s. 45 of the Act and, if so, whether the jurisdiction of the Tribunal could only be invoked in the manner prescribed thereunder.

For the foregoing reasons we hold that both the High Court and the trial Court went wrong in dismissing the suits on the ground that s. 26 of the Act was a bar against their maintainability. We, therefore, set aside the judgment of the High Court as well as that of the trial Court and remand the suits to the trial Court for disposal in accordance with law. We should not be understood to have expressed any opinion on the other questions raised in the suits. The respondent will pay the costs of the appellants here.

The costs of the courts below will abide the result.

Suits remanded.

VORA ABBASBHAI ALIMAHOMED

v.

HAJI GULAMNABI HAJI SAFIBHAI

(A.K. SARKAR, J.C. SHAH AND RAGHUBAR DAYAL JJ.)

Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947, *s.* 12—*Protection against eviction—Scope of s.* 12 (1)—"*May*" *in* 12(3) (*a*) *whether mandatory—Protection of* 12(3) (*h*) *when available—S.* 12, *Explanation, effect of—"Standard rent"—Meaning of—Revisional Jurisdiction of High Court when exercisable—Code of Civil Procedure* 1908 (*Act* 5 *of* 1908), *s.* 115.

The Appellant was the tenant of the respondent occupying of the latter premises at a monthly rental of Rs. 70. The appellant appealed to the Civil Judge for fixing standard rent under s. 11(1) and for specifying interim rent under s. 11(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and deposited a certain amount to the credit of the respondent. Subsequently the respondent filed a suit before the Civil Judge for evicting the appellant on the ground of non-payment of rent. The Civil

1963

Vora Abbasbhai Alimahomed
v.
Haji Gulamnabi Haji Safibhai

Judge ordered the appellant to deposit the arrears of rent at the rate of Rs. 51 per month within 15 days. He substantially complied with his order. The two proceedings were amalgamated. The Civil Judge fixed the standard rent at the rate of Rs. 50 per month and dismissed the suit for eviction on the ground that the appellant was willing to pay the standard rent within the meaning of s. 12 of the Act.

In appeal the District Court fixed the standard rent Rs. 70 per mensem and found that since the appellant had complied with the order to deposit arrears and since he was ready and willing and ready to pay standard rent he confirmed order of the lower court order of dismissing of the suit.

The respondent took the matter in revision before the High Court under s. 115 Code of Civil Procedure, 1908. The High Court reversed the order of the District Court and directed eviction on the grounds that appellant was not ready and willing to pay the standard rent, that he had not deposited the standard rent at the rate enhanced by the District Court and that he had not paid the interim rent at the rate fixed by the trial Court.

Held: (*i*) Section 12 (1) of the Act applies to a tenant who continues to remain in occupation even after the determination of the contractual tenancy. Such a tenant is entitled to claim protection from eviction against eviction so long as he is willing and ready to pay the standard rent and permitted increases and observe other conditions under the Act. This protection is subject to the provisions of s. 13 and to the limitations contained in s. 12(2) and s. 12(3) (*a*). The expression "may" in s. 12(3) (*a*) has a mandatory content: if the conditions of this clause are fulfilled the court is bound to pass a decree in ejectment against the tenant. *Bhaiya Punyalal Bhagwandin* v. *Bhagwatprasad*, [1963] 3 S.C.R. 312.

(*ii*) The power to fix standard rent is exercisable under s. 11(1) alone. To bring his claim within s. 12(3) (*b*) the tenant must pay or tender the standard rent fixed by the court and permitted increases on or before the first day of hearing or on before such other date fixed by the court. The amount of costs has to be paid or deposited only if the court so directs. If in appeal the standard rent is enhanced the appeal court may fix a date for payment of the difference and if the tenant pays the difference on or before the day so fixed he will be entitled to get the protection of s. 12(3) (*h*).

(*iii*) Explanation to s. 12 erects a rule of evidence. If the tenant pays or tenders regularly the interim rent specified by the court till the disposal of the suit the court is bound to presume that the tenant is at the date of the decree ready and willing to pay the standard rent and permitted increase. The expression "standard rent" in s. 12(3) (*b*) shall not however to be equated with "interim rent" in s. 11(3). There is nothing in s. 12 to support the contention that the dispute concerning standard rent contemplated by cl. (*b*) of sub-s. (3) is one which must be raised before service of notice under s. 12(3).

(*iv*) The District Court ought to have before disposing of the appeal fixed a date for payment of the difference between the standard rent due and the amount actually deposited in court. The error committed by the District Court was however only technical.

Held, further the High Court in exercise of its power under s. 115 Code of Civil Procedure had no authority to set aside the order of the District Court merely because it was of opinion that the judgment of the District Court was assailable on the ground of error of fact or even of law. The High Court may exercise its power under that section only if the subordinate court has acted without jurisdiction or has failed to exercise its jurisdiction or has acted with material illegality or irregularity.

Balakrishna Udayar v. *Vasudeva Aiyar*, L.R. 44 I.A. 261, *Rajah Amir Hassan Khan* v. *Sheo Baksh Singh*, L.R. 11 I.A. 237, *Joy Chand Lal Babu* v. *Laksha Chaudhury*, L.R. 76 I.A. 131, distinguished.

Manindra Land and Building Corporation v. *Bhutnath Banerjee*, [1964] 3 S.C.R. 495.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 470 of 1963.

Appeal by special leave from the judgment and decree dated August 14, 1962, of the Gujarat High Court in Revision Application No. 425 of 1960.

S.T. Desai, *B. Parthasarathy*, *J.B. Dadachanji*, *O.C. Mathur* and *Ravinder Narain*, for the appellant.

N.C. Chatterjee and *M.V. Goswami*, for the respondent.

October 22, 1963. The Judgment of the Court was delivered by

Shah J.

SHAH J.—Haji Gulamnabi Haji Safibhai—hereinafter called 'the plaintiff'—is the owner of certain premises in the town of Baroda, and Vora Abbasbhai—hereinafter called 'the defendant'—occupies the premises as plaintiff's tenant on a monthly rental of Rs. 70. By notice dated December 1, 1956 which was served on December 3, 1956, the plaintiff called upon the defendant to deliver possession of the premises alleging that the latter had failed to pay rent since October 1, 1955. The defendant by his letter dated December 7, 1956 contended that he had paid rent at the agreed rate till April 1, 1956, and that he was entitled to get credit for Rs. 200 being the

1963

Vora Abbasbhai Alimahomed
v.
Haji Gulamnabi Haji Safibhai

Shah J.

costs incurred by him for "electric-installation" in the premises made with the plaintiff's consent, and that the rent stipulated was excessive.

On January 5, 1957 the defendant moved the Civil Judge, Junior Division, Baroda under s. 11(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, called for the sake of brevity 'the Act', for an order fixing the standard rent of the premises occupied by him and also for an order under s. 11(3) specifying interim rent. By letter dated January 7, 1957 the defendant informed the plaintiff about the application moved by him and requested the plaintiff to appear in the proceeding, and expressed his willingness to pay such amount as the Court ordered him to pay. On January 8, 1956 the defendant deposited in Court Rs. 500 to the credit of the plaintiff. On January 27, 1957 the plaintiff instituted a suit in the Court of the Civil Judge, Junior Division, Baroda, for a decree in ejectment on the ground of non-payment of rent. On February 14, 1957 the defendant applied to the Court for an order specifying the rate at which interim rent may be deposited in Court so long as the standard rent of the suit property was not fixed, and submitted that the dispute between the parties related to fixation and payment of standard rent, and that without prejudice to his contentions he was ready to deposit the amount ordered by the Court. The Civil Judge on the same day ordered: "The defendant to deposit the arrears at the rate of Rs. 51 per month within 15 days from today." Pursuant to this order the defendant deposited Rs. 200 on March 2, 1956 to the credit of the plaintiff and deposited diverse other sums from time to time which by February 11, 1958, aggregated—taking into account the amount of Rs. 500 deposited on January 8, 1956 to Rs. 1,479. No further steps it appears were taken in the application moved by the defendant under s. 11 for fixation of standard rent but proceeding was amalgamated with the suit as the enquiry about the appropriate standard rent had also to be made in the suit.

On March 28, 1958, the Civil Judge, dismissed the plaintiff's claim for a decree in ejectment. In the view of the Court the standard rent of the premises was Rs. 50 per month, that the defendant had paid the stipulated rent upto April 1, 1956 and that he was entitled to credit for Rs. 150 expended by him with the consent of the plaintiff for "electric-installation" in the premises occupied by him. Taking into account the aggregate amount deposited, the Court held that the defendant was not liable to be evicted for non-payment of standard rent and that in any event it was established that the defendant was ready and willing to pay the amount of standard rent and permitted increases within the meaning of s. 12(1) of the Act.

In appeal the District Court held that the "proper standard rent" of the premises was Rs. 70 per month, that rent had not been paid by the defendant since October 1, 1955 and that the defendant was not entitled to get credit for Rs. 150 spent by him for "electric-installation". But the learned Judge held that by depositing, pursuant to the order of the Court of First Instance, interim rent as ordered, the defendant had complied with the requirements of s. 12(3) (b), and that he had otherwise proved his readiness and willingness to pay the amount of standard rent and permitted increases. The District Court accordingly confirmed the decree of the Trial Court, insofar as it related to the claim for possesssion and modified it in respect of the quantum of standard rent, and the consequential adjustment of the amounts deposited in Court.

The High Court of Gujarat in exercise of its jurisdiction under s. 115, Code of Civil Procedure reversed the decree of the District Court, and ordered the defendant "to hand over vacant and peaceful possession of the premises to the plaintiff within four months from the date of the order". In the view of the High Court the defendant was not ready and willing to pay the standard rent and permitted increases at the date of the suit and that he did not comply

1963

Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai

Shah J.

with the requirements of s. 12(3) (b) of the Act, because he had not deposited in Court the amount of standard rent at the rate determined by the order of the District Court and had not paid even the interim rent at the rate fixed by the Court of First Instance and that he had not paid costs of the suit which he was bound under s. 12(3) (b) to pay.

Section 12(1) of the Act confers, subject to certain provisions contained in s. 13, protection upon tenants. It provides:

> "A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act."

The clause applies to a tenant who continues to remain in occupation after the contractual tenancy is determined: it does not grant a right to evict a contractual tenant without determination of the contractual tenancy. Protection from eviction is claimable by the tenant even after determination of the contractual tenancy so long as he pays or is ready and willing to pay the amount of the standard rent and permitted increases and observes and performs the other conditions of the tenancy consistent with the provisions of the Act.

The premises in question are situated within the territory of the former State of Baroda and by virtue of s. 3 of the Bombay Merged States (Laws) Ordinance VI of 1949 and the Bombay Act IV of 1950 called the Bombay Merged States (Laws) Act, 1950 which extended the Bombay Rents, Hotel and Lodging House Rates (Control) Act, LVII of 1947, to the territory of Baroda, the definition of 'standard rent' in relation to any premises for purposes residential or non-residential was enacted by s. 5 cl. (10A). The clause provides:

" 'Standard rent' in relation to any premises let for the purpose of residence or for non-residential purpose means:

(*a*) where the standard rent is fixed by the Controller under the House Rent Control Order, 1947, made by the Baroda Government, such standard rent, or

(*b*) where the standard rent is not so fixed, subject to the provisions of section 11—

(*i*) the rent at which the premises were let on the specified date, or

(*ii*) where they were not let on the specified date, the rent at which they were last let before that date, or

(*iii*) where they were first let after the specified date, the rent at which they were first let, or

(*iv*) in any of these cases specified in section 11, the rent fixed by the Court:

Provided that an increase in rent made in operation immediately before the 30th day of July 1949, in accordance with the provisions of the said House Rent Control Order, 1947, shall be deemed to be included in the standard rent."

The expression 'specified date' was defined in cl. (10) as meaning the first day of January, 1943, in the case of premises let for the purpose of residence and the first day of January 1944 in the case of premises let for non-residential purpose.

Where standard rent is not fixed under cl. (a) in sub-s. (10A) of s. 5 recourse must ordinarily be had to the Court for fixation of standard rent, under s. 11 of the Act. Section 11 provides:

"(1) In any of the following cases the Court may, upon an application made to it for that purpose, or in any suit or proceeding, fix the standard rent at such amount as, having regard, to the provisions of this Act and the circumstances of the case, the Court deems just—

1963

Vora Abbasbhai Alimahomed
v.
Haji Gulamnabi Haji Safibhai

Shah J.

(a) where any premises are first let after the first day of September 1940, and the rent at which they are so let is in the opinion of the Court excessive; or

(b) where the Court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (10) of section 5; or

(c) where by reason of the premises having been let at one time as a whole or in parts and at another time in parts or as a whole, or for any other reasons, any difficulty arises in giving effect to this Part; or

(d) where any premises have been or at let rent-free or at a nominal rent or for some consideration in addition to rent; or

(e) where there is any dispute between the landlord and the tenant regarding the amount of standard rent.

"(2) If there is any dispute between the landlord and the tenant regarding the amount of permitted increases the Court may determine such amount.

(3) If an application for fixing the standard rent or for determining the permitted increases is made by a tenant who has received a notice from his landlord under sub-section (2) of section 12, the Court shall forthwith make an order specifying the amount of rent or permitted increases to be paid by the tenant pending the final decision of the application, and a copy of such order shall be served upon the landlord."

(On account of some oversight the section has not been amended in its application to the merged territory of Baroda to make it consistent with the provisions of the Bombay Act IV of 1950. In cl. (b) reference should have been made to sub-s. (10A) and not sub-s. (10). But that is a mere drafting error.) Section 11 authorises the Court to fix standard rent on an

application made for that purpose, or in any suit or proceeding when for deciding it, it is necessary to do so. Standard rent is fixed by the Court at such amount as having regard to the provisions of the Act and the circumstances of the case, the Court deems just. Clause (2) authorises the Court to fix the amount of permitted increases. By cl. (3) the Court is required in an application moved by the tenant for fixing the standard rent and permitted increases, after he has received a notice under s. 12(2), forthwith to make an order specifying the amount of rent which may appropriately be called interim rent, pending the final determination of standard rent. The reason of the rule contained in this clause is obvious: it is to prevent a tenant from making an application for fixation of standard rent a pretext for refusing to pay rent to the landlord. But by an order made under sub-s. (3) the Court merely *specifies* the amount of rent payable pending the determination of standard rent: the Court thereby does not *fix* standard rent within the meaning of s. 5(10A) (*iv*).

The protection given by sub-s. (1) of s. 12 is subject to the provisions of s. 13 and also subject to certain limitations and restriction procedural as well as substantive contained in s. 12. Sub-section (2) of s. 12 provides:

> "No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882."

It enacts a restriction upon the right of the landlord to sue the tenant in ejectment on the ground of non-payment of standard rent or permitted increases, by requiring him to give one more opportunity to the tenant to pay rent due by him. Clause (3) (a) of s. 12

1963

Vora Abbasbhai Alimahomed
v.
Haji Gulamnabi Haji Safibhai

Shah J.

specifies the circumstances in which the tenant is deemed to forfeit the protection. It provides:

> "Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court may pass a decree for eviction in any such suit for recovery of possession."

In the context the expression "may" has a mandatory content: if the conditions of the clause are fulfilled the Court is bound to pass a decree in ejectment against tenant: *Bhaiya Punyalal Bhagwandin* v. *Bhagwatprasad*[1]. Clause (3) (b) provides:

> "In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continue to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court."

The clause deals with cases not falling within cl. (3) (a) *i.e.* cases (*i*) in which rent is not payable by the month (*ii*) in which there is a dispute regarding the standard rent and permitted increases, (*iii*) in which rent is not due for six months or more. In these cases the tenant may claim protection by paying or tendering in Court on the first day of the hearing of the suit or such other date as the Court may fix, the standard rent and permitted increases and continuing to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also by paying costs of the suit as directed by the Court. What the tenant has to pay or tender in

(1) [1963] 3 S.C.R. 312

Court to comply with the condition of cl. (b) of sub-s. (3) is standard rent and permitted increases, and the Court has under cl. (b) of sub-s. (1) merely the power to fix the *date of payment* or tender, and not the *rate* at which the standard rent is to be paid. Power to fix the standard rent of premises is exercisable under s. 11(1) alone. To bring his claim within s. 12(3)(b) the tenant must pay or tender the standard rent and permitted increases on or before the first day of hearing, or on or before such other date as the Court fixes, and also costs of the suit as may be directed by the Court. It may be noticed that the statute imposes upon the tenant obligation to pay or deposit the amount of costs if the Court so directs, and not otherwise. The observation made by the High Court to the contrary, *viz* :

> "It is, therefore, clear that the tenant in order to be entitled to claim the protection of s. 12(3)(b) must deposit costs of the suit along with the arrears of standard rent and permitted increases . . . ."

is in our judgment erroneous.

But in the practical working of cl. (3) (b) some difficulty may arise. Where there is no dispute as to the amount of standard rent or permitted increases, but rent is not payable by the month, or the rent is not in arrears for six months, by paying or tendering in Court the standard rent and the permitted increases and continuing to pay it till the suit is finally decided the protection granted by the clause is made effective. Where there is a dispute as to the standard rent, the tenant would not be in a position to pay or tender the standard rent, on the first date of hearing, and fixing of another date by the Court for payment or tender would be ineffectual, until the standard rent is fixed. The Court would in such a case on the application of the tenant, take up the dispute as to standard rent in the first instance, and having fixed the standard rent, call upon the tenant to pay or tender such standard rent so fixed, on or before a date fixed. If the tenant pays the standard rent fixed, on or before the date specified, and continues to pay or

1963

Vora Abbasbhai Alimahomed
v.
Haji Gulamnabi Haji Safibhai

Shah J.

tender it regularly till the suit is finally decided, he qualifies for the protection of cl. (3) (b). If in an appeal filed against the decree, the standard rent is enhanced, the appeal Court may fix a date for payment of the difference, and if on or before that date the difference is paid, the requirement of s. 12(3)(b) would be complied with.

Clause (4) authorises the Court to pay to the landlord out of the amount paid or tendered by the tenant, such amount towards payment of rent or permitted increases due to him as the Court thinks fit. Then follows an Explanation:

> "In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under sub-section (3) of section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court."

The Explanation enacts a rule of evidence. If after service of the notice upon the tenant by the landlord under sub-s. (2) of s. 12 the tenant makes an application under sub-s. (3) of s. 11 before the expiry of a month and thereafter pays or tenders regularly the amount of interim rent specified by the Court till the disposal of the suit, the Court is bound to presume that the tenant is at the date of the decree ready and willing to pay the standard rent and permitted increases.

Section 12(3) (b) requires the tenant to pay the standard rent, and not interim rent, and for the purpose of that clause the expression "standard rent" may not be equated with "interim rent" specified under s. 11(3). Compliance with an order for payment of interim rent is made by the Explanation to s. 12 conclusive evidence of the readiness and willingness to pay the standard rent, but that by itself is not a ground for holding that the interim rent which

may be *specified* under sub-s. (3) of s. 11 is standard rent *fixed* under sub-s. (1) of s. 11. It is true that the statute requires the tenant to pay or tender in Court standard rent at the rate which may still remain to be fixed by order of the Court—such order itself being liable to be varied or modified by an order of a superior Court. But that is not a ground for departing from the definition supplied by the statute. The Legislature has prescribed conditions on which the tenant may qualify for protection of his occupation, and one of the important conditions is the readiness and willingness to pay the standard rent and permitted increases, which may be proved by obtaining an order of the Court fixing the rate of standard rent and complying therewith or by complying with the Explanation to s. 12 or otherwise.

The claim made by the defendant fell within the terms of s. 12(3) (b) and not s. 12(3) (a). The defendant had contended by his reply dated December 7, 1956, to the notice served by the plaintiff, that the contractual rent was excessive: he had then raised the same contention in the application filed for fixation of standard rent and in his written statement filed in the suit. There is nothing in s. 12 to support the contention raised by Mr. Chatterjee on behalf of the plaintiff that the dispute concerning standard rent contemplated by cl. (b) of sub-s. (3) is one which must have been raised before service of the notice under s. 12(2). The entire tenor of the section is against that interpretation.

On the view we have expressed, the District Court was apparently in error in assuming that by tendering in Court rent at the rate specified in the order dated February 14, 1957 the requirement of s. 12(3) (b) regarding payment or tender of standard rent was satisfied. Standard rent for the purpose of s. 12(3)(b) is such rent as is already determined or may be finally determined under s. 11(1). But it turned out that the amount deposited by the defendant pursuant to the order of the Court was not less than the amount fixed by the Trial Court. It is true that the defendant

1963

Vora Abbasbhai Alimahomed
v.
Haji Gulamnabi Haji Safibhai

Shah J.

did not continue to pay rent regularly till the suit was finally decided, and that deprived him of the protection under s. 12(3) (b). The District Court enhanced the standard rent to Rs. 70 and directed adjustment of standard rent against the amount paid in Court. That Court, it is true, did not also strictly follow the requirements of law, but the defect was technical. The Court should have before disposing of the appeal fixed a date for payment of the difference between the standard rent due and the amount actually deposited in Court. The District Court also held that the defendant had otherwise established his readiness and willingness to pay the standard rent.

The question which then arises: had the High Court jurisdiction to set aside the order of the District Court in exercise of its powers under s. 115 of the Code of Civil Procedure? The District Court on an erroneous view of s. 12(3) (b) held that the requirements of that provision were complied with by the defendant, but it also held that having regard to the circumstances, the readiness and willingness contemplated by sub-s. (1) was otherwise established. The High Court had, in exercise of its powers under s. 115 Code of Civil Procedure, no authority to set aside the order merely because it was of the opinion that the judgment of the District Court was assailable on the ground of error of fact or even of law. Jurisdiction to try the suit was conferred upon the Subordinate Judge by s. 28(1) (b) of the Act, and the decree or order passed by the Subordinate Judge was by s. 29(1) (b) subject to appeal to the District Court of the District in which he functioned, but all further appeals were by sub-s. (2) of s. 29 prohibited. The power of the High Court under s. 115 Code of Civil Procedure was not thereby excluded, but the exercise of that power is by the terms of the statute investing it severely restricted. The High Court may exercise its powers in revision only if it appears that in a case decided by a Subordinate Court in which no appeal lies thereto the Subordinate

Court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity. As observed by the Privy Council in *Balakrishna Udayar* v. *Vasudeva Aiyar*[1] :

> " . . . . . the section (s. 115 of the Code of Civil Procedure) applies to jurisdiction alone, the irregular exercise or non-exercise of it, or illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved."

Therefore if the Trial Court had jurisdiction to decide a question before it and did decide it, whether it decided it rightly or wrongly, the Court had jurisdiction to decide the case, and even if it decided the question wrongly. it did not exercise its jurisdiction illegally or with material irregularity: *Rajah Amir Hassan Khan* v. *Sheo Baksh Singh*[2].

Mr. Chatterjee for the plaintiff contended that the District Court in declining to pass a decree in ejectment refused to exercise a jurisdiction vested in it by law, and therefore the case fell within the terms of cl. (b) of s. 115. Counsel relied in support of his plea upon *Joy Chand Lal Babu* v. *Laksha Chaudhury and others*[3]. In *Joy Chand Lal's case*[3], an application for relief under ss. 30 and 36 of the Bengal Money-Lenders Act was dismissed by the Subordinate Judge on the view that the loan in question was a commercial loan which did not fall within the terms of the Act. The Judge however proceeded to consider whether the suit in which the application was made was a suit to which the Act applied, and held that it was such a suit. The High Court of Calcutta set aside the order. In appeal the Privy Council agreed with the High Court that the Subordinate Judge was bound, upon his finding that the loan was a commercial loan, to dismiss the application without determining whether the suit was one to which the Act applied.

(1) L.R. 44 I.A. 261
(2) L.R. 11 I.A. 237
(3) L.R. 76 I.A. 131

1963

Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai

Shah J.

Sir John Beaumont in dealing with the power of the High Court observed:

> "There have been a very large number of decisions of Indian High Courts on s. 115, to many of which their Lordships have referred. Some of such decisions prompt the observation that High Courts have not always appreciated that although error in a decision of a Subordinate Court does not by itself involve that the Subordinate Court has acted illegally or with material irregularity so as to justify interference in revision under sub-s. (c), nevertheless, if the erroneous decision results in the Subordinate Court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under sub-s. (a) or sub-s. (b), and sub-s. (c) can be ignored."

The Privy Council distinguished between cases in which on a wrong decision the Court either assumes jurisdiction which is not vested in it or refuses to exercise jurisdiction which is vested in it by law, and those in which in exercise of its jurisdiction the Court arrives at a conclusion erroneous in law or in fact. In the former class of cases exercise of revisional jurisdiction by the High Court is permissible but not in the latter. This was pointed out by this Court in *Manindra Land and Building Corporation* v. *Bhutnath Bannerjee and others*[1] wherein after referring to the passage already quoted and another passage from the judgment in *Joy Chand Lal's case*[2], the Court observed :

> "These remarks are not applicable to the facts of the present case. They apply to cases in which the law definitely ousts the jurisdiction of the Court to try a certain dispute between the parties and not to cases in which there is no such ouster of jurisdiction under the provisions of any law, but where it is left to the Court itself to determine certain matters as a result

(1) [1964] 3 S.C.R. 495. (2) L.H. 76 I.A. 131

of which determination the Court has to pass a certain order and may, if necessary, proceed to decide the dispute between the parties. The distinction between the two classes of cases is this. In one, the Court decides a question of law pertaining to jurisdiction. By a wrong decision it clutches at jurisdiction or refuses to exercise jurisdiction. In the other, it decides question within its jurisdiction. In the present case, the question whether there was a sufficient cause was exclusively within the jurisdiction of the Court and the Court could decide it rightly or wrongly."

Section 12(1) does not affect the jurisdiction of the Court to entertain and decide a suit in ejectment against a tenant. It merely confers a protection upon a tenant if certain conditions are fulfilled, and cls. (2) (3) (a), (3) (b) and the Explanation deal with certain specific cases in which readiness and willingness to pay standard rent, may either be presumed or regarded as proved. The decision of the District Court that the tenant established or failed to establish his readiness and willingness to pay the standard rent does not affect the jurisdiction of the Court conferred by law upon it, and by wrongly deciding that a tenant is or is not entitled to protection, the Court does not assume to itself jurisdiction which is not vested in it by law or refuse to exercise a jurisdiction which is vested in it by law. Nor does the Court by arriving at an erroneous conclusion on the plea of the tenant as to his readiness and willingness act illegally or with material irregularity in the exercise of its jurisdiction.

The High Court was in error in setting aside the decree of the District Court in exercise of the powers in revision under s. 115 Code of Cvil Procedure. The appeal must therefore be allowed and the order passed by the District Court restored. If any amount has been deposited as standard rent since the order passed by the District Court, the same should be paid over to the plaintiff at the rate of

1963

Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai

Shah J.

Rs. 70 per month. We direct, having regard to the circumstances, that there shall be no order as to costs in this appeal.

Appeal allowed.

1963

October 22

THUNGABHADRA INDUSTRIES LTD.

v.

THE GOVERNMENT OF ANDHRA PRADESH

(A.K. SARKAR, K.C. DAS GUPTA AND N. RAJAGOPALA AYYANGAR JJ.)

Civil Procedure Code, 1908 (5 *of* 1908), O. 47, *r.* 1—*Petition for certificate of fitness under Constitution Act*, 131(1)(*c*)—*Order that the cost does not involve any substantial question of law—Whether an "error apparent on the face of the record".*

Practice and Procedure—Notice to respondent before granting special leave—Whether objection to the maintainability of appeal permitted after grant of special leave—Supreme Court Rules, 1950, *O. XIX, r.* 4.

In respect of the assessment year 1949-50, the appellant while submitting his return disclosing his turnover of the sale of oil, included therein the value of the hydrogenated oil that he sold and claimed a deduction under r. 18 of the Turnover and Assessment Rules in respect of the value of the groundnuts which had been utilised for conversion into hydrogenated oil on which he had paid tax at the point of their purchase. The sales tax authorities rejected the claim on the ground that hydrogenated groundnut oil was not groundnut oil within that rule. This view was upheld by the High Court on February 11, 1955, in the Tax Revision Case No. 120 of 1953 filed by the appellant, but, on application, the High Court granted a certificate of fitness under Art. 133(1) of the Constitution of India on the ground that substantial questions of law arose for decision in the case. For the assessment years 1950-51, 1951-52 and 1952-53, the same question as to whether hydrogenated groundnut oil was raised and decided against the appellant by the sales tax authorities and the High Court. The appellant then applied for a certificate of fitness under Art. 133(1) of the Constitution, but the High Court dismissed the petition on September 4, 1959, stating: "The judgment sought to