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(311402)

SUPREME COURT

P. SATHASIVAM AND B.S. CHAUHAN, JJ.

The National Textile Corporation Ltd. v. Nareshkumar Badrikumar Jagad & Ors.

Civil Appeal No.7448 of 2011

5th September, 2011

CPC, 1908 O.14 R.1, O.6 R.1 – Pleadings – Object – Decision cannot be based an grounds outside pleading of parties – Same remain the object for framing the issues under Order XIV CPC and the court should not decide a suit on a matter/point on which no issue has been framed – A party has to take proper pleadings and prove the same by adducing sufficient evidence – No evidence can be permitted to be adduced on a issue unless factual foundation has been laid down in respect of the same – A new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings. Held, Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. [Para 6, 7, 13, 14]

Tenancy and Rent Act

Maharashtra Rent Control Act (1999) S.3(1) – Textile Undertakings (Nationalisation) Act (1995) Ss.2(g); 3, 4(6) – Contract Act, 1872, S.182 – Eviction – National Textile Corporation is Govt. Company and not central Govt – Said corporation cannot to be held to be agent of Central Govt. as defined under S.182 of Contract Act – Poddar Mills continued as a tenant by holding over the suit premises – Plea that after nationalization of said mill Central Govt became tenants and hence exemption from eviction under Rent Control Act (1999) is unsustainable.

Cases Cited:

1.M/s. Trojan & Co. v. RM N.N. Nagappa Chettiar, AIR 1953 SC 235 [Para 7]

2.State of Maharashtra v. M/s. Hindustan Construction Company Ltd., 2010 ALL SCR 1041=AIR 2010 SC 1299 [Para 7]

3.Kalyan Singh Chouhan v. C.P. Joshi, 2011 ALL SCR 311=AIR 2011 SC 1127 [Para 7,9]

4.Ram Sarup Gupta (dead) by L.Rs. v. Bishun Narain Inter College & Ors., AIR 1987 SC 1242 [Para 8]

5.Bachhaj Nahar v. Nilima Mandal & Ors., 2009 ALL SCR 1104=AIR 2009 SC 1103 [Para 8]

6.Kashi Nath (Dead) through L.Rs. v. Jaganath, (2003) 8 SCC 740 [Para 9]

7.Biswanath Agarwalla v. Sabitri Bera & Ors., (2009) 15 SCC 693 [Para 9]

8.Syed and Company & Ors. v. State of Jammu & Kashmir & Ors., 1995 Supp (4) SCC 422 [Para 10]

9.Chinta Lingam & Ors. v. The Govt. of India & Ors., AIR 1971 SC 474 [Para 11]

10.J. Jermons v. Aliammal & Ors., (1999) 7 SCC 382 [Para 12]

11.M/s Sanghvi Reconditioners Pvt. Ltd. v. Union of India & Ors., AIR 2010 SC 1089 [Para 14]

12.Greater Mohali Area Development Authority & Ors. v. Manju Jain & Ors., 2010(6) ALL MR 462 (S.C.)=AIR 2010 SC 3817 [Para 14]

13.State of Rajasthan & Anr. v. Sripal Jain, AIR 1963 SC 1323 [Para 15]

14.Pashupati Nath Sukul v. Nem Chandra Jain & Ors., AIR 1984 SC 399 [Para 15]

15.R.S. Nayak v. A.R. Antulay, AIR 1984 SC 684 [Para 15]

16.V.S. Mallimath v. Union of India & Anr., AIR 2001 SC 1455 [Para 15]

17.Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr., AIR 1975 SC 1331 [Para 16]

18.Ramana Dayaram Shetty v. The International Airport Authority of India & Ors., AIR 1979 SC 1628 [Para 16]

19.Federal Bank Ltd. v. Sagar Thomas & Ors., AIR 2003 SC 4325 [Para 17]

20.State of Punjab & Ors. v. Raja Ram & Ors., AIR 1981 SC 1694 [Para 18]

21.The State of Bihar v. The Union of India & Anr., AIR 1970 SC 1446 [Para 18]

22.S.S. Dhanoa v. Municipal Corporation Delhi & Ors., AIR 1981 SC 1395 [Para 18]

23.K. Jayamohan v. State of Kerala & Anr., (1997) 5 SCC 170 [Para 18]

24.Hindustan Steel Works Construction Ltd. v. State of Kerala & Ors., AIR 1997 SC 2275 [Para 18]

25.Mohd. Hadi Raja v. State of Bihar & Anr., AIR 1998 SC 1945 [Para 18]

26.State through Narcotics Control Bureau v. Kulwant Singh, AIR 2003 SC 1599 [Para 18]

27.Food Corporation of India v. Municipal Committee, Jalalabad & Anr., AIR 1999 SC 2573 [Para 19]

28.M/s. Electronics Corporation of India Ltd., v. Secretary, Revenue Department, Government of Andhra Pradesh & Ors., AIR 1999 SC 1734 [Para 19]

29.A.K. Bindal & Anr. v. Union of India & Ors., 2003(4) ALL MR 1160 (S.C.)=(2003) 5 SCC 163 [Para 20]

30.Southern Roadways Ltd., Madurai v. S.M. Krishnan, AIR 1990 SC 673 [Para 21]

31.Smt. Chandrakantaben v. Vadilal Bapalal Modi, AIR 1989 SC 1269 [Para 21]

32.Prem Nath Motors Ltd. v. Anurag Mittal, 2009(2) ALL MR 951 (S.C.)=AIR 2009 SC 569 [Para 21]

33.Vivek Automobiles Ltd. v. Indian Inc., (2009) 17 SCC 657 [Para 21]

34.Pradeep Kumar Biswas v. Indian Institute of Chemical Biology & Ors., (2002) 5 SCC 111 [Para 21]

35.Saraswat Co-op. Bank Ltd. & Anr. v. State of Maharashtra & Ors., 2006(6) ALL MR 134 (S.C.)=(2006) 8 SCC 520 [Para 23]

36.Leelabai Gajanan Pansare & Ors. v. Oriental Insurance Company Ltd. & Ors., 2008 ALL SCR 2422=(2008) 9 SCC 720 [Para 24,25]

37.D.C. Bhatia & Ors. v. Union of India & Anr., (1995) 1 SCC 104 [Para 24]

38.Fruit & Vegetable Merchants Union v. Delhi Improvement Trust,, AIR 1957 SC 344 [Para 27]

39.Maharaj Singh v. State of Uttar Pradesh & Ors., AIR 1976 SC 2602 [Para 27]

40.Municipal Corporation of Hyderabad v. P.N. Murthy & Ors., AIR 1987 SC 802 [Para 27]

41.Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu & Ors., 1991 Supp. (2) SCC 228 [Para 27]

42.Dr. M. Ismail Faruqui etc. v. Union of India & Ors., AIR 1995 SC 605 [Para 27]

43.Government of A.P. v. H.E.H. The Nizam, Hyderabad, (1996) 3 SCC 282 [Para 27]

44.K.V. Shivakumar & Anr. v. Appropriate Authority & Ors., (2000) 3 SCC 485 [Para 27]

45.Municipal Corporation of Greater Bombay & Ors. v. Hindustan Petroleum Corporation & Anr., AIR 2001 SC 3630 [Para 27]

46.*Sulochana Chandrakant Galande v. Pune Municipal Transport & Ors., 2010 ALL SCR 1863=(2010) 8 SCC 467 [Para 27]*

JUDGMENT

Dr. B. S. CHAUHAN, J. :- This appeal has been preferred against the judgment and order dated 3.8.2009 in Civil Revision Application No. 564 of 2008 passed by the High Court of Judicature at Bombay affirming the judgment and order of the Small Causes Appellate Court dated 14.8.2008 in Appeal No. 627 of 2006 by which the appellate court has affirmed the judgment and decree dated 5.8.2006 in TE & R Suit No. 311/326/2001 passed by the Court of Small Causes at Bombay.

2. FACTS:

A. The suit premises belongs to the trust run by the respondents – Nareshkumar Badrikumar Jagad & Ors. Sh. Damodar Dass Tapi Dass and Sh. Daya Bhai Tapidas executed a lease deed dated 11.3.1893 in respect of the suit premises admeasuring 12118 sq. yds. bearing plot no. 9 in Survey No. 73 of Lower Parel Division, N.M. Joshi Marg, Chinchpokli, Mumbai-400 011, in favour of a company named Hope Mills Limited for a period of 99 years commencing from 22.10.1891. The lease so executed was to expire on 21.10.1990.

B. The original owners transferred and conveyed the suit property in favour of one Harichand Roopchand and Ratan Bai on 22.2.1907. Thereafter, the suit property came to be vested in and owned by a public charitable trust, namely, Harichand Roopchand Charity Trust (hereinafter called as 'Trust').

C. The leasehold rights in respect of suit property stood transferred to Prospect Mills Ltd. and, thereafter to Diamond Spinning & Weaving Co. Pvt. Ltd. and, ultimately, vide a lease indenture dated 25.10. 1926 to Toyo Poddar Cotton Mills Ltd. (hereinafter called the 'Poddar Mills').

D. The Textile Undertakings (Taking over of Management) Act, 1983 (hereinafter called 'the Act 1983') was enacted by the Parliament in order to take over the management of 13 textile undertakings including the Poddar Mills pending their nationalisation. The lease granted in favour of Poddar Mills expired by efflux of time on 22.10.1990. Thus, the said Poddar Mills continued as a tenant by holding over the suit premises. The Trust issued a legal notice dated 2.12.1994 to the National Textile Corporation (hereinafter called as the appellant), terminating its tenancy qua the suit premises. The Parliament enacted the Textile Undertakings (Nationalisation) Act, 1995 (hereinafter called 'the Act 1995'). The Trust filed an eviction suit against the appellant under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called 'the Act 1947'). The Act 1947 stood repealed by the Maharashtra Rent Control Act, 1999 (hereinafter called 'the Act 1999'). The respondent- Trust issued a notice for terminating the tenancy of the appellant vide notice dated 26.9.2000. The respondents/plaintiffs after withdrawal of the suit filed under the Act 1947, filed a fresh suit in the Small Causes Court at Bombay seeking eviction of appellant and for a decree of mesne profits on 20.4.2001. The appellant filed the written statement denying the pleas taken by the respondents/plaintiffs. The suit was decreed in favour of the respondents/plaintiffs vide judgment and decree dated 5.8.2006 by which the appellant was directed to hand over vacant and peaceful possession of the suit premises to the respondents within four months.

E. Being aggrieved, the appellant preferred Appeal No. 627 of 2006 to the Division Bench of the Small Causes Court at Bombay on 13.11.2006 which was dismissed by the appellate court by affirming the judgment and decree of the trial court vide judgment and decree dated 14.8.2008. The appellant preferred civil revision before the High Court of Bombay, which has been dismissed vide impugned judgment and order dated 3.8.2009.

Hence, this appeal.

3. Shri Prag P. Tripathi, learned Additional Solicitor General, appearing for the appellant has submitted that the judgments and decrees of the courts below have to be set aside as none of the courts below has taken into consideration the effect of the provisions of the Act 1995 by virtue of which the textile undertaking stood absolutely vested in the Central Government and further vested in the appellant. As on the expiry of the lease of 99 years on 22.10.1990, the Act 1947 was in force, the then tenant, Poddar Mills became the statutory tenant. Such tenancy rights stood vested absolutely in the Central Government on commencement of the Act 1995 by operation of law. The appellant stepped in the shoes of the Central Government merely as an agent, thus, the Central Government remained the tenant. The Central Government continued to be a tenant in the suit premises and thus, would be protected in terms of Section 3(1) (a) of the Act 1999 being premises let out to the Government. The courts below failed to consider this vital legal issue. The suit filed by the respondents was not maintainable. The judgments and decrees of the courts below are liable to be set aside.

4. Per contra, Shri Mukul Rohatgi, learned senior counsel appearing for the respondents, submitted that it is not permissible for the court to travel beyond the pleadings. No evidence can be led on an issue in respect of which proper pleadings have not been taken. Findings of fact cannot be recorded on a issue on facts in respect of which no factual foundation has been laid. The appellant had never raised the issue before the courts below that the Central Government was the tenant and it was holding the premises merely as an agent. In the written statement filed by the appellants, no reference was made to the provisions of Act 1995. Even otherwise, the tenancy rights which had vested in the Central Government, stood vested immediately, by operation of law, in the appellant, a public sector undertaking as well as the public limited company having a paid up share capital of more than rupees one crore, thus the appellant has no protection of the Act 1999. As the said provisions of Act 1999 are not attracted in the instant case, the suit for eviction was filed before the Small Causes Court at Bombay. All issues raised in the plaint have been adjudicated by three courts. The power of the revisional court, in view of the provisions of Section 115 of Code of Civil Procedure, 1908 (hereinafter called as 'CPC'), remains very limited after the amendment Act 2002, w.e.f. 1.7.2002. Being the fourth court, in exercise of its power under Article 136 of the Constitution, this Court should not entertain the appeal. The appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties

and perused the record.

6. In the instant case, no reference had ever been made by the appellant to the effect of the provisions of the Act 1995 before the trial court while filing the written submissions; neither any issue has been framed; nor arguments had been advanced in regard to the same; this issue has not been agitated either before the appellate court or revisional court. Before us, an application has been filed to urge additional grounds regarding the application of the Act 1995 without seeking amendment to the pleadings (WS).

7. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide: M/s. Trojan & Co. v. RM N.N. Nagappa Chettiar, AIR 1953 SC 235; State of Maharashtra v. M/s. Hindustan Construction Company Ltd., AIR 2010 SC 1299 : [2010 ALL SCR 1041]; and Kalyan Singh Chouhan v. C.P. Joshi, 2011 PLRonline 0201, AIR 2011 SC 1127 :).

8. In Ram Sarup Gupta (dead) by L.Rs. v. Bishun Narain Inter College & Ors., AIR 1987 SC 1242, this Court held as under:

> ".. in the absence of pleadings, evidence if any, produced by the parties cannot be considered.. no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it."

Similar view has been reiterated in Bachhaj Nahar v. Nilima Mandal & Ors., AIR 2009 SC 1103 : [2009 ALL SCR 1104].

9. In Kashi Nath (Dead) through L.Rs. v. Jaganath, (2003) 8 SCC 740, this Court held that "where the evidence is not in line of the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon."

Same remain the object for framing the issues under Order XIV CPC and the court should not decide a suit on a matter/point on which no issue has been framed. (Vide: Biswanath Agarwalla v. Sabitri Bera & Ors., (2009) 15 SCC 693; and Kalyan Singh Chouhan [2011 ALL SCR 311] (supra).

10. In Syed and Company & Ors. v. State of Jammu & Kashmir & Ors., 1995 Supp (4) SCC 422, this Court held as under:

> "Without specific pleadings in that regard, evidence could not be led in since it is settled principle of law that no amount of evidence can be looked unless there is a pleading. Therefore, without amendment of the pleadings merely trying to lead evidence is not permissible."

11. In Chinta Lingam & Ors. v. The Govt. of India & Ors., AIR 1971 SC 474, this Court held that unless factual foundation has been laid in the pleadings no argument is permissible to be raised on that particular point.

12. In J. Jermons v. Aliammal & Ors, (1999) 7 SCC 382, while dealing with a similar issue, this Court held as under:

> ".. there is a fundamental difference between a case of raising additional grounds based on the pleadings and the material available on record and a case of taking a new plea not borne out of the pleadings. In the former case no amendment of pleading is required, whereas in the latter it is necessary to amend the pleadings.The respondents cannot be permitted to make out a new case by seeking permission to raise additional grounds in revision."

13. In view of the above, the law on the issue stands crystallised to the effect that a party has to take proper pleadings and prove the same by adducing sufficient evidence. No evidence can be permitted to be adduced on a issue unless factual foundation has been laid down in respect of the same.

14. There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings. (See : M/s Sanghvi Reconditioners Pvt. Ltd. v. Union of India & Ors., AIR 2010 SC 1089; and Greater Mohali Area Development Authority & Ors. v. Manju Jain & Ors., AIR 2010 SC 3817 : [2010(6) ALL MR 462 (S.C.)]).

15. The questions do arise as to whether in the facts and circumstances of this case the Government is a tenant or the appellant can be termed as “Government” or “Government Department” or “agent” of the Central Government in the context of the Act 1999.

The Government loosely means the body of persons authorized to administer the affairs of, or to govern, a State. It commands and its decision becomes binding upon the members of the society. Government includes, both the Central Government as well as the State Government. The government is impersonal in character having three independent functionaries as its branches. It performs regal and sovereign functions, which are not alienable to any other person, e.g. defence, security, currency etc. Government means a group of people responsible for governing the country. It consists of the activities, methods and principles involved in governing a country or other political unit.

The Government is a body that governs and exercises control by issuing directions and is not governed by any other agency. It is a body politic that formulates policies and the laws by which a civil society is controlled. It is a political concept formulated to rule the nation. It is not a profit and loss establishment. “From the legal point of view, government may be described as the exercise of certain powers and the performance of certain duties by public authorities or officers, together with certain private persons or corporations exercising public functions.”

Thus, Government Department means something purely fundamental, i.e. relating to a particular government or to the practice of governing a country. It has different Wings.

However, the expression ‘Government’ may be required to be interpreted in the context used in a particular Statute. The expression denotes the Executive and not the Legislature. (Vide: State of Rajasthan & Anr. v. Sripal Jain, AIR 1963 SC 1323; Pashupati Nath Sukul v. Nem Chandra Jain & Ors., AIR 1984 SC 399; R.S. Nayak v. A.R. Antulay, AIR 1984 SC 684; and V.S. Mallimath v. Union of India & Anr., AIR 2001 SC 1455)

16. To perform the functions, the Government has its various departments and to facilitate its working, the Government itself may be divided into various Sections. To carry out the commercial activities by the State, the Corporations have been established by enactment of Statutes and the “power to charter Corporations is incidental to or in aid of Governmental functions.” Such Corporations would exhypothesis be agencies of the Government. (Vide : Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr., AIR 1975 SC 1331; and Ramana Dayaram Shetty v. The International Airport Authority of India & Ors., AIR 1979 SC 1628).

17. Banks and Financial institutions carrying out financial transactions, are independent to do business subject to the regulatory laws made by the legislature. They are not under the direct executive control of the government. They are profit and loss earning organisations coupled with all connected financial and economic activities. They are a body corporate with a limited role to play and do not “govern” people as understood by governance. (See: Federal Bank Ltd. v. Sagar Thomas & Ors., AIR 2003 SC 4325).

18. In State of Punjab & Ors. v. Raja Ram & Ors., AIR 1981 SC 1694, this Court considered the provisions of the Food Corporation Act, 1964 and held that Food Corporation of India was not a Government department but a Government Company. The Court observed :

> “A Government department has to be an organisation which is not only completely controlled and financed by the Government but has also no identity of its own. The money earned by such a department goes to the exchequer of the Government and losses incurred by the department are losses of the Government. The Corporation, on the other hand, is an autonomous body capable of acquiring, holding and disposing of property and having the power to contract. It may also sue or be sued by its own name and the Government does not figure in any litigation to which it is a party.”

> (See also: The State of Bihar v. The Union of India & Anr., AIR 1970 SC 1446; S.S. Dhanoa v. Municipal Corporation Delhi & Ors., AIR 1981 SC 1395; K. Jayamohan v. State of Kerala & Anr., (1997) 5 SCC 170; Hindustan Steel Works Construction Ltd. v. State of Kerala & Ors., AIR 1997 SC 2275; Mohd. Hadi Raja v. State of Bihar & Anr., AIR 1998 SC 1945; and State through Narcotics Control Bureau v. Kulwant Singh, AIR 2003 SC 1599).

19. In Food Corporation of India v. Municipal Committee, Jalalabad & Anr., AIR 1999 SC 2573, this Court considered the case of imposition of house tax under the provisions of the Punjab Municipalities Act, 1911 and held that Food Corporation of India was a Government Company and not a Government Department – a distinct entity from Central Government. Thus, was not entitled to exemption from tax under Article 285 of the Constitution. While deciding the said case, reliance had been placed by the Court on its earlier judgment in M/s. Electronics Corporation of India Ltd., etc. etc. v. Secretary, Revenue Department, Government of Andhra Pradesh & Ors., etc. etc., AIR 1999 SC 1734.

20. In A.K. Bindal & Anr. v. Union of India & Ors., (2003) 5 SCC 163 : [2003(4) ALL MR 1160 (S.C.)], this Court clarified:

> "The legal position is that identity of the government company remains distinct from the Government. The government company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire shareholding is owned by the Central Government will not make the incorporated company as Central Government..."
>
> (Emphasis added)

21. In Southern Roadways Ltd., Madurai v. S.M. Krishnan, AIR 1990 SC 673 : [2009(2) ALL MR 951 (S.C.) : 2009 ALL SCR 115], this Court examined an issue whether the possession of the agent can be termed to be the possession of the principal for all purposes including the acquisition of title and held that agent who receives property from or for his principal, obtains no interest for himself in the property for the reason that possession of the agent is the possession of the principal and in view of the fiduciary relationship the agent cannot claim his own possession. While deciding the said case reliance was placed on various earlier judgments including Smt. Chandrakantaben v. Vadilal Bapalal Modi, AIR 1989 SC 1269.

In Prem Nath Motors Ltd. v. Anurag Mittal, AIR 2009 SC 569, this Court dealt with the relationship of agent and principal and held that in view of the provisions of Section 230 of the Indian Contract Act 1872 (hereinafter called the 'Contract Act'), an agent is not liable for the acts of a disclosed principal subject to a contract to the contrary. Where the relationship of principal and agent is established the agent cannot be sued when the principal has been disclosed. (See also: Vivek Automobiles Ltd. v. Indian Inc., (2009) 17 SCC 657).

Thus, it was made clear that suit does not lie against an agent where the principal is known or has been disclosed.

The appellant may be called 'agency' or 'instrumentality' of the Central Government for a limited purpose, namely to label it to be the "State" within the ambit of Article 12 of the Constitution. (See: Pradeep Kumar Biswas v. Indian Institute of Chemical Biology & Ors., (2002) 5 SCC 111).

However, even by stretch of imagination, the appellant cannot be held to be an 'agent' of the Central Government as defined under Section 182 of the Contract Act.

22. Thus, if the aforesaid settled legal principles are applied to the appellant, it becomes evident that appellant is neither the government nor the department of the government, but a Government Company. Appellant cannot identify itself with the Central Government. The submission made by Mr. Tripathi that appellant is merely an agent of the Central Government is not worth consideration at all for the simple reason that rights vested in the appellant stood crystallised after being transferred by the Central Government. Appellant is being controlled by the provisions of the Act 1995 and not by the Central Government. Whereas an agent is merely an extended hand of the principal and cannot claim

independent rights.

23. Section 3 (1) (a) & (b) provide for exemption from the application of the Act 1999. This Court examined the validity of provisions of Section 3(1) (a) and (b) of the Act 1999 in Saraswat Coop. Bank Ltd. & Anr. v. State of Maharashtra & Ors., (2006) 8 SCC 520 : [2006(6) ALL MR 134 (S.C.)] and came to the conclusion that it was within the exclusive domain of the legislature to decide which section of tenants should be afforded protection on the basis of economic criteria. If a particular section of tenants is not protected considering their economic conditions it can be held to be a reasonable classification and making such distinction is valid. The exclusion of premises let or sub-let to banks or any public sector undertaking or any corporation established by or under any Central or State Act or foreign missions, international agencies, multinational companies and private and public limited companies having paid up share capital of rupees one crore or more could not be held to be arbitrary. The Court further held that the provisions of Section 3(1)(b) are applicable to all premises whether let out before or after commencement of the Act 1999.

24. In Leelabai Gajanan Pansare & Ors. v. Oriental Insurance Company Ltd. & Ors., (2008) 9 SCC 720 : [2008 ALL SCR 2422], this Court dealt with the same issue as which of the categories of tenants have been excluded from the operation of the Act 1999 and held as under:

> "Therefore, we are of the view that on a plain meaning of the word "PSUs" as understood by the legislature, it is clear that, India's PSUs are in the form of statutory corporations, public sector companies, government companies and companies in which the public are substantially interested (see the Income Tax Act, 1961). When the word PSU is mentioned in Section 3(1)(b), the State Legislature is presumed to know the recommendations of the various Parliamentary Committees on PSUs. These entities are basically cash-rich entities. They have positive net asset value. They have positive net worths. They can afford to pay rents at the market rate....we hold that Section 3(1)(b) clearly applies to different categories of tenants, all of whom are capable of paying rent at market rates. Multinational companies, international agencies, statutory corporations, government companies, public sector companies can certainly afford to pay rent at the market rates. This thought is further highlighted by the last category in Section 3(1)(b). Private limited companies and public limited companies having a paid-up share capital of more than Rs 1,00,00,000 are excluded from the protection of the Rent Act. This further supports the view which we have taken that each and every entity mentioned in Section 3(1)(b) can afford to pay rent at the market rates."
>
> (Emphasis added)
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> (See also: D.C. Bhatia & Ors. v. Union of India & Anr., (1995) 1 SCC 104).

25. The case stands squarely covered by the judgment of this Court in Leelabai Gajanan Pansare [2008 ALL SCR 2422] (supra) so far as the issue of exemption to the Act 1999 is concerned.

26. Section 3(1) and (2) of the Act 1995 reads as under:

> "3(1) On the appointed day, the right, title and interest of the owner in relation to every textile undertaking shall stand transferred to and shall vest absolutely in, the Central Government. (2) Every textile undertaking which stands vested in the Central Government by virtue of sub-section (1), shall immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation." (Emphasis added)
>
> The aforesaid provisions require construction giving proper meaning to the expression 'vesting'.

27. Vesting' means having obtained an absolute and indefeasible right. It refers to and is used for transfer or conveyance. 'Vesting' in the general sense, means vesting in possession. However, 'Vesting' does not necessarily and always means possession but includes vesting of interest as well. 'Vesting' may mean vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision of the Act. Word 'Vest' has different shades, taking colour from the

context in which it is used. It does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of a limited vesting, being limited, in title as well as duration. Thus, the word 'vest' clothes varied colours from the context and situation in which the word came to be used in the statute. The expression 'vest' is a word of ambiguous import since it has no fixed connotation and the same has to be understood in a different context under different set of circumstances. (Vide: Fruit & Vegetable Merchants Union v. Delhi Improvement Trust, AIR 1957 SC 344 ; Maharaj Singh v. State of Uttar Pradesh & Ors., AIR 1976 SC 2602; Municipal Corporation of Hyderabad v. P.N. Murthy & Ors., AIR 1987 SC 802; Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu & Ors., 1991 Supp. (2) SCC 228; Dr. M. Ismail Faruqui etc. v. Union of India & Ors., AIR 1995 SC 605 ; Government of A.P. v. H.E.H. The Nizam, Hyderabad, (1996) 3 SCC 282 ; K.V. Shivakumar & Anr. v. Appropriate Authority & Ors., (2000) 3 SCC 485 ; Municipal Corporation of Greater Bombay & Ors. v. Hindustan Petroleum Corporation & Anr., AIR 2001 SC 3630 ; and Sulochana Chandrakant Galande v. Pune Municipal Transport & Ors., (2010) 8 SCC 467) : [2010 ALL SCR 1863].

28. The Act 1995 has been brought for providing the acquisition and transfer of the rights, title and interest of the owners in respect of the textile undertakings. Respondents had not been the owner of the textile undertaking. They had rented out the premises to Poddar Mills and what had vested in the Central Government was only the right, title and interest of the Poddar Mills and nothing else. The Poddar Mills was having only right in tenancy in the suit premises. The owner had been defined in clause (g) of Section 2 of the Act 1995, taking into consideration the expression in relation to textile undertaking as a proprietor or lessee, or occupier of the textile company undertaking. It included even the receiver and liquidator where the companies had gone under liquidation. Textile undertaking has been defined in Section 2(m) which means undertaking specified in column (2) of the First Schedule to the Act 1995 i.e., the textile undertakings, management of which had been taken over by the Central Government under the Act 1983. The First Schedule included Poddar Mills at Sl. No.9 and Poddar Mills had been paid compensation to the tune of Rs.7,46,30,000. Nothing has been paid so far as respondent No.1 is concerned. Sub-section (6) of Section 4 of the Act 1995 provides that any suit, appeal or other proceedings of whatever nature in relation to any property which had vested in the Central Government under Section 3 on the appointed day, instituted or preferred by or against the textile company is pending, the same shall not abate or adversely affect the rights of the parties by reason of the transfer of textile undertaking. Thus, the commencement of the Act 1995 does not really affect even the pending cases. In view thereof, it is beyond our imagination as how the Act 1995 would prejudice the cause of the respondents in the proceedings which arose subsequent to the commencement of this Act.

29. It is not permissible for the appellant to canvass that the Central Government has any concern so far as the tenancy rights are concerned. Right vested in the Central Government stood transferred and vested in the appellant. Both are separate legal entities and are not synonymous. The appellant being neither the government nor government department cannot agitate that as it has been substituted in place of the Central Government, and acts merely as an agent of the Central Government, thus protection of the Act 1999 is available to it. Appellant cannot be permitted to say that though all the rights vested in it but it merely remained the agent of the Central Government. Acceptance of such a submission would require interpreting the expression 'vesting' as holding on behalf of some other person. Such a meaning cannot be given to the expression 'vesting'.

It is a settled legal proposition that an agent cannot be sued where the principal is known. In the instant case, the appellant has not taken plea before either of the courts below. In view of the provisions of Order VIII Rule 2 CPC, the appellant was under an obligation to take a specific plea to show that the suit was not maintainable which it failed to do so. The vague plea to the extent that the suit was bad for non-joinder and, thus, was not maintainable, did not meet the requirement of law. The appellant ought to have taken a plea in the written statement that it was merely an 'agent' of the Central Government, thus the suit against it was not maintainable. More so, whether A is an agent of B is a question of fact and has to be properly pleaded and proved by adducing evidence. The appellant miserably failed to take the required pleadings for the purpose.

30. Thus, in view of the above, we reach the inescapable conclusion that appellant is not entitled for exemption under Section 3(1)(a) or 3(1)(b) of the Act 1999. Nor can it claim the

status of an ‘agent’ of the Central Government. Submissions advanced on behalf of the appellant are preposterous. Facts and circumstances of the case do not warrant review of the impugned judgment.

However, considering the nature of business of the appellant, it is in the interest of justice that appellant be given time upto 31.12.2013, to vacate the premises. Appellant shall file a usual undertaking within four weeks from today to hand over peaceful and vacant possession to the respondent No.1.

With the aforesaid observation, appeal stands dismissed.

Appeal dismissed