Hari Prasad and another Vs Nathmal Chunilal

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Feb. 21, 1974

Acts Referred: Constitution of India, 1950 â€" Article 227
Transfer of Property Act, 1882 â€" Section 111, 113, 116

Citation: (1974) MhLj 637

Hon'ble Judges: C.S. Dharmadhikari, J

Bench: Single Bench

Advocate: W.G. Somalwar, for the Appellant; Imdadali and A.K. Ramchandani, for the Respondent

Final Decision: Allowed

Judgement

C.S. Dharmadhikari, J.
Plaintiffs Hari Prasad and Satyanarayan are the owners of the suit premises admeasuring 80'' x 60'' on Imambada

road, Nagpur and the non-applicant-tenant is occupying the same on a monthly rent of Rs. 90/-. The plaintiffs-landlords filed an application against

the non-applicant-tenant for permission to terminate his tenancy on the grounds of arrears of rent and habitual defaults under the provisions of the

C. P. & Berar Letting of Houses and Rent Control Order, 1949, referred to hereinafter as the Rent Control Order. Such a permission was granted

by the Rent Controller on both the counts on 27-10-1966. Thereafter the plaintiffs served a notice upon the non-applicant-tenant on 5-12-1966

terminating his tenancy with effect from the end of December 1966. Before the expiry of the said notice, the tenant, vide his reply dated 19-12-

1966, informed the landlords that the quit notice given by them was bad in law and they were not entitled to terminate his tenancy since he had filed

appeals against the orders of the Rent Controller and the said permission granted by the Rent Controller is not final, but is subject to the decision of

appeals. In view of this contention raised on behalf of the tenant, the Applicants:- landlords accepted the rent from the tenant and when the appeals

were ultimately decided in their favour on 23-12-1967 they again served a notice on the non-applicant-tenant dated 1-1-1968 terminating his

tenancy with effect from the end of January 1968. It was specifically stated in the said notice that the non-applicant-tenant vide his reply dated 19-

12-66 had stated that the order of the Rent Controller was not final and was subject to the orders of the appellate authority, and therefore, the

applicants-landlords awaited the decision in the appeals and as the appeals filed by the tenant are now finally decided and arc dismissed, they are

serving the notice. After the period of expiry of the said notice and the termination of tenancy, the plaintiffs filed a suit for ejectment and for arrears

of rent against the non-applicant-tenant. In this suit also the defendant-tenant raised a plea that the permission granted by the Rent Controller on

27-10-1966 stood exhausted in view of the notice dated 5-12-1966 and as the fresh notice issued thereafter, namely, the notice dated 1-1-1968,

was not supported by any fresh permission from the Rent Controller, the suit itself was not maintainable.

2. Before the trial Court the parties filed various documents in support of their respective case and these documents are admitted by both the

parties. The learned Judge found that the tenancy was a monthly tenancy and necessary permission was granted by the Rent Controller. However,

relying upon a decision of this Court in Chaturbhuj v. Mangnibai 1958 N L J 250 the learned Judge came to the conclusion that there was a waiver

of the first notice and the permission granted by the Rent Controller stood exhausted and as no fresh permission from the Rent Controller was

obtained by the landlords before issuing the second notice dated 1-1-1968, the second notice is not a legal and valid one and hence the suit is not

maintainable so far as the plaintiffs'' claim for ejectment and possession of the suit property is concerned. In this view of the matter, the learned

Judge of the Small Causes Court passed a money decree in favour of the plaintiffs directing the defendant to pay an amount of Rs. 180/- to the

plaintiffs on account of arrears of rent till 31-1-1968. However, he dismissed the suit regarding the possession of the suit house. Being Aggrieved

by this judgment of the learned Judge of the trial Court, the plaintiffs-landlords have filed this revision application.

3. Shri Somalwar, the learned counsel for the applicants, contended before me that the learned Judge of the Small Causes Court has committed an

error in holding that in view of the first notice itself (Ex. 39), namely, notice dated 5-12-1966, the permission granted by the Rent Controller stood

exhausted and the fresh notice dated 1-1-1968 (Ex. 20) could not have been issued by the landlords on the basis of the prior permission obtained

by them from the Rent Controller. He further contended that the learned Judge further committed an error in holding that there was waiver on the

part of the landlords because of the acceptance of the rent after the first notice was given by them. He farther contended that the law laid down by

this Court in Chaturbhuj v. Mangnibai (cit. supra) is not applicable to the facts and the circumstances of the present case. In the alternative it was

contended by him that in any case the law laid down in the said decision is no more good law in view of the subsequent decisions of the Supreme

Court and the view taken by this Court in the said decision deserves to be reconsidered.

4. On the other hand, it is contended by Shri Ramchandani, the learned counsel for the non-applicant tenant, that the permission granted by the

Rent Controller was a permission for giving a notice only. Therefore, once a legal and valid notice was given by the landlords to the tenant in

pursuance of the said permission, the permission stood exhausted. In any case by the conduct of the plaintiffs-landlords, it is clear from the record,

that they have waived the first notice. The acceptance of the rent by the landlords after issuing of the first notice in itself amounts to waiver of the

first notice. In this case there is not only the acceptance of the rent, but further the plaintiffs have given a second notice thereby in terms waiving the

first notice. According to Shri Ramchandani, the amount which was paid by the non-applicant-tenant after the notice dated 5-12-1966 was paid as

a rent. The plaintiffs have accepted the same amount as a rent and such an acceptance of the rent was even prior to the decision of the appeals by

the Deputy Collector. In this view of the matter, according to Shri Ramchandani, the plaintiffs by their conduct have waived the first notice and in

view of the issuance of the first notice itself and further in view of the law laid down by this Court in Chaturbhuj v. Mangnibai (cit. supra) the

previous permission granted by the Rent Controller in favour of the plaintiffs stood exhausted.

5. For properly understanding the controversy involved in the revision application, it will be useful to reproduce certain relevant provisions of the

Rent Control Order. Clauses 13 (1) and (2) of the Rent Control Order read as under:

13 (1) No landlord shall, except with the previous written permission of the Controller:-

(a) give notice to a tenant determining the lease or determine the lease if the lease is expressed to be determinable at his option; or

(b) where the lease is determinable by efflux of the time limited thereby, require the tenant to vacate the house by process of law or otherwise if the

tenant is willing to continue the lease on the same terms and conditions.

(2) A landlord who seeks to obtain permission under sub-clause (1) shall apply in writing to the Controller in that behalf.

Thereafter sub-clause (3) of clause 13 reads:

(3) If after hearing the parties the Controller is satisfied.....

he shall grant the landlord permission to give notice to determine the lease as required by sub-clause (1).

Clause 21 of the Rent Control Order thereafter provides for an appeal against the order of the Controller. The said clause reads as under:

21 (1) Any person aggrieved by an order of the Controller may, within fifteen days from the date on which the order is communicated to him,

present an appeal in writing to the Collector of the district:

Provided that in computing the period prescribed above, the time properly taken in obtaining a copy of the order complained of shall be excluded.

(1-A) Every petition for appeal shall be accompanied by a certified copy of the order to which objection is made unless the authority to which the

petition is made, dispenses with its production.

(2) The Collector shall then send for the record of the case from the Controller and, after perusing such record and making such further enquiry as

he may think fit, either personally or through the Controller, shall decide the appeal.

(2-a) The Collector may, either on his own motion at any time or on the application of any party interested made within ninety days of the passing

of an order, review any order passed by himself or any of his predecessors-in-office and pass such order in reference thereto as he thinks fit so

however that no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such

order.

(3) The decision of the Collector, and subject only to such decision, an order of the Controller shall be final and no further appeal or revision or

application for review shall lie from such decision to any authority whatsoever.

If these two clauses, namely, clauses 13 and 21 of the Rent Control Order, are read together, it is the contention of Shri Somalwar that it is the

decision of the Deputy Collector, namely, the appellate authority, which is final and the order granting permission passed by the Rent Controller is

subject to such a decision by the appellate authority and subject only to such a decision the order of the Controller shall be final and not otherwise.

According to Shri Somalwar, therefore, unless there is a final order passed by the Deputy Collector or the appellate authority in an appeal under

clause 21, there is no occasion for a landlord to issue a notice terminating the tenancy of a tenant. On the contrary, it is the contention of Shri

Ramchandani that clause 13 of the Rent Control Order clearly lays down that a permission is to be granted by the Rent Controller and it is that

permission which is operative on its own strength and it is open for a landlord to issue a notice of termination as soon as such a permission is

granted. For this proposition Shri Ramchandani has relied upon the decisions of this Court, namely, P.K. Deshmukh v. Sudhabai 1966 Mh. L J

690, Mahadeo v. Akaji 1964 Mh. L J 528 and Ishwariprasad Ganpatrao Vs. Shankar Dayal Shukla, .

6. From the view taken by this Court in these decisions it is clear that it is open for the landlord to act upon the permission granted by the Rent

Controller and to issue a notice terminating the tenancy of the tenant. In Mahadeo v. Akaji (cit. supra) this Court has held that if subsequent to the

filing of a suit or even passing of a decree in favour of a landlord the permission is revoked by the High Court, then in that case the decree itself

becomes void and unenforceable by reason of the order passed by the High Court in a writ petition. In Ishwariprasad v. Shankar Dayal (cit. supra)

in terms this Court found that mere fact that the tenant has filed an appeal against the order of the Rent Controller is not enough to suspend the

operation of the order of the Rent Controller granting permission or in itself is not sufficient to stay the suit. In this context in para. 7 of the judgment

it has been observed:

The provisions of clause 13 of the C. P. and Berar Letting of Houses and Rent Control Order show that the only bar that is raised by clause 13 is

giving of notice terminating his lease without written permission of the Rent Controller. Once such permission is granted, the bar is removed. If that

permission gets set aside ""cause of action"" may not survive and that must have its effect ultimately on the litigation commenced in the civil Court.

Merely because there is a possibility of such a contingency arising it is not proper for the civil Court trying the suit to stay its hands indefinitely

awaiting result of the Rent Control proceedings first before the appellate Court and then before the superior Courts. Such course is not warranted

as it results in unnecessary prolongation of the proceedings.

In P. K. Deshmukh v. Sudhabai (cit. supra) the same view has been taken by this Court which was based on the provisions of Bombay Rents,

Hotel and Lodging House Rates (Control) Act, 1947. Therefore, it is quite clear that it is not necessary for a landlord to wait till the Rent Control

proceedings are finally decided for issuing a notice to the tenant terminating his tenancy if he has obtained a permission from the Rent Controller in

this behalf.

7. However, the question which is required to be decided in this revision application is to some extent a different one. In this particular case on the

basis of a permission granted by the Rent Controller the landlords did issue a notice terminating the tenancy of the non-applicant-tenant which was

dated 5-12-1966 and by this notice the tenancy of the non-applicant-tenant was to stand terminated at the end of December 1966. But even

before the expiry of the notice period of termination of the tenancy, the tenant informed the landlords that the notice issued by them is premature as

he had already filed appeal before the appellate authority challenging the order passed by the Rent Controller. Vide his reply dated 19-12-1966,

given by the counsel for the tenant to the counsel for the landlords in reply to the notice issued by them dated 5-12-1966, the tenant informed the

landlords as under:

That, my client has preferred appeals under clause 21 of the House Rent Control Order, 1949 against the orders passed in Rev. Case No. 552/A-

71(2) of 1965-66 and Rev. Case No. 135/A-71(2) of 1964-65 before the Collector, Nagpur, and the said appeals are pending hearing parties.

That the order of the Rent Controller is final subject to the order of the Collector. It means that so long the appeals are pending the finality of the

order is in suspense. My client, therefore, says that the notice is premature.

In view of these contentions raised by the tenant instead of filing of a suit immediately, the applicants-landlords chose to await the decisions in

appeals and as the appeals were duly filed and were pending before the appellate authority, they accepted the rent from the tenant on an

assumption that pending decisions in appeals the tenant has a right to continue as a tenant in view of the provisions of the Rent Control Order.

Apart from the fact as to whether the order of the Rent Controller merges in the order of the appellate authority, in my opinion, such a conduct of

the landlords in such circumstances cannot amount to waiver of the first notice or the permission granted by the Rent Controller. What amounts to

a waiver has been clearly laid down by the Supreme Court in Bhawanji v. Himatlal 1973 Mh. L J 1. After referring to the earlier decision of the

Supreme Court in Ganga Dutt Murarka Vs. Kartik Chandra Das and Others, and reiterating the principle laid down therein, in para. 12 of the

decision the Supreme Court observed as under:

Learned counsel for the appellants argued that whenever rent is accepted by a landlord from a tenant whose tenancy has been determined, but

who continues in possession, a tenancy by holding over is created. The argument was that the assent of the lessor alone and not that of the lessee

was material for the purposes of section 116. We are not inclined to accept this contention. We have already shown that the basis of the section is

a bilateral contract between the erstwhile landlord and the erstwhile tenant, if the tenant has the statutory right to remain in possession, and if he

pays the rent, that will not normally be referable to an offer for his continuing in possession which can be converted into a contract by acceptance

thereof by the landlord. We do not say that the operation of section 116 is always excluded whatever might be the circumstances under which the

tenant pays the rent and the landlord accepts it. We have earlier referred to the observations of this Court in Ganga Dutt Murarka v. Kartik

Chandra Das regarding some of the circumstances in which a fresh contract of tenancy may be inferred. We have already held the whole basis of

section 116 of the Transfer of Property Act is that, in case of normal tenancy, a landlord is entitled, where he does not accept the rent after the

notice to quit, to file a suit in ejectment and obtain a decree for possession, and so his acceptance of rent is an unequivocal act referable only to his

desire to assent to the tenant continuing in possession. That is not so where Rent Act exists: and if the tenant says that landlord accepted the rent

not as statutory tenant but only as legal rent indicating his assent to the tenant''s continuing in possession, it is for the tenant to establish it. No

attempt has been made to establish it in this case and there is no evidence, apart from the acceptance of the rent by the landlord, to indicate even

remotely that he desired the appellants to continue in possession after the termination of the tenancy. Besides, as we have already indicated the

animus of the tenant in tendering the rent is also material. If he tenders the rent as the rent payable under the statutory tenancy, the landlord cannot,

by accepting it as rent, create a tenancy by holding over. In such a case the parties would not be ad adem and there will be no consensus. The

decision in Ganga Dutt Murarka v. Kartik Chandra Das which followed the principles laid down by the Federal Court in AIR 1949 124 (Federal

Court) , is correct and does not require re-consideration.

From these observations it is quite clear that mere acceptance of a rent is not enough to create a new tenancy u/s 116 of the Transfer of Property

Act in the cases where the Rent Control Legislation is in existence. Further the burden is upon the tenant to prove and establish the said fact,

namely, the assent of the landlord to tenant''s continuing in possession as a tenant. Apart from this, the question will have to be considered from a

different perspective.

8. In the present case it was the case of the tenant himself that in view of the filing of the appeals before the appellate authority the permission

granted by the Rent Controller has not assumed finality and it is not open for the landlords to act upon the said permission. It was the case of the

tenant that it is the order passed in the appeal which is final and that order alone gives a right to the landlords to issue a notice for terminating the

tenancy of the tenant. It is pertinent to note that this contention was raised by the tenant in his reply dated 19-12-1966 even prior to the expiry of

the notice period or termination of the tenancy and the landlords by their conduct accepted the said contention, and therefore, decided to await the

decision in appeals. It is no doubt true that it was open for the landlords to institute a suit for ejectment immediately after obtaining the permission

from the Rent Controller and it was not necessary for them to await the decision of the appellate authority even though the appeals were pending.

However, the landlords could have instituted a suit inspite of pendency of appeals at their own risk and peril. As observed by this Court in

Ishwariprasad v. Shankar Dayal ""if that permission gets set aside by appeal or other order the plaintiff''s cause of action may not survive and that

must have its effect ultimately on the litigation commenced in the civil Court."" Moreover, by express provision of law, namely, clause 21 of the Rent

Control Order, the decision of the Deputy Collector is made final and subject only to such a decision the finality is attached to the order of the

Controller. Therefore, it is quite clear that a landlord may file a suit for eviction on getting the permission of the Rent Controller, but to do so he

runs the risk of such permission being revoked by the appellate authority and in which case his suit might become infructuous in view of the express

words of sub-clause (3) of clause 21 of the Rent Control Order. In this view of the matter, in my opinion, if the landlord accepting the contention

of the tenant decided to await the decision in an appeal filed by the tenant, it cannot be said that there was any intention on his part to continue the

relationship of landlord and tenant or the create a new tenancy. This is further clear from the fact that according to the tenant''s own contention he

was entitled to the protection of the Rent Control Order till the appeals filed by him before the Deputy Collector were finally decided. This plea

was raised by the tenant even before the expiry of the notice period. Accepting this contention of the tenant if in the meantime the landlords accept

an amount equivalent to rent it cannot be said that they have waived their right under the permission granted by the Rent Controller or have waived

the notice issued by them.

9. It is no doubt true that the decision of this Court in Chaturbhuj v. Mangnibai (cit. supra) does help the non-applicant-tenant to some extent.

However, in that case it seems that the permission had become final under the provisions of the Rent Control Order and thereafter a notice was

issued by the landlord and in this context it was observed by this Court that after issuing a legal and valid notice after obtaining the necessary

permission from the Rent Controller if the landlord accepts the rent then in these circumstances the permission stood exhausted. In the said

decision in paragraph 4 it was observed by this Court as under:

It is true that waiver has to be inferred from the intention of the landlord or from his conduct. Section 113 of the Transfer of Property Act provides

that a notice given u/s 111, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of

the person giving it showing an intention to treat the lease as subsisting. Waiver can evidently be inferred from the conduct of the person serving

notice indicating an intention to treat the lease as subsisting. But in the absence of any other circumstance, acceptance of rent which has become

due in respect of the premises since the expiration of the notice amounts to waiver of the notice. This is made clear by illustration (a) to section

113. That illustration states:

A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in

respect of the property since the expiration of the notice. The notice is waived.

It must, therefore, be held that in this case, by acceptance of rent by the plaintiff for a period after the date of the expiry of the notice, the notice

served by the plaintiff was waived.

10. This decision in Chaturbhuj''s case was adversely commented upon by the Madhya Pradesh High Court in Kamaksha Prasad Mishra Vs. Smt.

Parwatibai Sitambarnath and Another, . After referring to the said decision, in paragraph 6 of the judgment it is observed by the Madhya Pradesh

High Court as under :

In the Bombay case it was held that waiver of notice determining tenancy can be inferred from the conduct of the person serving notice indicating

an intention to treat the lease as subsisting and that in the absence of any other circumstance, acceptance of rent which has become due in respect

of the premises since the expiration of the notice would amount to waiver of the notice. Here there are circumstances to indicate that by accepting

rent for the month of February 1956 the landlords did not intend to treat the tenancy as subsisting.

In that case it was further held that the permission granted by the Rent Controller under clause 13 of the C. P. and Berar Letting of Houses and

Rent Control Order 1949 was exhausted when the landlord first gave a notice to quit on 21-7-1950 and that he could not without obtaining fresh

permission from the Rent Controller give a second notice to quit. With due respect to the learned Judges of the Bombay High Court, we do not

find ourselves in agreement with this view which does not take into account the fact that waiver of a notice to quit necessarily implies restoration of

the old tenancy. The Bombay case does not also notice the decision of the Federal Court in Kai Khushroo Benzonjee Capadia v. Baj Jerbai

Hirjibhoy Warden.

11. The Rajasthan High Court also in Roshanlal v. Kailash Prasad has referred to the decision of this Court in Chaturbhuj''s case and observed as

follows:

In Chaturbhuj v. Manjibai the landlord had obtained the permission of the Rent Controller to serve a notice of ejectment upon the tenants under

clause 13 of the C. P. and Berar Letting of Houses and Rent Control Order, 1949. Thereafter the landlord accepted rent which was sent to him by

money-order. Later on the landlord served another notice to quit to the tenant, but this time without the permission of the Rent Controller. Their

Lordships were considering whether without the second notice with permission of the Controller the suit was maintainable. As regards the first

notice they held that since rent was accepted by the landlord the notice will be deemed to have been waived. The judgment was by J. C. Shah J.

as he then was. In Ganga Dutt Murarka"s case, the observations were from the judgment delivered by Shah J. as he then was, in the Supreme

Court. In the Supreme Court case his Lordship pointed out that whether the conduct justifies an inference about the creation of fresh tenancy

would depend upon the facts of each case. His Lordship added that occupation of premises by a tenant whose tenancy is determined is by virtue

of the protection granted by the statute and not because of any right arising from the contract which is determined. The statute protects his

possession so long as the conditions which justify a lessor in obtaining an order of eviction against him do not exist. Once the prohibition against the

exercise of jurisdiction by the Court is removed, the right to obtain possession by the lessor under the ordinary law springs into action and the

exercise of the lessor"s right to evict the tenant will not unless the statute provides otherwise be conditioned. Therefore, as long as the restrictions

under the Rent Control Act continue the right of the landlord to evict the tenant has not sprung into action and lies under the effect of the brake put

by the Rent Control Legislation.

In view of this decision and the subsequent decisions of the Supreme Court it was contended by Shri Somalwar that the decision of this Court in

Chaturbhuj v. Mangnibai (cit. supra) deserves to be reconsidered.

12. However, in my opinion, it is not necessary to go into this question in the present case. As observed by the Supreme Court in Ganga Dutt

Murarka"s case the question relating to waiver will have to be decided having regard to the facts and circumstances of each case.

13. In the present case the landlords chose to wait for the decision in appeals filed by the tenant and that too at the instance of the tenant himself.

Immediately after the appeals were decided, the landlords gave a notice to the tenant through their counsel terminating his tenancy. In the said

subsequent notice, namely, Ex. 20 dated 1-1-1968, a specific reference was made by the landlords to this fact. The relevant portion of the said

notice is as under:

My client has obtained permission of the Rent Controller, Nagpur, in Rent Control Case No. 552/A-71 (2)/65-66 and also in Rent Control Case

No. 135/A-71 (2)/64.-65 for serving you with a quit notice. The permission of the Rent Controller that was obtained in the above cases has been

confirmed by the Appellate Court on 28-12-1967 and your appeals against the order of the Rent Controller have been dismissed.

I had previously served you with a quit notice dated 5-12-1966 based on the permission of the Rent Controller but by your reply notice dated 19-

12-1965 you had stated that the orders of the Rent Controller were not final and were subject to the orders of the Appellate Court. My clients,

have, therefore, awaited the decision of the Appeals which were finally dismissed on 28-12-1967, and I am serving you with this fresh quit notice.

My clients by this notice terminates your tenancy with effect from the end of January 1968 and call upon you to vacate the premises under your

lease by the end of the said month. I also call upon you to pay my clients all the arrears of rent due from you.

From the conduct of the landlords as well as the subsequent notice it is quite clear that it was never the intention of the landlords to continue the

possession of the non-applicant-tenant as a tenant or to treat the tenancy as subsiting. In substance this second notice was given in continuation of

the first notice. Because of the statutory provisions, namely, the provisions of the Rent Control Order, the tenant filed appeals against the order of

the Rent Controller. As actually the appeals were filed and the order passed by the Rent Controller became Sub judice at the appellate stage,

during the pendency of the appeals the landlords decided to wait for the decisions in appeals, and in view of the statutory provisions of the Rent

Control Order and pendency of appeals they accepted the amount equivalent to the rent for the intervening period. As soon as the appeals were

decided they immediately issued the second notice making everything clear and thereafter terminating the tenancy of the tenant. The only conclusion

which could be drawn from this conduct of the landlords is that there was no intention on the part of the landlords to continue the tenant in

possession as a tenant. In this case the amount of rent was tendered by the tenant in view of the statutory provisions, namely, the Rent Control

Order, as the appeals were pending before the appellate authority. If by virtue of pendency of appeals the tenant tendered the rent, the landlords

by accepting the rent cannot create a tenancy or from this conduct it could not be held that they have either created the new tenancy or have

waived the first notice or the permission granted by the Rent Controller.

14. If the contention raised by Shri Ramchandani is accepted it is likely to result in complications and defeat the very provisions of the Rent Control

Order themselves. Take a hypothetical case : suppose in a given case a permission has been granted by the Rent Controller and in pursuance of

this permission a landlord issues a notice terminating the tenancy of a tenant. Thereafter the tenant filed an appeal before the appellate authority and

the appellate authority sets aside the order passed by the Rent Controller and quashes the permission granted by him. It is common knowledge that

normally a writ petition under Article 227 of the Constitution of India or a review petition can be filed against the order of the appellate authority.

The landlord pursues the further remedy, but in the meantime in view of the setting aside of the order of the Rent Controller and quashing of the

permission by the appellate authority landlord accepts the rent. If ultimately in a writ petition the order passed by the appellate authority is set aside

and the permission granted by the Rent Controller is restored, can it be said that only because the landlord accepted the rent meanwhile the

permission granted by Rent Controller which is subsequently restored by the High Court also stands exhausted ? If the interpretation put forward

by Shri Ramchandani is accepted, it will have to be held that inspite of the order of the High Court setting aside the order of the appellate authority

and restoring the permission granted by the Rent Controller, in view of the fact that subsequent to the order of the appellate authority as the

landlord had accepted the rent, the original permission granted by the Rent Controller and which is restored by the High Court, stands exhausted.

Therefore, in my opinion all these provisions of the Rent Control Order should be construed harmoniously. A litigant has a right to pursue the

remedy provided under the special legislation. The rights of the parties cannot be decided or cannot be allowed to be adversely affected by

prosecution of such remedies by either of the parties. It is an established principle of law that whenever an appeal is provided it is the appellate

order which is final and the order of the first Court normally merges in the order passed by the appellate authority.

15. No doubt it is true that it is open for a landlord to issue a notice terminating the tenancy of a tenant after grant of permission by the Rent

Controller, but such issuance of a notice and institution of a suit in pursuance of the said notice is at the risk of the landlord himself. This risk

involves the likelihood of suit being stayed till the decisions of Rent Control authorities in appeal etc., if it is filed immediately after the order of Rent

Controller. He chooses this action at his own sufferance and at his own peril, and therefore, if a landlord chooses to await the final decision under

the special statute which creates rights and obligations in favour or against the landlord and the tenant, the landlord cannot be punished for such a

conduct of his. This conduct cannot be said to be a voluntary act of a landlord, which will amount to waiver. On the contrary he chooses to await

for the decision of the appellate authority as an appeal has been provided by the special statute and the finality has been attached to the appellate

order only. The order passed by the Rent Controller being subject to the decision in appeal, in my opinion, it cannot be said that in the present

case only because the landlords thought it expedient or advisable to wait till the decision of the appeals, it could be said that by accepting rent

tendered by the tenant during the pendency of appeal, they have waived either the notice or the permission granted by the Rent Controller or

created a new tenancy.

16. In the result, therefore, the revision application is allowed. The judgment and decree passed by the Court below so far as they relate to the

dismissal of the suit filed by the plaintiffs relating to the possession of the suit house is concerned, are set aside and instead it is directed that the

plaintiffs are entitled to a decree for possession of the suit property from the defendant. However, the defendant-tenant is granted four months''

time from to-day for delivery of the possession of the suit premises. The plaintiffs will be entitled to execute the decree thereafter if the defendant-

tenant fails to deliver possession of the suit property to the plaintiffs within that period. In the circumstances of the case, however, there will be no

order as to costs throughout.