(1979) 02 BOM CK 0049

Bombay High Court

Case No: Special Civil Application No''s. 2849 of 1974 and 499 of 1975

Narendra Singh Virdi		APPELLANT
	Vs	
N.N. Engineer and Others		RESPONDENT

Date of Decision: Feb. 22, 1979

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 12, 12(2), 12(3), 13(1)

Citation: (1979) MhLj 851

Hon'ble Judges: P.B. Sawant, J

Bench: Single Bench

Advocate: H.C. Tunara, for the Appellant; C.R. Dalvi, for the Respondent

Final Decision: Allowed

Judgement

P.B. Sawant, J.
These two petitions are between the same parties in proceedings under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Rent Act). The facts giving rise to them are taken from Special Civil Application No. 2849 of 1974 and they are as follows:

2. The premises involved are a bunglow situate on plot No. 5 in Survey No. 2 at Mundhava Road, Ghorpuri, Poona (hereinafter referred to as the suit premises) which was admittedly leased out to the petitioner-tenant by respondent No. 1 and his wife one Banoobai since deceased, under a rent note dated 10-11-1957 at a monthly rent of Rs. 130/- exclusive of electricity and water charges. Respondent No. 1 and his wife the said Banoobai, were admittedly the owners in common of the suit premises. The rent of the suit premises was increased by owners from 1-1-1963 to Rs. 150/- and the tenant paid the said rent from 1-1-1963 to 31-7-1963. Thereafter, there were arrears of rent 1-8-1963 to 31-3-1964 and, therefore, the owners by their notice dated 22-4-1964 terminated the tenancy and demanded arrears of rent u/s

12(2) of the Rent Act. Thereafter, they filed a suit a suit on 10-6-1964 being Civil Suit No. 2267 of 1964 in the Rent Court i.e., the Small Causes Court, Poona. The tenant by his written statement filed on 23-9-1964, among other things, disputed the rent as not being the standard rent and claimed the fixation of standard rent. By its decision dated 26-7-1965, the trial Court fixed the standard rent at Rs. 130/- per month and also passed a decree for possessions of the suit premises in favour of the owners. The tenant thereafter preferred an appeal being Appeal No. 672 of 1965 and the Appellate Court by its decision dated 16-4-1966 allowed the appeal, dismissed the suit of the owners and confirmed the standard rent at Rs. 130/- per month. Against the said decision, the owners preferred a petition under Article 227 of the Constitution being Special Application No. 46 of 1967 in this Court and this Court by its decision dated 6-10-1970 confirmed the decision of the District Court and dismissed the said writ petition.

3. It appears that while the aforesaid proceeding were pending, the water connection which was available to the tenant from the connection of the owners, was cut off the Poona Cantonment Board on 24-8-1966 on account of the failure to pay the water charges for the period from 21-6-1965 to July 1966 as per seven bills dated 14-7-1966 served by the Cantonment on Board on 24-8-1966. The water charges were subsequently paid by the tenant on 27-8-1966. Thereafter, on 3-10-1966 the tenant requested the owners to give their consent by signing on the requisite forms, for re-connecting the water supply. On 5-10-1966, respondent No. 1 refused to sign. It may be mentioned here that on 3-10-1966 the said Banoobai expired. Thereafter, the tenant filed an application being Miscellaneous Application No. 631 of 1966 on 10-10-1966 u/s 24 of the Rent Act for a direction to respondent No. 1 who was alone a party to the said application, to give his consent for re-connection of the water supply. Respondent No. 1 preferred a revision application before the District Court being Revision Application No. 16 of 1967 and by its decision dated 25-4-67 the District Court allowed the revision application holding that in the circumstances of the case, respondent No. 1 was under no obligation to give his consent for giving the water supply from his connection. Against the said decision, the tenant preferred a writ petition under Article 227 of the Constitution in this Court being Special Civil Application No. 2078 of 1967. A compromise was arrived at on 13-9-1968 in the said writ petition whereby the tenant was given liberty to take an independent connection for himself and the landlord agreed to give his consent for such direct connection of water supply.

4. On 22-4-1967, the tenant filed an application for re-fixation of standard rent u/s 11 of the Rent Act being Miscellaneous Application No. 258 of 1967 on the ground that the supply of water through the landlord''s connection was a term of the tenancy, and since that supply was stopped by the landlord and he was required to take an independent connection by incurring expenditure, he was entitled to a fresh fixation of standard rent. In this application, the trial Court by its ex parte order dated 24-4-1967 fixed interim rent at Rs. 87/- per month and also directed the

tenant to deposit all areas at that rate within one month therefrom.

5. Before I advert to the further course of this standard rent application, it is necessary to refer to the other events which took place in the mean while and which also led to another proceeding following a simultaneously course with the said standard rent proceedings.

6. As stated earlier, the said Banoobai who was the co-owner with respondent No. 1 of the suit premises, died on 3-10-1966. By their notice dated 2-5-1967, respondent No. 1 in his capacity as the co-owner as well as the heir of the deceased Banoobai, together with her other heirs who are respondent Nos. 2 to 5 herein, served upon the tenant a notice u/s 12(2) of the Rent Act and call upon to pay the arrears of rent for the period from 1-11-1966 to 30-4-1967 within one month from the receipt of the said notice. It is not disputed that the tenant did not pay the arrears of rent within one month of the receipt of the said notice as per the demand. However, in the mean while on 8-6-1967, respondent Nos. 2 to 5 i.e. the other heirs of deceased Banoobai, released their share in the suit premises in favour of respondent No. 1. Thereafter, respondent No. 1 filed the present suit being suit No. 1720 of 1967 in the Small Causes Court, Poona, for recovery of possession of the suit premises on the ground of arrears of rent. To the suit, he joined respondents Nos. 2 to 5 as defendants Nos. 2 to 5. Both the standard rent application filed by the tenant as well as the present suit were, by consent, heard together and the trial Court by its common judgment dated 29-9-1973 decided both the standard rent application as well as the present suit. As regards the standard rent application, the trial Court dismissed the same holding that the standard rent of Rs. 130/- per month fixed earlier was the proper standard rent. As regards the suit, the trial Court decreed the same holding that the tenant was in arrears of rent for six months and that he had neglected to pay the said arrears within one month of the notice u/s 12(2) of the rent Act and, therefore, the landlord was entitled to a decree u/s 12(3)(a) of Rent Act. The trial Court also held that in any case the present case would be covered by the provisions of section 12(3)(b) of the Rent Act, and , therefore, the landlord was entitled to a decree on that ground as well. Against the said decision in the standard rent application, the tenant preferred a revision and against the decree for possession in the suit, he preferred an appeal, before the District Court. The District Court heard both the appeal as well as the revision application together, and again by a common judgment dated 25-9-1974, dismissed both the appeal as well as the revision application. As regards the revision in the standard rent application, the District Court confirmed the finding as well as the order of the trial Court. As far as the appeal against the decree for possession, the appeal Court held that the landlord was entitled to a decree for possession on the ground mentioned in section 12(3)(b) of the Rent Act as held by the trial Court. The Appeal Court however, did not decide the question whether in the alternative the case would be covered by the provisions of section 12(3)(b) of the Rent Act. It is aggrieved by this decision in the suit as well as in the standard rent proceedings, that the present two petitions have

been filed. Special Civil Application No. 2849 of 1974 is directed against the decree passed in the suit and Special Civil Application No. 499 of 1975 seeks to challenge the decision in revision in the standard rent application.

7. Mr. Tunara, the learned Counsel appearing for the petitioner-tenant in both the petitions does not press his contentions in Special Civil Application No. 499 of 1975 i.e. the petition arising out of the standard rent proceedings. However he has seriously challenged the decree for possession granted against the petitioner in the suit, and in support of his challenge has raised the following three contentions :---

His first contention is that as per the rent note dated 10-11-1957 (Ex. 103) the rent was payable by the 5th of the next month. On the date of the suit notice, viz. 2-5-1967, the rent for the sixth month viz. April 1967, had not become due for payment within the meaning of section 12(2) of the Rent Act and, therefore, the suit was not covered by the provisions of section 12(3)(a) of the same. The second contention was that the rent which was demanded as per the suit notice dated 2-5-1967 was the rent which due and payable to all the respondents viz. to respondent No. 1 in his capacity as the co-owner with the deceased Banoobai as well as in his capacity as one of the heirs of Banoobai and to the other heirs of the deceased-Banoobai. On 8-6-1967, the other heirs of Banoobai, by a release deed Ex. 83 on record relinquished their share in the suit premises in favour of respondent No. 1, but did not assign their share in the rent in favour of respondent No. 1. The present suit which was filed on 14-6-1967 by respondent No. 1 for recovery of possession, therefore, was not maintainable u/s 12 of the Rent Act and no decree for possession could be passed in his favour on the ground of arrears of rent, since what was demanded as rent as per the said notice had no longer remained rent after 8-6-1967. His third contention was that in any case, in view of the fact that there were proceedings u/s 24 of the Rent Act as well as for fixation of standard rent pending between the parties, it could not be said that the tenant had neglected to pay the rent within the meaning of section 12(3) of the Rent Act.

8. Mr. Dalvi, the learned Counsel appearing for respondent No. 1 supported the decree passed against the tenant and contended that the contentions which were sought to be taken by the petitioner in this Court were never raised before either of the courts below and therefore, he should not be permitted to do so in this petition. In this connection he submitted, firstly, that whether the rent was to be paid immediately after the month of tenancy was over or not, was a question of fact and if such a question was raised the land lord would have led evidence to prove that the rent was in fact payable at the expiry of the month and not on or before the 5th as per the rent notice. He also submitted that if the question was so raised it would have been possible for the landlord to produce the deed of assignment also of the rent by respondents Nos. 2 to 5 in favour of respondent No. 1. He however fairly conceded that there was no document other than the rent note to support the plea that the rent was payable otherwise than as stated therein. He also admitted that as

per his information there was no deed of assignment of rent. I find from the evidence on record as it stands today that the first two contentions, to the raising of which Mr. Dalvi has taken objection, are pure questions of law and they arise out of the undisputed facts on record. I will also presently point out that as far as the second contention is concerned, as the law stands today, it will make no difference whether there was an assignment of rent also, in favour of respondent No. 1, I therefore, propose to deal with said two questions, as they are pure questions of law, notwithstanding the said objection.

9. It will be convenient to deal first with the second contention because according to me it goes to the root of the whole matter and the answers to the other questions also partly depend on the answer to the said contention.

10. The second contention advanced on behalf of the petitioner elaborately simply stated is as follows :---

Respondent No. 1 and the deceased Banoobai were the owners of the suit premises and, therefore, the landlords thereof, till 3-10-1966 on which date the said Banoobai died. To the rent which accrued from that date, it was respondent No. 1 and respondents Nos. 2 to 5 as heirs of the said Banoobai, who were entitled jointly. By the suit notice dated 2-5-1967, in fact both respondent No. 1 and respondents Nos. 2 to 5 together, demanded the arrears of rent from 1-11-1966 to 30-4-1967. On 8-6-1967, admittedly, respondents Nos. 2 to 5 released their share in the property, as a result of which respondent No. 1 alone became the owner of the suit premises and therefore the landlord. There was thus a transfer of their share in the property by respondents Nos. 2 to 5 in favour of respondent No. 1. Even assuming that there was either before, simultaneously with or after the said release deed, an assignment of their share in the rent by respondents Nos. 2 to 5 in favour of respondent No. 1, that assignment could not be of rent but only of a debt which was due to them from the petitioner. Therefore, on 8-6-1967, assuming that there was an assignment of their share in the rent due till then, what respondent No. 1 got was only the amount of debt due to respondents Nos. 2 to 5 and no rent as such. Respondent No. 1, therefore, could not have filed the present suit for recovery of possession u/s 12(2) of the Rent Act, because a suit for recovery of possession under the said section pre-supposes that there was a notice demanding arrears of rent and that rent as per the said demand was not paid. In other words, the suit which is contemplated by the said provision is a suit pursuant to the non-payment of rent. Since after 8-6-1967, no such rent was due except to the extent of the share or respondent No. 1 in the rent demanded as per the suit notice, no suit for recovery of possession on account of rent due under the said notice could have been filed under the said section. The proposition that the rent due, changes its character and becomes only a debt or an actionable claim after the property changes hands, is now well settled in law, by a series of decisions. The first decision cited at the bar is reported in 1976 All India Rent Control Journal 562. This is a decision of the Division Bench of the Gujarat High

Court in Khatri Kasam Sidi v. Dastmohamed Chaus and Ors. It has been held in this case that in respect of arrears of rent due to the vendor prior to the date of sale, the purchaser cannot be considered as a landlord and the amount due to the original landlord which may be recoverable by the purchaser by virtue of a deed of assignment cannot be considered as rent due to him. In Daya Debi Vs. Chapala Debi, the same position in law is reiterated by stating that a claim for arrears of rent loses its character of rent, as soon as it is assigned. The said claim is converted into an actionable claim as defined by section 3 of the Transfer of Property Act and is assignable in the manner contemplated by section 130 of that Act. Then there is a judgment of a Single Judge of this Court taking the same view. It is an unreported decision of K.K. Desai J. in (Civil Revision Application No. 50 of 1960, decided on 27-9-1962), where also the learned Judge has observed that in respect of arrears of rent due to the predecessor-in-title, the successor can become only a creditor in respect of the debt due and cannot be considered a landlord within the meaning of section 12 of the Rent Act. It must be noted that all the above decisions are under the Rent Act with which I am concerned in this petition. As against this, Mr. Dalvi relied upon a decision of the Allahabad High Court and another decision of his Court to contend that the arrears of rent did not change their character and become a mere debt of the plaintiff-landlord and the other members of the family. By virtue of a final decree in a partition suit the building in question came to the share of one Trivenibai. In pursuance of the said decree, Trivenibai obtained symbolical possession of the building including the suit premises on 1-1-1957. The tenant was already inducted in the suit premises by virtue of a rent note executed on 31-5-1954 i.e. prior to the partition decree. It appears that there was a further settlement between the plaintiff''s father and the said Trivenibai, and as a result of the said settlement which was recorded by a compromise decree between the parties, the building in question reverted to the share of the plaintiff and his father as owners thereof, and on 3-5-1959 again symbolical possession of the building was obtained by the plaintiff''s father on behalf of himself and the plaintiff. Thereafter, on 27-6-1960, an application under the said rent control order was filed by the plaintiff against the tenant seeking permission to evict him on the grounds that he had been in arrears of rent for a period of four years and eight months, and that he was also a habitual defaulter. The application was resisted by the tenant contending that the plaintiff had no right to demand rent, as the landlord of the premises was the said Trivenibai. The Rent Controller held that under the rent note the rent was reserved annually. The tenant had not paid any rent after 23-10-1959 and, therefore, was in arrears of rent for four years at the date of the application. He, therefore, made an order directing the tenant to pay a sum of Rs. 1200/- and also permitted the landlord to give notice to determine the lease. In appeal against the said order, the Collector held that in view of the partition decree, the plaintiff was not the landlord between 1-1-1957 and 3-5-1959 on which date the building reverted to the plaintiff. He could not, therefore, complain of the defaults, if any in the payment of rent, and the only defaults that he could complain of were those subsequent to 3-5-1959. He,

therefore, held that the tenant was not guilty of more than one default which occurred between 3-5-1959 and 27-6-1960 on which date the said application was filed. The Collector, therefore, set aside the order passed by he Rent Controller and dismissed the plaintiff''s application. It is on these facts that before the Division Bench an argument was advanced on behalf of the landlord that the, question whether the tenant had committed defaults in the payment of rent or not was a matter relating to the conduct of the tenant in the payment of rent and not a matter of the landlord''s right to receive rent. According to the said argument, the landlord was entitled to complain of the defaults made by his tenant even to his predecessor-in-title and can avail of the said defaults, and had not to wait until the requisite number of defaults had again been committed by the tenant after he obtained the right to receive rent from him. According to this argument, the new landlord was entitled to complain of the said defaults irrespective of whether he was entitled to receive the rent in respect of which the defaults were committed. It appears from the last paragraph of the judgment that the Division Bench disagreed with the view taken by the Collector that the new landlord was not entitled to complain of the default or avail of the same, and set aside the order passed by the Collector. It will be necessary to re-produce here the exact argument advanced before the Court in that case and the finding recorded thereon. They are as follows :---

"Mr. Phadke has then argued that even if it were to be assumed that there was an agreement to pay the rent at the end of the year for the whole of the year, it could not be said that there was not the requisite number of defaults in the present case. The learned Collector has taken the view that there would not be more than one defaults because the only defaults of which the landlord can complain are those occurring subsequent to the 3rd of May, 1959. According to Mr. Phadke that view is entirely erroneous. The question whether the tenant has committed defaults in the payment of rent or not is a matter relating to the conduct of the tenant in the payment of rent and not a matter of the landlord''s right to receive rent. In other words, according to him, a landlord is entitled to complain of the defaults made by the tenant even to his predecessor-in-title and can avail of the said defaults and has not to wait until the requisite number of defaults have again been committed by the tenant since after he obtained the right to receive rent from him. Mr. Phadke points out that the Rent Controller in his order has given a categorical finding that a tenant has been in default of the payment of rent for four years at the date when the application was made by the landlord. It is true that three four defaults might have occurred during the time during which the right to receive the rent from the tenant belonged not to the petitioner but to Trivenibai; but, irrespective of whether the petitioner was entitled to receive the rent or some other person, through whom he claims, was entitled to receive it, they still constitute defaults on the part of the tenant for the purposes of the Rent Control Order.

In our opinion, this contention urged by Mr. Phadke also appears to us to be entirely justified. What has happened is that on account of the erroneous view which the learned Collector has taken, viz., that the petitioner is not entitled to complain of the defaults complained of or avail of the defaults which have occurred before the period of the 3rd of May, 1959, he has not applied his mind and considered the question whether the finding of the Rent Controller that the tenant was in default of payment of rent from 1955 onwards for a period of four years is correct or not. In our opinion, therefore, having regard to the two contentions which have been raised before us by Mr. Phadke, it appears necessary that the order passed by the learned Collector in appeal must be set aside and the appeal must be sent back to him for trial and disposal according to law. We order accordingly. There will be no order as to costs."

11. It will thus be apparent from the aforesaid decision of the Division Bench that firstly there was no discussion whatsoever as to whether the rent due prior to the date of transfer continued to retain its character as rent even after the transfer and whether the transferee could avail of the "arrears of rent" due prior to the transfer as a ground for evicting the tenant. Secondly, the case was obviously not of a transfer but of allotment of share on partition in a joint Hindu family property. A partition has been held not to amount to transfer of property and, therefore, strictly speaking it could not be said on the facts of the said case that the property had changed hands and the rent had changed its character on account of the said allotment of share in the partition. It is, therefore, probably that the question as to whether rent due prior to 3-5-1959 had changed its character or not did not fall for consideration. It is for this reason that is will not be fair to hold that this decision has taken the view that the rent due prior to the date of transfer continued to retain its character as rent even after the transfer. Thirdly, it also appears from this decision, through is must be admitted that is difficult to say with any amount of certainty that the decision went on the footing that it is the conduct on the part of the tenant in committing defaults which was relevant for determining whether permission to the landlord should be given to issue a notice of termination of tenancy. It must be remembered in this connection, that the application there was made not only under sub-clause 3(i) but also under sub-clause 3(ii) of Clause 13 of the said Order, and sub-clause 3(ii) reads as under :---

"If after hearing the parties the Controller is satisfied

(i) ....

(ii) That the tenant is habitually in arrears with the rent."

From the finding given by the Division Bench and quoted above, it is not possible to say as to which part of the argument appealed to the learned Judges and on what ground the order of the Collector in appeal, was set aside. It is however, not impermissible to conclude, in the absence of specific reasons given while accepting

the argument advanced on behalf of the landlord, that it is the conduct of the tenant in remaining in arrears with the rent that must have also weighed with the Division Bench in allowing the landlord''s writ petition. However, as stated earlier, in any case, it will be hazardous, in the circumstances to conclude that the Division Bench took the view that the arrears of rent prior to the date of transfer continued to retain their original character as rent after the date of transfer. It is for this reason that although apparently this decision purports to be in favour of the landlord in the present case, I cannot persuade myself to hold that this decision has laid down an such proposition as canvassed on behalf of the respondent-landlord and has taken a view different from that taken by the other authorities just discussed above. There is no other decision pointed out to me which has taken a different view. It will have, therefore, to be held that the arrears of rent do not retain their character as rent after the date of transfer, notwithstanding the fact that the arrears of rent are assigned simultaneously with or after the assignment of the property.

12. It will be necessary in this connection to deal with an allied question viz. whether a transferee can avail of the defaults committed in payment of rent by the tenant prior to the date of transfer. This is no because reliance was placed on behalf of the landlord on two decisions in support of this proposition viz. the one of the Division Bench of this Court just parted with and the other of the Supreme Court reported in Kanta Goel Vs. B.P. Pathak and Others, I have already referred to the decision of the Division Bench of this Court in extent and have pointed out that the question whether rent continued to retain its identity as such rent after the date of transfer has not at all been debated upon and discussed in the said decision. In fact, it does not appear that aspect of the matter was present either in the mind of the parties or in the mind of the Court while deciding the said case. Therefore, the question whether the transferee could take advantage of the defaults in payment of "rent" as such also did not come up for consideration in that case. As pointed out earlier, it appears that what appealed to the Court was the argument advanced on behalf of the landlord with regard to the conduct of the tenant in being a habitual defaulter in the context of sub-clause 3(ii) of Clause 13 of the said order under which the landlord had made that application for permission to terminate the tenancy. It does appear that the attention of the Court was concentrated on finding out as to whether the case of the tenant fall within the said clause. Therefore, the reliance placed on this decision in support of the allied submission viz. whether the earlier defaults could be availed of by the landlord in a case such as the present one, is not well founded. As regards the decision of the Supreme Court Kanta Goel Vs. B.P. Pathak and Others, the decision was under the Delhi Rent Control Act (59 of 1958) and the question which fell for consideration there was whether a co-owner was a landlord for the purposes of the said Act and the Court held that a co-owner was as much an owner of the entire property as any sole owner. I fail to see how this authority is of any use to hold that the defaults in the payment of rent prior to the date of transfer could be availed of by the transferee or the new landlord. As against

this, the decision of the Gujarat High Court reported in 1976 All India Rent Control Journal at page 562 (supra) and referred to earlier, has taken the view that in respect of arrears of rent due to the vendor prior to the date of sale, the purchaser cannot be considered as landlord and, therefore, the purchaser cannot avail of the defaults in payment of such rent for the purpose of evicting the tenant. A learned Single Judge of this Court (Chandurkar, J.) in the case of Shantinath S. Ghogade v. Rajmal Uttamchand Gugale, 1979(1) All India Rent Control Journal 102 while considering whether breaches of tenancy committed prior to the sale could be availed of by the vendee or not, has held that such breaches are not available to the landlord for evicting the tenant. According to the learned Judge, if the definition of " landlord" and " tenant" under the Rent Act are read properly, it is clear that the breaches which are contemplated by Clauses (a) and (b) of section 13(1) of the Rent Act must be breaches by the tenant of that landlord who claims to exercise his right to recover possession. The learned Judge further held that there is nothing in the Rent Act which will indicate that the legislature intended that in cases where a cause of action, which was never taken advantage of by the earlier landlord , should enure for the benefit of the purchaser and the purchaser should be able to base an action for ejectment on the basis of the alleged violation of the provisions of section 13(1) before the premises were transferred by the original landlord to the purchaser. It would thus appear that although the allied question was posed in a language different from the main question in the present case as to whether there was change in the character of " rent" the finding essentially turns on the answer to the main question itself. Once it is held that on the date of transfer the arrears of rent lose their identity as rent no complaint could be made by the transferee that there were defaults in the payment of rent. As stated earlier, section 12(2) of the Rent Act contemplates a suit for recovery of possession on the ground that there was a failure to pay rent which was due. It further contemplates that before filing of such a suit there should be a notice of demand for the rent due. It is only on the failure of compliance with such notice that a ground for evicting the tenant, accrues to the landlord. In the present case after 8-6-1967 there was no rent due under the said notice except to the extent of the share of respondent No. 1 in the said rent. There was no notice given demanding such rent which was due to him, as indeed there could be no such notice, in the circumstances of the case. The notice given on 2-5-1967 related to the rent which was due not only to respondent No. 1, but to him as well as to others. The rent which was due to respondents Nos. 2 to 5 changed its character on and from 8-6-1967 and no longer remained rent. Therefore, the notice dated 2-5-1967 could not be availed of for the purpose of filling the present suit. Hence the suit itself was not maintainable.

13. Coming now to the next argument viz. that there went no arrears of rent for a period of six months on the date the notice was given, in view of the answer given to the second question already, it is really not necessary to discuss this as well as the other question viz. whether the case was covered by section 12(3)(b) of the Rent Act.

However, I propose to answer both the said questions for whatever they are worth. Admittedly, the original contract of tenancy between the parties was governed by the terms and conditions reduced to writing in the rent note dated 10-11-1957. Clause 6 of the rent note was as follows :---

" The lease will pay the agreed rent after the expiry of each calender month on or before the 5th of next month."

What was sought to be argued was that on the date the suit notice was given the tenant was no longer a contractual tenant, his contractual tenancy having been terminated some time earlier. He was merely a statutory tenant and, therefore, all the terms and conditions under the original contract should be deemed to have been extinguished after the termination of the contractual tenancy. The tenancy continued to be governed by the provisions of the Rent Act. He could not, therefore, avail of any of the terms of the tenancy including the said Clause (b) and it should therefore, be held that he was liable to pay rent at the expiry of the calender month, and hence the notice given on 2-5-1967 was a proper and a valid notice demanding arrears of rent for six months. For this proposition reliance was placed on a decision of the Supreme Court in Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, The observations in the said case relied upon are as follows :---

".....But with the determination of the lease, unless the tenant acquires the right of a tenant holding over, by acceptance or rent or by assent to his continuing in possession by the landlord, the terms and conditions of the lease are extinguished, and the rights of such a person remaining in possession are governed by the Statute alone."

14. In this connection it will be relevant to refer to the provisions of section 12(1) of the Rent Act which are as follows :---

" 12(1) 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 increased, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act."

(Underlining mine).

There is nothing in this section which makes a distinction between a contractual and a statutory tenant. It will have, therefore, to be held that whether he is a contractual or a statutory tenant, so long as he pays the standard rent and permitted increases and observes and performs the other conditions of the tenancy which are not inconsistent with the provisions of the Rent Act, the landlord will not get a right to recover possession of the premises. The condition that a tenant will pay the rent by a particular date after the expiry of the month of tenancy is certainly not inconsistent with any of the provision of the Rent Act. There is also nothing in the

said Act which lays down either the mode or the manner of payment or the date by which such payment is to be made by the tenant. The question therefore that falls for consideration, is whether it can be said that merely because the contractual tenancy had come to an end the payment of rent for the month of tenancy was over. As stated earlier, the provisions of section 12(1) cover the cases of both contractual and statutory tenant. What is contemplated by the said provision is that after the coming into operation of the Rent Act, the tenants whether contractual or statutory will continue to hold the tenancy on the same terms and conditions on which they held it prior to the date of the coming into operation of the said Act so long as such terms and conditions are not inconsistent with the provisions of the Rent Act. Clause 6 of the rent note requires the tenant to pay the agreed rent on or before the 5th of the next month and this term of the tenancy is not inconsistent with any of the provisions of the Rent Act. There is nothing in the decisions of the Supreme Court referred to earlier to show that the terms and conditions of the tenancy which are not inconsistent with the provisions of the Rent Act will also come to an end with the end of the contractual tenancy. I am., therefore, of the view that in the present case, Clause 6 of the rent note still remained in force between the parties, and the rent for April 1967 had not become due till 5-5-1967. The suit notice, therefore, which was given on 2-5-1967 demanding arrears of rent for a period of six months was premature, and therefore, failure on the part of the tenant to comply with the said notice cannot be construed as negligence on his part make payment of such arrears of rent. In the circumstances, the case will not be governed by the provisions of section 12(3)(a) of the Rent Act. The decree passed by the Appeal Court for possession of the suit premises on that ground cannot, therefore, be sustained.

15. As regards the third contention, if I were to hold that respondent No. 1 was entitled to file the present suit pursuant to the said notice, I would have no hesitation in answering this question in favour on the plaintiff-landlord. It was argued on behalf of the tenant that during the period from 10-10-1966 to 13-9-1968, the dispute with regard to the restoration of the water connection was pending between the parties. After making payment of the water charges, the tenant had requested in writing, to the landlord by his letter dated 3-10-1966, to give his consent for re-connection of the water supply and the landlord by his letter dated 5-10-1966 had refused to do so. Therefore, on 10-10-1966 the tenant had filed an application for restoration of the water connection u/s 24 of the Rent Act which finally come to an end on 13-9-1968 when there was a compromise between the parties pursuant to which the tenant was to take an independent connection and the landlord was to accord his consent to such connection. The argument was that during this period between 5-10-1966 i.e. the date of refusal of the landlord to give his consent and the date of compromise as aforesaid, there was an interference by the landlord in the use and enjoyment of the suit premises and therefore the obligation to pay rent was suspended. It was therefore, submitted that there could not be any arrears of rent for this period and therefore the notice given was

unwarranted and the suit filed was not maintainable at all. It was also argued on behalf of the tenant that there was a further dispute with regard to the standard rent between the parties pursuant to the application of the tenant filed on 22-4-1967 which came to an end on 29-9-1973 and the tenant had made payment of the rent in the Court as per the interim rent fixed by the Court. If these payments are taken into consideration, the tenant could not be said to have neglected to make the payment of rent within the meaning of section 12(3) of the Rent Act. I find that both these submissions are without a solid foundation.

16. As regards the argument with regard to the suspension of the obligation to pay rent between 5-10-1966 to 13-9-1968, the Appeal Court in the said proceedings u/s 24 of the Rent Act, had come to the conclusion that it was on account of the default of the tenant himself that the supply of water from the landlord''s connection was cut off. There was no obligation under the contract of tenancy or under the statute to provide water supply from his own connection by the landlord once the water supply was cut off on account of the misfeasance of the tenant. Admittedly, the rent was exclusive of the charges for water supply. Therefore in the circumstances, it cannot be said that the tenant was deprived of the use and enjoyment of the suit premises by the landlord by any act on his part. Hence it can hardly be said that the obligation of the tenant to pay rent to the landlord was suspended during the said period. The tenant continued to be liable to pay rent notwithstanding the said disconnection of the water supply and the landlord was within his right to claim the arrears of rent and issue the suit notice which claimed the said arrears of rent. This as I have stated earlier on the footing that respondent No. 1 landlord alone was entitled to claim the arrears of rent as per the suit notice. As regards the second submission, the record clearly shows that even when the Court fixed interim standard rent by its order 24-4-1967 and ordered the tenant to make the payment of all arrears then due within one month as the rate of Rs. 87/- per month, the tenant failed to do so. Instead, he took time from the Court on several occasions to make the said payment. If this is so, then as, has been held recently by the Supreme Court in Ganpat Ladha Vs. Sashikant Vishnu Shinde, , the Court has no discretion under the provisions of section 12(3)(b) of the Rent Act but to pass a decree for possession on the said ground. If, therefore, I were to hold as stated earlier, that the respondent landlord was entitled to file the present suit, he would be certainly entitled to a decree for possession on the ground mentioned in section 12(3)(b) of the Rent Act.

17. However, since I have come to the conclusion that respondent No. 1 was not entitled to file the present suit, he is not entitled to a decree for possession on the ground mentioned either in section 12(3)(a) or section 12(3)(b) of the Rent Act.

18. In the result, the petition succeeds and the rule is made absolute. In the circumstances of the case there will be no order as to costs.

19. As stated earlier Mr. Tunara has not pressed Special Civil Application No. 499 of 1975 which arises out of the standard rent proceedings. The rule granted in the said petition is, therefore, discharged with no order as to costs.