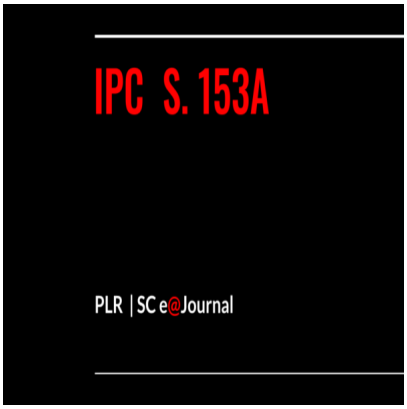

IPC 153A – It is necessary that at least two such groups or communities should be involved.

Description

Transfer of Property Act, Section 106 and Delhi Rent Control Act, 1958 – Filing of an eviction suit under general law serves as a notice to quit to the tenant without the requirement of a separate notice under Section 106 of the Transfer of Property Act if the Rent Act is not applicable to the premises. ***AIR 1979 SC 1745*** **. [Para 12]**

Hindu undivided family (HUF) – Role of Karta in HUF under Eviction Suit – A junior member of a Hindu undivided family (HUF) can file an eviction suit if the Karta is unable to perform his duties due to prolonged absence abroad, with no objections from other family members, establishing that a junior member can act as Karta in such circumstances – – Delhi Rent Control Act, 1958, Section 14(1)(e) . ***(1991)3 SCC 442)*****. [Para 7]**

Delhi Rent Control Act, 1958, Section 6A, 8 and 14(1)(e) – Delhi Rent Control Act, 1958, Sections 6A and 8 – Rent Adjustment – Under Section 6A of the Delhi Rent Control Act, 1958, a landlord can increase rent by 10% every three years, despite ongoing eviction proceedings, provided that notice of the increase is given as required by Section 8 of the Act. [Para 10]

Hindu undivided family (HUF) – Management of Joint Hindu Family Property – A younger member of a Joint Hindu Family can manage the property in absence of the senior member or Karta under specific conditions such as the Karta's unavailability, express relinquishment of management rights by the Karta, or extraordinary circumstances affecting the family, ***(1991)3 SCC 442)*****. [Paras 6 and 7]**

Rent Act – General Law vs. Rent Control Legislation – The landlord's right to evict under general law persists unless specifically limited by Rent Control legislation. Once such legislative protection is withdrawn, the landlord's original rights under general law revive and can be enforced (2001(2) RCR (Rent) 328 (SC)). [Paras 12 and 13]

Civil Procedure Code, Order 23 Rule 1 – Delhi Rent Control Act, 1958, Section 14(1)(e) – Delhi Rent Control Act, 1958, Sections 6A and 8 – Civil Procedure in Rent Cases – If the Rent Act ceases to apply (e.g., due to a rent increase above the statutory threshold during the pendency of a suit), the landlord can withdraw the petition from the Rent Controller and file a fresh eviction suit under general law without needing permission from the Rent Controller. [Para 10]

Cases Referred :-

1. Sunil Kumar v. Ram Prakash, (1988)2 SCC 77].

2. Tribhovan Das Haribhai Tamboli v. Gujarat Revenue Tribunal [(1991)3 SCC 442].

3. Narendrakumar J. Modi v. Commissioner of Income Tax, Gujarat II, Ahmedabad [(AIR 1976 Supreme Court 1953]

4. Mohinder Prasad Jain v. Manohar Lal Jain, 2006(1) RCR (Rent) 250 : [2006 II AD (SC) 520].

5. Santosh Hazari v. Purushottam Tiwari (dead) by LRs., 2001(3) RCR (Civil) 243 .

6. Madhukar v. Sangram, [(2001)4 SCC 756].

7. D.C. Bhatia v. Union of India, [(1995)1 SCC 104].

8. V. Dhanapal Chettiar v. Yesodai Ammal, 1979(2) RCR (Rent) 352 : [AIR 1979 Supreme Court 1745].

9. Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co., 2001(2) RCR (Rent) 328 : (2001)8 SCC 397.

For the Appellants :- Bhaskar P. Gupta, Senior Advocate with Rana Mukherjee, Subodh K. Pathak, Ms. Geeta Luthra, Shashi Ranjan, B. Patnaik, Ms. Pinky Anand and D.N. Goburdhan, Advocates.

For the Respondent :- Rajiv Dutta, Senior Advocate with Rajesh Goyal, Ms. Mandeep Kuar and V.P. Singh, Advocates.

JUDGMENT

Tarun Chatterjee, J. – Leave granted.

2. This appeal has been preferred before us, assailing the judgment and decree dated 19th of April, 2007, passed by the High Court of Delhi, whereby, the High Court had dismissed the appeal of the appellant, thereby affirming the judgments of the courts below decreeing the eviction suit filed at the instance of the respondent against the appellant.

3. The facts leading to the filing of this appeal may be stated as follows.

4. On 16th of July, 1980, the appellant entered into a lease with Dr. Santokh Singh HUF for a period of 4 years, with respect to the property situated at N-112, Panchsheel Park, New Delhi (for short “the suit premises”), at a monthly rent of Rs. 3500/-. Accordingly, at the expiry of the afore said period of 4 years, a notice of eviction dated 5th of April, 1984 was issued which was followed by filing an Eviction petition No. 432 of 1984 before the Additional Rent Controller by Jasraj Singh, claiming himself to be the Karta of Dr. Santokh Singh HUF. The Additional Rent Controller passed an order directing the appellant for payment of rent at the rate of Rs. 3500/-. After coming into force of Section 6A of the Delhi Rent Control Act, a notice dated 9th of January, 1992 was sent by Jasraj Singh, in the above capacity, to the appellant for enhancement of rent by 10 percent and also termination of tenancy of the appellant. In reply to this notice, the appellant denied the right of the respondent to enhance the rent. Another notice dated 31st of March 1992 was sent afresh by the respondent notifying the appellant that the rent stood enhanced by 10 percent while the tenancy stood terminated w.e.f. 16/17th of July, 1992. The aforesaid eviction petition No. 432 of 1984 was withdrawn on 20th of August, 1992 by Jasraj Singh. Thereafter, a notice dated 3rd of September, 1992 was sent by Jasraj Singh asking the appellant to vacate the suit property to which the appellant did not concede and refused to vacate the same by a reply dated 24th of September, 1992. On 6th of February, 1993, Dr. Santokh Singh HUF, through Jasraj Singh, claiming himself to be the Karta of the HUF, instituted a suit seeking eviction of the appellant from the suit premises. The trial court decreed the respondent’s suit for possession, against which an appeal was preferred before the Additional District Judge, Delhi. The first appellate court dismissed the appeal summarily. Against this order of the first appellate court, a second appeal, being R.S.A. No. 146 of 2003, was preferred before the High Court of Delhi, which remanded the matter to the first appellate court for fresh consideration. In pursuance of this direction of the High Court, the first appellate court,

after fresh consideration of the matter, affirmed the judgment passed by the Trial court thereby dismissing the appeal of the appellant herein. Being aggrieved and dissatisfied with the order of the first appellate court, the appellant preferred a second appeal, being R.S.A. No. 209 of 2005, before the High Court of Delhi, which, however, was also dismissed. It is this decision of the High Court of Delhi, which is impugned in this appeal and in respect of which leave has already been granted.

5. The pivotal questions, inter alia, in the facts and circumstances of this case, which warrant our determination are as follows :

(i) Whether Jasraj Singh could file the suit for eviction, in the capacity of the Karta of Dr. Santokh Singh HUF, when, admittedly, an elder member of the aforesaid HUF was alive ?

(ii) Whether the High Court was right in concluding that the first appellate court had duly dealt with all the issues involved and re-appreciated evidence as provided under Order 41 Rule 31 of the Code of Civil Procedure (in short "the CPC") ?

(iii) Whether the contractual tenancy between the landlord and tenant came to an end merely by filing an Eviction Petition and whether the landlord could seek enhancement of rent simultaneously or post termination of tenancy ?

(iv) Whether the landlord could issue a notice under Section 6A of the Delhi Rent Control Act, 1958 (in short "the Act") for increase of rent without seeking leave of the rent controller during the pendency of an order under Section 15 of the Act directing the tenant to deposit rent on a month to month basis ?

6. We have heard the learned counsel for the parties. As regards the first issue, as noted hereinabove, the learned senior counsel Mr. Gupta appearing on behalf of the appellant had questioned the maintainability of the suit filed at the instance of Jasraj Singh, claiming himself to be the Karta of Dr. Santokh Singh HUF. The learned counsel Mr. Gupta strongly argued before us that in view of the settled principal of law that the junior member in a joint family cannot deal with the joint family property as Karta so long as the elder brother is available, the respondent herein, who is admittedly a junior member of the family, could not have instituted the eviction suit, claiming himself to be the Karta of the family. In support of this argument, the learned senior counsel Mr. Gupta has placed reliance on the decisions of this court in ***Sunil Kumar and another v. Ram Prakash and others, 1988(2) RRR 288 : [(1988)2 SCC 77]*** and ***Tribhovan Das Haribhai Tamboli v. Gujarat Revenue Tribunal and others [(1991)3 SCC 442].*** Before we look at the views expressed by the High Court on this question, it would be pertinent to note the ratios of the two authorities cited before us. In ***Sunil Kumar and another v. Ram Prakash and others*** [supra], this court held as follows : –

"In a Hindu family, the Karta or Manager occupies a unique position. It is not as if anybody could become Manager of a joint Hindu family. As a general rule, the father of a family, if alive, and in his absence the senior member of the family, is alone entitled to manage the joint family property."

From a reading of the aforesaid observation of this court in ***Sunil Kumar and another v. Ram Prakash and others*** [supra], we are unable to accept that a younger brother (sic member) of a joint hindu family would not at all be entitled to manage the joint family property as the Karta of the family. This decision only lays down a general rule that the father of a family, if alive, and in his absence the senior member of the family would be entitled to manage the joint family property. Apart from that, this decision was rendered on the question whether a suit for permanent injunction, filed by co-parcerners for restraining the Karta of a joint hindu family from alienating the joint family property in pursuance of a sale agreement with a third party, was maintainable or not. While considering that aspect of the matter, this court considered as to when could the alienation of joint family property by the Karta be permitted. Accordingly, it is difficult for us to agree with Mr. Gupta, learned senior counsel appearing for the appellant, that the decision in ***Sunil Kumar and another v. Ram Prakash and others*** [supra] would be applicable in the present case which, in our view does not at all hold that when the elder member of a joint hindu family is alive, the younger member would not at all be entitled to act as a manager or Karta of the joint family property.

In Tribhovandas's case [supra], this court held as follows :

"The managership of the joint family property goes to a person by birth and is regulated by seniority and the karta or the manager occupies a position superior to that of the other members. *A junior member cannot, therefore, deal with the joint family property as manager so long as the karta is available except where the karta relinquishes his right expressly or by necessary implication or in the absence of the manager in exceptional and extraordinary circumstances such as distress or calamity affecting the whole family and for supporting the family or in the absence of the father whose whereabouts were not known or who was away in remote place due to compelling circumstances and that his return within the reasonable time was unlikely or not anticipated.*"

(Emphasis supplied)

From a careful reading of the observation of this court in Tribhovandas's case [supra], it would be evident that a younger member of the joint hindu family can deal with the joint family property as manager in the following circumstances :-

(i) if the senior member or the Karta is not available;

(ii) where the Karta relinquishes his right expressly or by necessary implication;

(iii) in the absence of the manager in exceptional and extra ordinary circumstances such as distress or calamity affecting the whole family and for supporting the family;

(iv) in the absence of the father :-

(a) whose whereabouts were not known or

(b) who was away in a remote place due to compelling circumstances and his return within a reasonable time was unlikely or not anticipated.

Therefore, in Tribhovandas's case [supra], it has been made clear that under the aforesaid circumstances, a junior member of the joint hindu family can deal with the joint family property as manager or act as the Karta of the same.

7. From the above observations of this court in the aforesaid two decisions, we can come to this conclusion that it is usually the Father of the family, if he is alive, and in his absence the senior member of the family, who is entitled to manage the joint family property. In order to satisfy ourselves whether the conditions enumerated in Tribhovandas's case [supra] have been satisfied in the present case, we may note the findings arrived at by the High Court, which are as follows :-

(i) Jasraj Singh, in his cross examination before the trial court had explained that his eldest brother Dhuman Raj Singh (supposed to be the Karta of the HUF) has been living in United Kingdom for a long time. Therefore, the trial court had rightly presumed that Dhuman Raj Singh was not in a position to discharge his duties as Karta of the HUF, due to his absence from the country.

(ii) The respondent produced the Xerox copy of the power of attorney given by Dhuman Raj Singh to Jasraj Singh.

(iii) The trial court relied upon the law discussed in the books namely, "Principles of Hindu Law" by Mulla and Mulla and "Shri S.V. Gupta on Hindu Law", wherein it has been observed that ordinarily, the right to act as the Karta of HUF is vested in the senior-most male member but in his absence, the junior members can also act as Karta. (Emphasis supplied)

(iv) There was no protest by any member of the joint hindu family to the filing of the suit by Jasraj Singh claiming himself to be the Karta of the HUF. There was also no whisper or protest by Dhuman Raj Singh against the actingof Jasraj Singh as the Karta of the HUF.

It may also be noted that the High Court relied on the decision of this court in ***Narendrakumar J. Modi v. Commissioner of Income Tax, Gujarat II, Ahmedabad [(AIR 1976 Supreme Court 1953]***, wherein it was held that so long as the members of a family remain undivided, the senior member of the family is entitled to manage the family properties……..and is presumed to be manager until contrary is shown, *but the senior member may give up his right of management, and a junior member may be appointed manager*. Another decision in ***Mohinder Prasad Jain v. Manohar Lal Jain, 2006(2) RCR (Civil) 36 : 2006(1) RCR (Rent) 250 : [2006 II AD (SC) 520]***, was also relied upon by the High Court wherein it has been held at paragraph 10 as follows :

"10. A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein."

Having relied on the aforesaid decisions of this Court and a catena of other decisions and the findings arrived at by it, as noted hereinabove, the High Court rejected the argument of the appellant that Jasraj Singh could not have acted as the Karta of the family as his elder brother, namely, Dhuman Raj Singh, being the senior most member of the HUF, was alive. In view of our discussions made herein earlier and considering the principles laid down in Tribhovandas's case [supra] and Sunil Kumar's case [supra], we neither find any infirmity nor do we find any reason to differ with the findings arrived at by the High Court in the impugned judgment. It is true that in view of the decisions of this court in Sunil Kumar's case [supra] and Tribhovandas's case [supra], it is only in exceptional circumstances, as noted herein earlier, that a junior member can act as the Karta of the family. But we venture to mention here that Dhuman Raj Singh, the senior member of the HUF, admittedly, has been staying permanently in the United Kingdom for a long time. In Tribhovandas's case [supra] itself, it was held that if the Karta of the HUF was away in a remote place, (in this case in a foreign country) and his return within a reasonable time was unlikely, a junior member could act as the Karta of the family. In the present case, the elder brother Dhuman Raj Singh, who is permanently staying in United Kingdom was/is not in a position to handle the joint family property for which reason he has himself executed a power of attorney in favour of Jasraj Singh. Furthermore, there has been no protest, either by Dhuman Raj Singh or by any member of the HUF to the filing of the suit by Jasraj Singh. That apart, in our view, it would not be open to the tenant to raise the question of maintainability of the suit at the instance of Jasraj Singh as we find from the record that Jasraj Singh has all along been realising the rent from the tenant and for this reason, the tenant is now estopped from raising any such question. In view of the discussions made herein above, we are, therefore, of the view that the High Court was fully justified in holding that the suit was maintainable at the instance of Jasraj Singh, claiming himself to be the Karta of the HUF.

8. This takes us to the next issue namely, whether the High Court was right in concluding that the first appellate court had duly dealt with all the issues involved and re-appreciated the evidence as provided under Order 41 Rule 31 of the CPC. The learned senior counsel for the appellant Mr. Gupta sought to argue that the High Court had erred in holding that the first appellate court had acted in due compliance with Order 41 of the CPC. It may be noted that the High Court, while concluding as aforesaid, came to the following findings :-

1) The first appellate court has passed a speaking order and it is apparent that it has applied its mind.

2) The First appellate court had to deal with the arguments which were advanced before it. It had rightly given the short shrift to all those arguments which did not inject some coherence.

3) The learned counsel for the appellant had failed to point out the issues regarding which the First Appellate court had not given its own conclusion.

4) The learned counsel for the appellant had also failed to show as to how the authority cited viz., ***Santosh Hazari v. Purushottam Tiwari (dead) by LRs., 2001(3) RCR (Civil) 243 : [AIR 2001 Supreme Court 965]*** was applicable to the facts of the case.

9. ***In our view***, it is difficult for us to set aside the findings of the High Court on the question whether the first appellate court, while deciding the questions of fact and law, had complied with the requirements under Order 41 of the CPC. We are in agreement with the findings of the High Court as on a perusal of the judgment of the first appellate court, it does not appear to us that the findings arrived at by the first appellate court affirming the judgment of the trial court on any issue were either very cryptic or based on non-consideration of the arguments advanced by the parties before it. In support of this contention, before the High Court, the appellant had relied on a decision of this court in the case of Santosh Hazari [supra], but in this appeal, the learned senior counsel for the appellant Mr. Gupta has strongly relied on a decision of this court in the case of ***Madhukar & Ors. v. Sangram & Ors., 2001(2) RCR (Civil) 704 : [(2001)4 SCC 756]*** and contended that since the judgment of the first appellate court was cryptic in nature and the first appellate court had not dealt with the issues involved in the appeal, the same was liable to be set aside and the matter was liable to be sent back to the first appellate court for rehearing. ***We are unable to accept*** this contention of the learned senior counsel for the appellant. Before we consider the findings of the first appellate court as well as the High Court on this issue, we must keep on record that in ***Madhukar & Ors. v. Sangram & Ors.*** [supra], this court had to reverse the findings of the High Court because the High Court erred in allowing the plaintiff/respondents first appeal without even considering the grounds on which the trial court had dismissed the suit and without discussing the evidence on record. On the same lines, the decision of this court in Santosh Hazari's case [supra] was based. ***In our view***, the aforesaid two decisions of this court are distinguishable on facts with the present case. A perusal of the judgment of the first appellate court after remand would clearly indicate that the same was neither cryptic nor based on non-consideration of the issues involved in the appeal. Apart from that, it has to be kept in mind that the decisions of this court in ***Madhukar & Ors. v. Sangram & Ors.*** [supra] and Santosh Hazari's case [supra], were considering the reversal of the findings of fact of the trial court. In the present case, the first appellate court had affirmed the findings of the trial court, which were based on total consideration of the material evidence – documentary and oral on record. It is well settled that in the case of reversal, the first appellate court ought to give some reason for reversing the findings of the trial court whereas in the case of affirmation, the first appellate court accepts the reasons and findings of the trial court. In any view of the matter, from a perusal of the judgment of the first appellate court, it is clear that it reflects conscious application of mind and has recorded the findings supported by reason on all the issues arising along with the contentions put forward by the parties. In Santosh Hazari's case [supra], this court observed :-

"The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court *agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with the reasons given by the court, decision of which is under appeal, would ordinarily suffice.*"

(Emphasis supplied).

Again, in ***Madhukar & Ors. v. Sangram & Ors.*** (supra), this court had to set aside the judgment of the High Court because the first appellate court was singularly silent as to any discussion, either of the documentary or the oral evidence. In addition, this court in that decision was of the view that the findings of the first appellate court were so cryptic that none of the relevant aspects were noticed. In this background, this court at paragraph 8 observed as follows :-

"Our careful perusal of the judgment in the first appeal shows that it hopelessly falls short of considerations which are expected from the court of first appeal. We, accordingly set aside the impugned judgment and decree of the High Court and remand the first appeal to the High Court for its fresh disposal in accordance with law."

In view of our discussions made hereinabove, ***we are, therefore, unable to agree*** with the learned senior counsel for the appellant Mr. Gupta that the High Court was not justified in holding that the findings of the first appellate court

were in compliance with O.41 of the CPC. That apart, the learned senior counsel for the appellant Mr. Gupta could not satisfy us or even point out the specific issues which, in his opinion, had been left to be addressed by the first appellate court. In view of the discussions made herein above, ***we are, therefore, of the view*** that no ground was made out by the appellant to set aside the judgment of the High Court on the question whether the judgment of the first appellate court was liable to be set aside for non-compliance with the mandatory provisions of Order 41 of the CPC.

10. Let us now deal with Issue Nos. 3 and 4. Since both these issues are interlinked, we shall deal with these two issues together. Let us first consider whether the respondent landlord could issue a notice under Section 6A of the Act for increase of rent when the petition for eviction of the appellant was pending before the Additional Rent Controller and when there had been an order to the tenant for deposit of rent on a month to month basis under Section 15 of the Act. ***In our view***, the first appellate court as well as the High Court were fully justified in holding that it was open to a landlord to increase the rent of the suit premises by 10% after giving a notice under section 6A of the Act. In this connection, it would be appropriate to reproduce Section 6A of the Act which talks about revision of rent and Section 8 of the Act which contemplates notice of increase of rent. Section 6A runs as under: –

"6A. *Revision of rent* – Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent every three years".

From a bare perusal of this provision under Section 6A of the Act, it is evident that by this statutory provision, the standard rent and in cases where no standard rent is fixed under the Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by 10% every three years. It is, therefore, open to the landlord under Section 6A of the Act to increase the rent agreed upon between him and the tenant by 10 % every three years, irrespective of the fact that an eviction proceeding is pending and an order under Section 15 of the Act has been passed by the Additional Rent Controller except that when a land lord wishes to so increase the rent of any premises, a notice of increase of rent, as provided under Section 8 of the Act, has to be served on the tenant thereby intimating the tenant his intention to make the increase. Section 8 of the Act runs as under :-

"*Notice of increase of rent* – (1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and in so far as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty days from the date on which the notice is given.

(2) Every notice under sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in Section 106 of the Transfer of Property Act, 1982 (4 of 1882)."

Therefore, if the landlord wishes to increase the rent of any premises at any time, only a notice expressing his intention to make such increase is required to be given to the tenant and Section 6A of the Act, as noted herein earlier, clearly permits the landlord to increase the rent by 10% every three years. In this view of the matter, after the completion of three years, it was open to the landlord at any point even during the pendency of an eviction petition to increase the rent of the suit premises after giving the prescribed notice to the tenant.

11. At this stage, we may also consider Section 3(c) of the Act, which bars the application of the Act to the premises whose monthly rent exceeds Rs. 3500/-. Section 3(c) of the Act runs as under :-

"*Act not to apply to certain premises* – Nothing in this Act shall apply –

(a) ……..

(b) ……..

(c) to any premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred

rupees;"

The Delhi Rent Control Act, 1958 was amended by Act No. 52 of 1988, which came into effect from 1st of December, 1988. By this amendment of the 1958 Act on 1st of December, 1988, Section 3(c) with other amendments was brought into force. Section 3(c) of the amended act provides that the provisions of the Act will not apply to any premises whose monthly rent exceeds Rs. 3500/- from the date of coming into operation of this act. In ***D.C. Bhatia and others v. Union of India and another, 1995(1) RCR (Rent) 25 : [(1995)1 SCC 104]***, while considering the parent act and the amending act, this court held that the objects of the amending act are quite different from the objects of the parent act. It observed that one of the objects of the amending act was to rationalise the rent control law by bringing about a balance between the interest of landlords and tenants. It was also observed that the object was not merely to protect the weaker section of the community. The Rent Act had brought to a halt house-building activity for letting out. This court also made an observation that many people with accommodation to spare did not let out the accommodation for the fear of losing the accommodation. As a result of all these, there was acute shortage of accommodation which caused hardship to the rich and the poor alike and that in the background of this experience, the amending act of 1988 was passed. In paragraph 28 of the aforesaid decision in D.C. Bhatia's case [supra], this court observed as follows :-

"In order to strike a balance between the interests of the landlords and also the tenants and for giving a boost to house-building activity, the legislature in its wisdom has decided to restrict the protection of the Rent Act only to those premises for which rent is payable up to the sum of Rs 3500 per month and has decided not to extend this statutory protection to the premises constructed on or after the date of coming into operation of the Amending Act for a period of ten years. This is a matter of legislative policy. The legislature could have repealed the Rent Act altogether. It can also repeal it step by step. It has decided to confine the statutory protection to the existing tenancies whose monthly rent did not exceed Rs 3500."

Considering the aforesaid reasons which led to the amending act of 1988, it is clear that the legislature intended to strike a balance by allowing the landlords to evict a tenant, who could pay more than Rs. 3500/- per month, from the tenanted premises.

12. In the present case, after serving a notice under Section 6A read with Section 8 of the Act, the protection of the tenant under the Act automatically ceased to exist as the rent of the tenanted premises exceeded Rs. 3500/- and the bar of Section 3(c) came into play. At the risk of repetition, since, in the present case, the increase of rent by 10% on the rent agreed upon between the appellant and the respondent brought the suit premises out of the purview of the Act in view of Section 3(c) of the Act, it was not necessary to take leave of the rent controller and the suit, as noted herein above, could be filed by the landlord under the general law. The landlord was only required to serve a notice on the tenant expressing his intention to make such increase. When the eviction petition was pending before the Additional Rent Controller and the order passed by him under Section 15 of the Act directing the appellant to deposit rent at the rate of Rs. 3500/- was also subsisting, the notice dated 9th of January, 1992 was sent by the respondent to the appellant intimating him that he wished to increase the rent by 10 percent. Subsequent to this notice, another notice dated 31st of March, 1992 was sent by the respondent intimating the appellant that by virtue of the notice dated 9th of January, 1992 and in view of Section 6A of the Act, the rent stood enhanced by 10 percent i.e. from Rs. 3500/- to Rs. 3850/-. It is an admitted position that the tenancy of the appellant was terminated by a further notice dated 16/17th of July, 1992. Subsequent to this, the eviction petition No. 432 of 1984 was withdrawn by the respondent on 20th of August, 1992 and the suit for eviction, out of which the present appeal has arisen, was filed on 6th of February, 1993. That being the factual position, it cannot at all be said that the suit could not be filed without the leave of the Additional Rent Controller when, admittedly, at the time of filing of the said suit, the eviction petition before the Additional Rent Controller had already been withdrawn nor can it be said that the notice of increase of rent and termination of tenancy could not be given simultaneously, when, in fact, the notice dated 16/17th of July, 1992 was also a notice to quit and the notice intending increase of rent in terms of Section 6A of the Act was earlier in date than the notice dated 16/17th of July, 1992. In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, ***we have no hesitation*** to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the

decision of this court in ***V. Dhanapal Chettiar v. Yesodai Ammal, [AIR 1979 Supreme Court 1745].***

13. Before parting with this judgment, we may deal with a decision of this court in the case of ***Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co. and another, 2001(2) RCR (Rent) 328 : [(2001)8 SCC 397]*** on which the learned senior counsel for the appellant Mr. Gupta placed strong reliance. Relying on this decision, Mr. Gupta sought to argue that the amendment of the Act being not retrospective in operation, in view of Section 6 of the General Clauses Act, it would not affect the pending eviction proceeding, which would continue as if the act had not been amended and therefore, the suit filed by the respondent for eviction under the general law without taking leave from the Additional Rent Controller could not be said to be maintainable. ***In our view***, the decision of this court in Ambalal Sarabhai's case [supra] does not support the appellant but it supports the respondent. In that decision, this court held that the vested right of the landlord under the general law continues so long it is not abridged by the protective legislation, namely, the Rent Act, but the moment this protection is withdrawn, the vested right of the landlord reappears which can be enforced by him. Such being the position, ***we are, therefore, of the view*** that since the eviction petition filed by the respondent before the Additional Rent Controller was withdrawn and the tenancy was terminated by a fresh notice to quit and in view of the increase of rent wished by the landlord in compliance with Section 6A read with Section 8 of the Act, there cannot be any difficulty to hold that the suit in fact was maintainable under the general law. That being the position, the decision of this court in Ambalal Sarabhai's case [supra] can not at all be applicable in favour of the appellant and which, in view of our discussions made hereinabove, can only be applicable in favour of the respondent.

14. For the reasons aforesaid, none of the grounds urged by the learned senior counsel for the appellant Mr. Gupta can be accepted by us to interfere with the impugned judgment of the High Court. Accordingly, the appeal fails and is hereby dismissed. However, considering the facts and circumstances of the case, we grant time to the appellant to vacate the premises in question by 29th of February, 2008 provided the appellant files an usual undertaking in this regard in this court within a fortnight from this date. In default, it will be open to the respondent to proceed to execute the decree for eviction of the appellant from the suit premises in accordance with law. There will be no order as to costs.

Appeal dismissed.

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