends some support to Mr.

Mehta"s contention, on a closer scrutiny of the decision it appears to be clearly distinguishable from the case before us. In that case, Section 3 in

terms provided for divesting of all proprietary rights of the proprietor in an estate, mahal, alienated village or alienated land in the area specified in

the notification and for vesting the same in the State free of all encumbrances. Section 4 of that Act provided that the consequences mentioned

therein would follow the notification u/s 3 notwithstanding anything contained in any contract, grant or document or in any other law for the time

being in force. It was held by their Lordships of the Supreme Court that a decree passed by a Court would be included in the term ""document

used in Section 4 of that Act. An analysis of this decision shows that in that case there was a clear provision taking away the right of a proprietor in

respect of an estate, mahal etc. even under a decree for possession, once a notification had been issued and there was a further provision for

vesting of the said rights in the State. In the present case, as we shall presently show, there are no words used in Section15A of the Bombay Rent

Act which in express terms override the effect of any decree for possession passed in favour of a party. Moreover, in that case the rights under the

decree were proprietary rights which vested in the State with retrospective effect. The decree, therefore, was executable, in any event, only at the

instance of the State and the right of the appellant to be continued in possession of the land as malik makbuza had been recognised by the State

itself. The observation in the judgment that the decree had become in-executable, on which strong reliance has been placed by Mr. Mehta, must be

considered in the light of these facts. In the case before us, apart from there being no words in Section 15A of the Bombay Rent Act which

express an intention to override any decree, there is no provision which takes away the right of the decree-holder or vests it in the State or any

other authority as in the case before the Supreme Court. In these circumstances, it appears to us that the ratio in that decision has no application to

the case before us. On the other hand, we find that in Ramdas P. Chitrigi Vs. Monica Pascol Miranda and Another, , it has been held by a Full

Bench of this Court that the provisions of the Bombay Rent Act do not apply to appeals pending on the date on which the provisions of Parts II

and III of the Act were applied to the premises which were the subject-matter of the proceedings. In that case, the view previously taken, that

Section 12 of the Bombay Rent Act is prospective and not retrospective, has been clearly approved. It appears to us that in the light of this

decision, there is substance in the submission of Mr. Sorabjee that the appellants are not entitled to claim protection of the provisions of Section

12(1) of the Bombay Rent Act. The provisions of Section 15A are prospective as from February 1, 1973. On the plain terms of Section 15A of

the Bombay Rent Act, there is nothing to show that it was intended to override any decree for possession which might have been passed prior to

its coming into force. It was, in this regard, submitted by Mr. Mehta that the opening words of Section 15A containing the non-obstinate clause

and running as follows:

Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract,...

were sufficient to override a consent decree as a consent decree is included in the term ""contract"" used therein. Reliance has been placed by Mr.

Mehta on the decision in Wentworth v. Bullen (1829) 109 E.R. 313, where it was observed by Parke J. that the contract of the parties is not the

less a contract, and subject to the incidents of a contract, because there is superadded the command of the Judge. This decision has been

approved in Conolan v. Leyland (1884) L.R. 27 Ch. D. 632. In that decision reference has been made to the statement of Chief Justice Erie see

Batson v. Newman (1876) L.R. 1 C.P. 573 to the effect that the above opinion expressed by Parke J. was really a considered judgment rather

than a dictum and was perfectly correct. Our attention has also been drawn by Mr. Mehta to the decision in Subba Rao v. Jagannadha Rao A.I.R

[1867] S.C. 591 where the Supreme Court has observed (para. 10) that compromise decree was not a decision by the Court. It was the

acceptance by the Court of something to which the parties had agreed. It has been said that a compromise decree merely sets the seal of the Court

on the agreement of the parties. The Court did not decide anything. Nor can it be said that a decision of the Court was implicit in it.

19. As against this, it was the submission of Mr. Sorabjee that once a consent decree has been passed, there is an imprimatur of the Court on the

agreement between the parties and it becomes a rule of the Court and it is something much more than a contract. It was submitted by him that the

word ""contract"" in Section 15A of the Bombay Rent Act does not cover an undertaking given to the Court or an order or decree of the Court. In

this connection, our attention was drawn by Mr. Sorabjee to the provisions of Section 4(4)(a) of the Bombay Rent Act, which was incorporated

into the Act by the Bombay Act 4 of 1953. Section 4(4)(a) provides that the expression ""premises belonging to the Government or a local

authority"" in Sub-section (1) of Section 4 shall notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a

Court, not include a building erected on any land held by any person from the Government. Similarly, reference may also be made to the provisions

of Section 15(2) of the Bombay Rent Act, which was added by Bombay Act 49 of 1959, where there is a specific reference in the non-obstinate

clause to the judgment, decree or order of the Court along with a contract. The provisions of Sections 4(4)(a) and 15(2) of the Bombay Rent Act

clearly show that at the time when Section 15A was enacted, the Legislature was aware that when it was intended to override the terms of any

judgment, decree or order, these were ordinarily specifically referred to in the non-obstinate clause and such appropriate language had, in fact,

been used in these provisions to achieve that object. Reference was also made by Mr. Sorabjee to the decision in Raja Kumara Venkata Perumal

Raja Bahadur v. Thatha Ramasamy Chetty I.L.R (1911) 35 Mad. 75 where it has been held that the basis of a compromise decree is a contract

between the parties to the litigation and the principles applicable to contracts would often have to be considered in determining the rules of

estoppel applicable to such decrees; at the same time, such a decree cannot be regarded as a mere contract, and has got a sanction far higher than

an agreement between parties. The parties to the decree cannot therefore put an end to it at their pleasure in the manner that they could rescind a

mere contract. Nor can it be impeached on some grounds on which a mere contract could be impeached such as absence of consideration or

mistake. At page 81 of the report we find that the division Bench of the Madras High Court has quoted with approval the observations contained

in the commentary by Black on ""Judgments"", second edn., (vol. I, p. 16), which run as follows:

The judgment is not the agreement; it is the act of the law invoked by the parties in executing the agreement.

In C.F. Angadi Vs. Y.S. Hirannayya, their Lordships of the Supreme Court, after considering the aforesaid observations of Parke J. in Wentworth

v. Bullen, have observed that a compromise decree between the parties was something more than a contract (see para. 12 of the report). In

Govind Waman v. Murlidhar Shrinivas the compromise decree contained a clause contrary to the provisions of Section 10 of the Transfer of

Property Act, 1882, as we have already pointed out, and it was sought to be contended that by reason of this it was not liable to executed at all.

This contention was advanced by Mr. Murdeshwar, who was appearing for the appellant in that matter. In connection with this contention,

Gajendragadkar J. (as he then was), who delivered the judgment of the Bench observed as follows (p. 468):

...If a decree had not been drawn in terms of compromise in the present case and the matter had remained merely at the stage of a compromise

between the parties, Mr. Murdeshwar undoubtedly would have succeeded. But the difficulty in his way arises by reason of the fact that to the

compromise of the parties a command of the Court has been super-imposed; and that makes all the difference.

These observations have been referred to by the Supreme Court in C.F. Angadi v. Y.S. Hirannayya (at p. 198). In view of these decisions, it

appears to us that although certain consequences which may result from a contract might also result from a consent decree, nevertheless a consent

decree passed by a Court on the basis of compromise between the parties cannot be equated with a contract, but must be regarded as something

more than a contract. In our opinion, the mere use of the word ""contract"" in the non-obstante clause in Section 15A of the Bombay Rent Act is not

enough to override a consent decree which provides for possession being handed over.

20. It was next submitted by Mr. Mehta that, even if the non-obstante clause in Section 15A of the Bombay Rent Act were to be altogether

disregarded, the main operative portion of that section shows that once a person was in possession of premises not less than a room as a licensee

on February 1, 1973 and the licence was subsisting on that date, he must be deemed to be a tenant thereof under that Act. It was submitted by

him that such a deemed tenancy would come into existence even where the licence was created by a consent decree which might provide for

possession being handed over. This may or may not be so. However, even if this is correct, it would not by itself render the decree inexecutable, in

so far as it provides for delivery of possession. As we have already pointed out, if the intention was to achieve that object, appropriate words

ought to have been used in the non-obstante clause in Section 15A of the Bombay Rent Act. It is true that the enacting part of a statute must,

where it is clear, be taken to control the non-obstante clause where both cannot be read harmoniously as submitted by Mr. Mehta. However, as

we have already pointed out, in our view, the operative part of Section 15A of the Bombay Rent Act read apart from the non-obstante clause

does not affect the execution of the decree for possession passed before the provisions of Section 15A came into force. In this regard, reference

may be made to the decision of the Supreme Court in Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others, to which

our attention has been drawn by Mr. Chagla, who appeared for one of the interveners. We are not concerned directly with controversy which

arose in that case. What is material, however, is, in the majority judgment the words of Bowen LJ. in Reid v. Reid (1886) L.R. 31 I.A 402, that in

construing a statute or a section in a statute which is to a certain extent retrospective, the Court ought nevertheless to bear in mind the maxim that,

except in special cases, the new law ought to be construed so as to interfere as little as possible with vested rights, have been cited with approval.

Once a decree for possession was passed in favour of the respondents, they undoubtedly acquired a vested right to recover possession under it

and an intention to interfere with such a vested right cannot be inferred except if the words of Section 15A clearly showed an intention to override

the provisions of a decree or order of a Court. In our view, therefore, even assuming that the appellants must be deemed to have become tenants

of the premises of Roop Talkies on February 1, 1973 under the provisions of Section 15A of the Bombay Rent Act, that by itself would not

render the consent decree inexecutable against them.

21. This brings us to the question as to whether any case has been made out that appellant No. 1 (defendant No. 2) should be relieved of the

undertaking given by him to the Court to hand over to respondent No. 1 or his son Kishorekumar the possession of the suit premises together with

the articles mentioned in Schedule "A" to the plaint. In this connection, the case of the appellants is that by virtue of the provisions of Section 15A

of the Bombay Rent Act, to which we have already made reference, the deceased defendant No. I and appellant No. 1 had become tenants of the

respondents in respect of the Roop Talkies on and from February 1, 1973 and after the death of defendant No. 1 the appellants and in any event

appellant No. 1 were tenants thereof under the provisions of the Bombay Rent Act as amended by the Act of 1973 and were entitled to the

protection of that Act notwithstanding the consent decree dated September 16, 1969. In view of the provisions of the Bombay Rent Act the

respondents were not entitled to execute the decree against any of the appellants. The possession of appellant No. 1 would be lost if the

respondents are permitted to enforce the undertaking given by appellant No. 1 at the time of passing of the consent decree and that it was,

therefore, just, convenient and necessary and in the interests of justice that appellant No. 1 should be relieved of the said undertaking given by him

to the Court. We have already taken the view that neither of the defendants became tenants under the Bombay Rent Act and further that, in any

event, the said consent decree remained executable. In view of this, it is clear that the entire case of the appellants for relieving appellant No. 1

from the undertaking fails. That case is based entirely on the basis of the consent decree being rendered inexecutable. In the view, which we have

taken that basis itself stands demolished and hence there is no case to relieve appellant No. 1 from the undertaking given by him to the Court.

22. We, however, propose to consider as to whether there is any case for relieving appellant No. 1 of the undertaking given by him to the Court

even assuming that the consent decree dated September 16, 1969 is no longer executable.

23. In this connection, the submission of Mr. Mehta was that the Court has a right to relieve a party from the undertaking in suitable cases. Our

attention was drawn by him to the statements in the Supreme Court Practice, 1973 1 456 to the effect that the Court will not vary an undertaking

given by a party but may relieve him if sufficient reason is shown. It was urged by him that the Court has the jurisdiction and the power to relieve a

party from the undertaking given by him in suitable cases. This position is not disputed by Mr. Sorabjee. The question, however, is whether any

case has been made out for relieving appellant No. 1 from the undertaking given by him. It is beyond dispute that relief from the undertaking is not

sought on the ground of any inability to comply with the decree or any hardship which would be involved in complying with the same. The case

sought to be made out is that, as the appellants or, in any event, appellant No. 1 have acquired the right to be protected tenants under the Bombay

Rent Act, the appellant No. 1 should be relieved of the undertaking so as to enable him to enjoy and exercise that right efficaciously. Our attention

was drawn to the observations of Story in his book on Equity Jurisprudence, vol. I, in para. 64 at p. 53 to the effect that if the law commands or

prohibits a thing to be done, equity cannot enjoin the contrary or dispense with the obligation. It was submitted by Mr. Mehta that the power to

relieve a party from an undertaking should be exercised by the Court in accordance with the public policy. According to Mr. Mehta, in view of

Section 15A of the Bombay Rent Act, the public policy is that the licensees who were deemed to have become tenants should be protected in

their possession. We may point out that at one stage, it was also submitted by Mr. Mehta that Section 15A of the Bombay Rent Act overrides the

law of contempt by reason of the non-obstante clause covering anything contrary contained in any other law for the time being in force, and that, as

a result of this, the undertaking must be deemed to be discharged. We are not inclined to accept this submission, as, in our view, the non-obstante

clause does not in any manner relate to relieving persons from any undertaking given by them. In this connection, we may point out that it was

submitted by Mr. Mridul, who appeared for one of the intervenes, that any interpretation of Section 15A of the Bombay Rent Act, which would

have the effect of nullifying undertakings given to the Court, would render the section unconstitutional as being repugnant to the constitutional

scheme of separation of powers, as the power to relieve a party from the undertaking given by him to the Court was in the nature of a purely

judicial power. At this stage, Mr. Mehta made it clear that it was not his case that u/s 15A of the Bombay Rent Act, the undertaking given by

appellant No. 1 had automatically come to an end by the effect of die statute or that under this section it was obligatory on the Court to relieve

appellant No. 1, who, according to him, was deemed to have become a tenant of the premises, of the undertaking given by him. He stated that his

only submission was that in view of the provisions of this section, the Court should exercise its discretion in favour of appellant No. 1 and relieve

him of the undertaking given by him. It is in view of this that the question of the constitutionality of this section has not been gone into by us at all.

24. As against this submission, it was submitted by Mr. Sorabjee that an undertaking given by a party to the Court has the effect of an order of the

Court. It is a solemn arrangement or understanding between the litigant, who gives an undertaking and the Court, which accepts it. In the present

case, the undertaking given by appellant No. 1 and defendant No. 1 was independent of and in addition to the consent decree. It was submitted by

him that relief from an undertaking can be granted only on equitable grounds i.e. grounds on which the Court of equity would grant the relief. It was

submitted by him that by applying for being relieved from the undertaking, appellant No. 1 was really seeking to approbate and reprobate, which

he is not entitled to do. It was pointed out by Mr. Sorabjee that there was no plea on behalf of appellant No. 1 or any of the appellants of any

personal disability or uncontrolled circumstances or mistake, and relief was sought only on the ground that certain new legal rights have been

conferred by subsequent legislation on appellant No. 1 and on that ground appellant No. 1 should be permitted to resile from the undertaking given

by him. It was submitted by him that discretion of the Court should not be exercised in favour of a party who wants to resile from a solemn

promise after fully availing himself of the benefit under the decree. Relieving appellant No. 1 from the undertaking in a case like the one before us

would tentamount to putting a premium on dishonesty and breach of solemn obligations.

25. As far as we are concerned, we find from decided cases and the commentaries on this subject that there is an infinite variety of cases in which

the Courts have relieved parties from the undertakings given by them. It would be presumptuous on our part to attempt to exhaustively enumerate

the classes of cases where the Courts have relieved parties from the undertakings given by them. We may, however, point out that there is one

common feature in all these cases where parties have been relieved by Courts from the undertakings given by them and this feature is that in all

those cases the Courts were persuaded to take the view that it was fair and equitable that the parties should be so relieved. In our view, when a

party applies for being relieved from an undertaking given by him and it is in the discretion of the Court to do so or not, the question to which the

Court must address itself is, Is it fair and equitable that the party applying for being relieved from the undertaking should be so relieved? In this

conclusion we are supported by the observations of Jessel M.R. in Mullins v. Howell (1879) L.R. Ch.D. 763. In that case relief from the

undertaking was sought by the defendant on the ground that the undertaking was given by him under a certain mistake or misapprehension, and the

observations of Jessel Master of Rolls, show that what he took into consideration was as to whether he should not, following the rule in equity,

enforce the agreement as against the defendant, and a fortiori should not enforce the undertaking against him. We may also refer to the

observations from Maitland''s Lectures on Equity, Lecture 18, which run as follows:

That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its

provisions and renounce all rights that are inconsistent with it.

These observations have been cited with approval by the Supreme Court in C. Beepathumma and Others Vs. V.S. Kadambolithaya and Others,

The question, therefore, to which we propose to address ourselves is : Have the appellants been able to show that such circumstances exist in the

case before us that it is fair and equitable that appellant No. 1 should be relieved from the undertaking given by him? In this connection, we must

note that the consent decree dated September 16, 1969 was obtained, in all probability, by reason of the aforesaid undertaking or on the footing

of the said undertaking given by appellant No. 1 and defendant No. 1, to hand over possession of the suit premises latest by September 30, 1973.

Whether this be so or not, one thing is clear and that is, it is not possible to say that but for this. Undertaking the respondents would have entered

into this consent decree. It is quite clear and beyond dispute that this undertaking constituted an integral and substantial part of the bargain between

the parties which resulted in the consent decree. By reason of this consent decree, the appellants got time to remain in possession of the suit

premises and the aforementioned articles upto September 30, 1973 which right they have enjoyed and of which they had the benefit. Is it now fair

or equitable on the part of appellant No. 1 to apply to be relieved from this undertaking on the ground that he would thereby be able to enjoy the

right alleged to have been conferred upon him by Section 15A of the Bombay Rent Act? In our view, the answer to this question must be

categorically in the negative. More^ over, it must be appreciated that the case of the appellants is that the relationship of licensors and licensees

was brought about between the defendants and the respondents by reason of the consent decree, which incorporates the undertaking. It is on the

basis of that alleged relationship that the appellants found their claim to have become tenants of the suit premises under the provisions of Section

15A of the Bombay Rent Act. In such a case, it would be thoroughly inequitable to allow them to claim the benefit of that alleged relationship and

at the same time to relieve them from the undertaking given by them. As far as question of public policy is concerned, we fail to see any rule of

public policy which would induce us to relieve appellant No. 1 of the undertaking given by him merely to enable him to enjoy certain rights, which,

according to him, are conferred on him u/s 15A of the Bombay Rent Act. In the first place, even assuming that appellant No. 1 is deemed to have

become a tenant of the suit premises, there is nothing in law which prevents him from surrendering that tenancy or his possession. In this

connection, it must be remembered that unlike the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, the Bombay Rent Act

does not provide for any safeguard to be complied with or put any restriction on the right of a tenant to surrender his tenancy, and hence there is

nothing against public policy or the policy of law in a tenant giving an undertaking to surrender his possession. In our view, therefore, the appellants

have failed to make out any case for appellant No. 1 being relieved of the undertaking given by him.

26. Before parting with the question of the undertaking, we may refer to two incidental matters. At one stage, it was suggested by Mr. Sorabjee

that as far as the order of the learned trial Judge refusing to relieve appellant No. 1 of the undertaking given by him was concerned, the same did

not amount to a judgment within the meaning of that term in Clause 15 of the Letters Patent of this Court and no appeal lay against the same. This

contention was, however, given up by Mr. Sorabjee, and hence we are not called upon to decide on the same. We may also mention that at one

stage it was faintly suggested by Mr. Mehta that appellant No. 1 should be relieved of the undertaking given by him, as the undertaking given by

defendant No. 1, who is dead, could not be enforced against any of the other appellants and the decree was not liable to be executed against any

of the appellants. This argument, of course, does not survive as we have taken the view that this decree is executable against all the appellants. But,

even on the footing that the decree was not executable against the appellants, it may be pointed out that no averments, have been made to show

that the appellants Nos. 2 to 6 are entitled to "be considered to be tenants of the premises of Roop Talkies on the death of defendant No. 1, as

there is no averment that they were living with defendant No. 1 at the time of his death as members of his family. It was also pointed out by Mr.

Sorabjee that the view so far taken is that rights as statutory tenants are not considered to be heritable. As the appellants have not made any

statement that the appellants other than appellant No. 1 are persons who were members of the family of defendant No. 1 residing with him at the

time of his death, they cannot claim here to be tenants in respect of the premises of Roop Talkies under the Bombay Rent Act. Even assuming that

they can be so considered, that by itself, in our opinion, would be no ground for relieving appellant No. 1 from the undertaking given by him.

27 In the result, the appeal fails and is dismissed. As far as the question of costs is concerned, it appears to us that looking to the points involved

and the length of time taken in the arguments, it is proper that the appellants should pay to the respondents, in one set, costs of this appeal as taxed

on the long cause scale with two counsel certified. Liberty is given to the Taxing Master under Rule 601 of the Rules of the High Court of Bombay

(Original Side), 1957, to allow a sum in excess of Rs. 2,000 towards instructions, if he so thinks fit. We direct that the Notice of Motion taken out

by the respondents in Suit No. 375 of 1962 and the notice under Order XXI, Rule 22 of the CPC be placed on the Board for hearing on

November 29, 1974.