A

SOUTH ASIA INDUSTRIES PRIVATE. LTD.

v.

S. SARUP SINGH AND OTHERS

B

April 19, 1965

[A. K. SARKAR, J. R. MUDHOLKAR AND R. S. BACHAWAT, JJ.]

Delhi Rent Control Act (*Act* 59 of 1958), *s.* 14(1), *Proviso* (b)—*Scope of.*

C The respondents were the owners of certain premises in New Delhi. The lessee—a company—of these premises assigned the lease to the appellant. Alleging that the transfer was done without their consent, the respondents filed an application against the lessee and the appellant under s. 14(1) proviso (b) of the Delhi Rent Control Act, 1958, for recovery of possession. Pending the proceedings, the lessee went into liquidation and its name was struck off from the D record. The Controller thereafter, passed an order in favour of the respondents. Having moved unsuccessfully the Rent Control Tribunal and the High Court, the appellant, appealed to the Supreme Court contending that: (i) the order made against the appellant, after the lessee ceased to be a party, was incompetent, as the only person against whom an order for recovery of possession can be made under the clause, is the tenant who assigned the tenancy, and E (ii) the clause in the lease by which the term "lessee" included the lessee's assignee operated as a consent by the respondents, to assign.

HELD: (i) (*Per* Sarkar, J.). The Act contemplates orders for recovery of possession also against persons other than a tenant who has assigned or sub-let without the landlord's consent, so that, where the tenant becomes extinct without leaving any successor, an order can be made against a person who took an assignment of the lease F from the tenant before the lease became extinct. [833C, D-E]

The proviso expressly states when an order of ejectment can be made and the clauses of the proviso are not intended to indicate the persons against whom an order for recovery of possession could be made, but only the circumstances in which an order for recovery of possession may be made. [832E-G]

The expression "the tenant" in cl. (b) is used only to emphasise G that the tenant assigning must be the tenant of the landord seeking eviction. So read, the effect of the clause is that a land-lord can recover possession if *his* tenant assigns or sub-lets without his consent. [832H, 833A-B]

Since the object of the proviso is to enable the landlord to recover possession in the specified cases, orders against all "persons in occupation" must have been contemplated so that the landlord might H without further trouble recover possession. Section 18 plainly implies that an order for recovery of possession against a sub-tenant is contemplated by the proviso. Further, the order for recovery of possession would, under s. 25, be binding on the assignee or sub-tenant, and therefore, they would be interested in showing that there was the requisite consent, and hence would be entitled to be made parties to the proceedings. If they are thus entitled to be heard to oppose the order of eviction, such an order could be made against them also. [833F-G, H; 834C, E, H-835A]

Per Bachawat J.(i): Both the tenant and the assignee were properly parties to the proceedings for possession and if the tenant company had been dissolved, there is no reason why the proceedings could not continue against the assignee alone. [839G] A

It is true that other clauses of the proviso contemplate eviction of the tenant on the ground of some act on the part of the tenant against whom the proceeding for possession is brought, but under cl. (b), the assignment is a ground of eviction of both the assigning tenant and the assignee and the Controller has jurisdiction to make an order for possession not only against the assigning tenant but also against the assignee. [839H-840B] B

Per Mudholkar J. (Dissenting)

The right which the respondents possessed to evict the defunct company from the premises, because the company had assigned the tenancy to the appellant without the respondents' consent could not be availed of by them, and the appellant could therefore continue in possession. [838B-C] C

The ban against eviction of a tenant in s. 14(1) is lifted by the proviso only with respect to the tenant and not to any other person, because, a proviso is subservient to the main provision. Therefore, the tenant must be a party to the proceeding right up to the date of making of the order of eviction. Unless an order is obtained against the tenant there would be no occasion for pressing in aid s. 25. Unlike the case of death of or assignment by, a tenant, an anomalous position results where the tenant happening to be a company is dissolved during the pendency of proceedings and cannot be represented by any one, because of a lacuna in the law. But such lacuna cannot be removed by the Courts without assuming a power to legislate. [836H, 837F-H] D E

(ii) *Per* Sarkar J.: The clause in the lease according to which "the lessee" includes his assignee, does not lead to the conclusion that the lessor consented to the assignment. Besides, the consent contemplated by the proviso is a direct consent to a contemplated assignment to a particular assignee. [835F-G] F

Regional Properties Ltd. v. *Frankenchwerth,* [1951] 1 All E. R. 178, applied.

Per Bachawat J: The consent contemplated by cl. (b) may be either general or special, but the clause in the lease would not amount to a consent by the landlord to an assignment either expressly or by necessary implication. [840D-E] G

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 149 of 1965.

Appeal by special leave from the judgment and order dated May 10, 1963 of the Punjab High Court (Circuit Bench) in S.A.O. No. 40-D of 1963. H

C. B. Agarwala, B. R. L. Iyengar, P. N. Chaddha, S. K. Mehta and *K. L. Mehta,* for the appellant.

S. T. Desai and *Gopal Singh* for *Harbans Singh,* for respondents Nos. 1 & 2.

Gurcharan Singh and *Gopal Singh* for *Harbans Singh,* for respondents Nos. 3 to 5.

A Sarkar and Bachawat, JJ. delivered separate but concurring judgments. Mudholkar, J. delivered a dissenting Opinion.

Sarkar, J. The respondents are the owners of certain premises in Connaught Circus in New Delhi, which were let out to Allen Berry & Co. (Calcutta) Ltd. Sometime in 1959 Allen Berry & Co. B transferred the lease to the appellant and put the latter in possession. Alleging that the transfer had been made without their consent, the respondents made an application under cl. (b) of the proviso to sub-s. (1) of s. 14 of the Delhi Rent Control Act, 1958 to the Controller appointed under it against Allen Berry & Co. and the appellant for an order for recovery of possession of the pre- C mises from them. While the application was pending, Allen Berry & Co. went into liquidation and was in due course dissolved and its name was, thereupon, struck off from the records of the proceedings. The Controller later heard the application and made an order in favour of the respondents for recovery of possession of the premises from the appellant alone. An appeal by the appellant D to the Rent Control Tribunal under the Act against this order was dismissed. The appellant then moved the High Court of Punjab for setting aside the order of the Tribunal, but there also it was unsuccessful. It has now come to this Court in further appeal.

It was contended that the order for recovery of possession E made against the appellant after Allen Berry & Co. had ceased to be a party to the proceedings, was incompetent. This contention was based on an interpretation of the terms of sub-s. (1) of s. 14, the material part of which is set out below:

> *S.* 14 (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree F for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:
>
> Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or G more of the following grounds only, namely:—
>
> (a) ... ...
>
> (b) that the tenant has, on or after the 9th day of June, 1952, sub-let, assigned or otherwise parted with the possession of the whole or any part of the H premises without obtaining the consent in writing of the landlord;

The contention of the appellant was put in this way: The first part of sub-s. (1) of s. 14 puts a complete ban on recovery of possession from all tenants. The proviso to it is only an excepting clause and it lifts that ban in the circumstances mentioned in it. It follows that the proviso, though it does not expressly mention

tenants, permits orders for recovery of possession against them alone. The tenant in cl. (b) of the proviso means only the tenant sought to be evicted under the proviso, such tenant having also to be by the express terms of the clause, a tenant who has assigned his tenancy. This follows from the use of the article "the" before the word "tenant" there. Therefore the only person against whom an order for recovery of possession can be made under cl. (b) of the proviso to sub-s. (1) of s. 14 is the tenant who has assigned his tenancy. No such order can, hence, be made against the person to whom the tenancy has been assigned. As the appellant was such a person, no order for eviction could be made against it. I wish to observe at once that if this contention is correct—which I do not think it is—then the order could never be made against the appellant and the fact that Allen Berry & Co. ceased to be a party to the proceedings made no difference in this regard.

The argument of the appellant is really based on the article "the" prefixed to the word "tenant" in cl. (b) of the proviso. It is paid that the article clearly indicates that the only person against whom an order for ejectment can be made under cl. (b) is the tenant who assigns or sub-lets or parts with possession of the tenancy without the landlord's consent. I am unable to accept this argument. The proviso expressly states that an order for ejectment can be made "on one or more of the following grounds" and then sets the grounds out in the different clauses that follow, one of which is cl. (b) with which we are concerned. The clauses, therefore, set out the circumstances in which the operative part of the proviso is set in motion, that is, the circumstances in which an order for recovery of possession may be made. If this is so, as I think it is, the clauses could not have been intended to indicate the person against whom an order for recovery of possession could be made. This purpose was entirely different. I am not suggesting that an order for recovery of possession against the assigning tenant cannot be made. All that I say is that the clauses do not intend to indicate the persons against whom an order for recovery of possession can be made and so it cannot be argued that the order cannot be made against any other person.

Now the article "the" appears to me to have been used to show that the tenant assigning must be the tenant of the landlord seeking eviction. So read, the effect of the proviso in cl. (b) is that a landlord can recover possession if *his* tenant has assigned, sub-let or transferred possession without his consent. This would be the natural reading of the provision and would carry out the intention of the Act. If this is not the correct reading of the provision, the situation would be anomalous. As the word "tenant" includes by virtue of its definition in s. 2(1), a sub-tenant, it would at least be arguable that cl. (b) authorised a superior landlord to recover possession when the sub-tenant assigned without his consent. That could not possibly have been intended for

A the intermediate tenant would then have lost his tenancy for no fault of his. Therefore, I think the article "the" was used only to emphasize that the tenant assigning must be the tenant of the landlord seeking eviction. The article "the" does not, in my opinion, lead inevitably to the conclusion that the only person against whom an order for recovery of possession can be made on the ground B mentioned in cl. (b) is the tenant assigning or sub-letting or parting with possession of his tenancy without the landlord's consent.

I think there are good reasons why it must be held that the Act contemplated orders for recovery of possession also against persons other than a tenant who has assigned or sub-let without C the landlord's consent. The offending tenant must of course go for, as I have said, he is the immediate tenant of the landlord desiring to recover possession and if he remains he would be entitled to possession and the landlord cannot recover possession. But this does not mean that the order may not also direct the removal from possession of others along with the immediate tenant D when there is one. The reason for this view I will presently state. If I am right in what I have said, it will follow that in a case like the present where the tenant becomes extinct without leaving any successor on whom the tenancy devolves, an order can be made against a person who took an assignment of the lease from the tenant before it became extinct.

E

It is trite saying that the object of interpreting a statute is to ascertain the intention of the legislature enacting it. When I enquire about the intention behind this statute, I find that far from lending any support to the appellant's contention it tends quite the other way. First, I observe that the object of the first part of sub-s. F (1) of s. 14 is to ban all recovery of possession of tenanted premises by a landlord and that of the proviso is to lift that ban in specified cases. The object of the proviso is then to enable the landlord to recover possession in any of the specified cases. Assume that the present is a case where the landlord became entitled to recover possession under cl. (b) of the proviso; clearly then the statute G intended the landlord to recover possession. It would be our duty to give effect to that intention unless the language used made it plainly impossible. I have earlier said that the language used does not compel the view that the only person against whom an order for recovery of possession can be made is the tenant assigning or sub-letting without the landlord's consent. That being so, orders H against all "persons in occupation" must have been contemplated so that the landlord might without further trouble recover possession. Further I find it impossible to hold that the language used indicates an intention that when a right has accrued to a landlord to recover possession, that right would be taken away from him when the tenant assigning has become extinct without leaving a successor, an event which is only accidental and certainly rare. A court would be fully justified in holding that in such a case it was

intended that an order for recovery of possession can be made against the assignee alone for that would enable the object of the statute which was to enable the landlord to recover possession, to be achieved. An interpretation which defeats the object of a statute is, of course, not permissible.

Then, looking at s. 18 of the Act I find that it clearly contemplates an order for recovery of possession under s. 14 against a sub-tenant. It says, "Where an order for eviction in respect of any premises is made under s. 14 against a tenant but not *against a sub-tenant* referred to in section 17", then in the circumstances mentioned, the sub-tenant shall be deemed to become a direct tenant under the landlord. This section plainly implies that an order for recovery of possession against a sub-tenant is contemplated by cl. (b) of the proviso to sub-s. (1) of s. 14. The appellant's argument to the contrary cannot be sustained against the clear implication of the Act. If s. 14 contemplates an eviction order against a sub-tenant, it must equally contemplate such an order against assignees of tenants, for the section makes no distinction between sub-tenants and assignees for the purpose of making such orders.

I am not unmindful of the fact that where an order for recovery of possession of any premises is made under s. 14 against a tenant assigning or sub-letting without the landlord's consent, that order would under s. 25 of the Act be binding on all persons in occupation of the premises except those who leave independent title to them. This section does not however say that an order for recovery of possession against an assignee of a lessee cannot be made. It would not, therefore, support an argument that an order for recovery of possession could be made under s. 14 against an assignee or a sub-tenant. On the other hand, it seems to me that to an application under cl. (b) of the proviso to sub-s. (1) of s. 14 an assignee or sub-tenant, as the case may be, should be a proper party. Under this provision an ejectment order can be made only when the assignment or sub-letting was without the consent of the landlord. If it was with such consent, the assignee or the sub-tenant would be protected by the Act. An assignee or a sub-tenant is, therefore, interested in showing that there was the requisite consent. They should hence be entitled to be made parties to the proceedings. Otherwise, if under s. 25 an eviction order obtained against the direct tenant is binding on them, they would be liable to be condemned without a hearing. It is no argument against this view that the direct tenant would protect them, for they cannot be made to depend on him for the protection of their rights. The direct tenant may be negligent or incompetent in his defence; he may even collude with the landlord or he may just not bother. If the assignee or the sub-tenant is thus entitled to be heard to oppose the order for eviction, that would be another reason for saying that an order eviction could be made against them also; if they could oppose the

making of the order, it would be unnatural to say that the order could not be made against them. In what I have said in this paragraph, I do not wish to be understood as holding that in view of s. 25 an order for eviction against a tenant is in fact binding on his assignee or sub-tenant. Such a decision is not necessary for this case. I wish, however, to point out that if s. 25 does not make the ejectment order so binding, the appellant cannot resort to it for any assistance.

I have now dealt with the first argument in support of the appeal and I find it unacceptable. The other argument was that the order for recovery of possession was unwarranted as in fact there had been a consent of the respondents to the assignment in favour of the appellant. It is said that the consent was given by a clause in the lease under which Allen Berry & Co. held which reads as follows:—

> "That whenever such an interpretation would be necessary in order to give the fullest scope and effect legally possible to any covenant or contract herein contained, the expression "The Lessor" hereinbefore used shall include his heirs, executors, administrators and assigns and the expression "THE LESSEE" hereinbefore used shall include their representatives and assigns."

I am unable to accept this contention also.

I notice that the lease gave no express right to the lessee to assign with or without the consent of the lessor. The lessee no doubt had that right under the Transfer of Property Act. It may be that under the clause the lessee's assignee would be included in the expression "lessee" as used in the lease; that is the entire effect of the clause. But this would be so whether the lessor had consented to the assignment or not. Therefore, this clause does not lead to the conclusion that the lessor had consented to the assignment. It is of no assistance in the present case. I am also inclined to the view that the consent contemplated by s. 14(1) proviso (b) is a direct consent to a contemplated assignment to a particular assignee: see *Regional Properties, Ltd.* v. *Frankenschwerth*(1). Clearly the clause in the case relied upon could not be a consent of this kind. This point, therefore, also fails.

For these reasons I would dismiss the appeal with costs.

Mudholkar, J. In this appeal by certificate granted by the Punjab High Court an unusual question arises for consideration. That question is whether an application made under s. 14(1)(b) of the Delhi Rent Control Act, 1958 by a landlord of a building in Delhi against a tenant who happens to be a company incorporated under the Indian Companies Act, cannot be proceeded with and granted on the ground that before the making of any order thereon by the

(1) (1951) 1 All. E.R. 178.

Rent Controller the Company is dissolved and is struck off the record of the case. According to the appellant who claims to be an assignee from the original tenant, that is, the Company, such an application cannot be proceeded with and granted while according to the respondent landlord the fact that the company is dissolved makes no difference.

The facts which are not in dispute and which have been stated in the judgment of Bachawat J., need not be recapitulated because what I have already said is sufficient to enable me to deal with the point.

The relevant part of s. 14(1) reads thus:

> "Notwithstanding anything to the contrary contained in any other law or contract no order or decree for the recovery of possession of any premises shall be made by any Court or Controller in favour of the landlord against a tenant:
>
> Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:—
>
> ...."
>
> (b) that the tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;
>
> ...."

It is not necessary to refer to cl. (a) or to the several clauses following cl. (b) in this sub-section or to any of the sub-sections of s. 14. Looking at sub-s. (1) what we find is that it enacts a bar to the making of an order or decree for the recovery of possession of any premises by any court or the controller *against a tenant*. In other words the jurisdiction of a civil court or even of the Rent Controller to make an order of eviction against the tenant is taken away. The proviso, however, lifts the ban against eviction in certain circumstances one of which is that set out in cl. (b). What is important to bear in mind is that sub-s. (1) is intended to protect the possession of the tenant. A proviso to a section or a sub-section is subservient to the main provision. It would, therefore, follow that the ban against the eviction is lifted only with respect to the possession of the tenant and not of any other person. In so far as persons other than the tenant who may be in possession of the premises which pertain to the tenancy is concerned, the matter is dealt with by s. 25 and we can leave that out at any rate for the present. Another thing to be noticed about s. 14 is that

A though under s. 2(1)(b) of the Act the word "tenant" includes several other persons in addition to the one with whom there was a contract that expression must be regarded as relating to the same individual in the entire section or at least in sub-s. (1) of s. 14 wherever it occurs. Thus, if in the first part of sub-s. (1) of s. 14 "tenant" is regarded as meaning as "assignee" of the tenant then B it would have to be given the same meaning in cl. (b) of sub-s. (1) of s. 14. That is to say that if there is a sub-letting or a further assignment or any other kind of parting with possession by an assignee of the original tenant (the assignment by the original tenant having been accepted or acquiesed in by the landlord) such assignee can be evicted by the landlord if the action of the assignee C of the kind mentioned was taken by him without his written consent.

Now, since sub-s. (1) is a bar to the jurisdiction of the Rent Controller to make an order or decree for recovery of possession against a tenant it must necessarily follow that the tenant must be D a party to a proceeding before him right up to the date of the making of the decree or order. Thus, if the tenant dies during the pendency of the proceedings and his legal representative is not substituted on the record in his place, the proceeding will abate against him and the Rent Controller will have no jurisdiction to make an order in favour of the landlord. That is to say, the pro- E viso will not be available to the landlord no matter what the tenant had done if the records of the proceeding became defective because neither the tenant nor his legal representative was any longer a party to those proceedings. The reason for this is that the ground upon which the landlord's application is based can be availed of for lifting the ban on the eviction by the Rent Controller F of the tenant alone. Unless an order is obtained against the tenant there would be no occasion for pressing in aid the provisions of s. 25 of the Act. Where during the pendency of the proceedings before the Rent Controller the tenant dies or makes an assignment of whatever interest he may still have left in the demised premises no difficulty would arise because his legal representative or G assignee could be brought on record in his place. But, it must be admitted, that an anomalous position results where the tenant happening to be a company is dissolved during the pendency of the proceedings and can, therefore, be not represented by any person. The Act does not contemplate this position nor even does the Code of Civil Procedure and so we have it that the defect in the record H resulting from the dissolution of a company cannot be removed at all. The result, however, of this is that the jurisdiction of the Controller to proceed with the application of the landlord and therefore to make eventually an order or decree entitling the landlord to recover possession from the tenant ceases to be exercisable. Apparently this curious position arises because of a lacuna in the law. Such a lacuna cannot be removed by the Courts without assuming the power to legislate—which obviously is beyond the

competence of any court. The duty of courts is merely to administer the law as they find it. The only way for remedying the defect is for the legislature to step in and amend the law.

The result of what has happened in this case is that the right which the landlord possessed to evict the now defunct company from the premises through the intervention of the Rent Controller because the company had assigned the demised premises to another without his consent can no longer be availed of by him. The assignee, who is the appellant before us, can therefore continue to be in possession of the premises even though he may have been liable to be evicted with the aid of s. 25 had the company not been dissolved in the meanwhile. Whether the landlord has now a right under the general law to evict the appellant is not a matter upon which I would express an opinion because it does not strictly arise at this stage. For these reasons I would allow the appeal, set aside the orders of the courts below and dismiss the application of the respondent-landlord under s. 14(1)(b) of the Act. In the particular circumstances of the case I would direct that costs throughout shall be borne by the parties as incurred.

Bachawat, J. Originally one Amar Sarup owned the land and building at plot No. 5, Block 'M', Connaught Circus, New Delhi. By a lease dated March 1, 1956, Amar Sarup leased the property to Allen Berry & Co. (Calcutta) Ltd., (hereinafter referred to as the tenant) for a period of five years on a monthly rent of Rs. 297/-. Sometime thereafter, Amar Sarup transferred the property to the respondents. In or about May, 1959, the tenant assigned the tenancy rights, and parted with possession of the whole of the premises to the appellant. On October 6, 1959, the respondents filed an application before the Rent Controller, Delhi praying for eviction of the tenant and the appellant. The tenant, a limited company, had gone into voluntary liquidation on September 26, 1959 and it was finally wound up and dissolved on October 29, 1960. On its dissolution, the tenant ceased to exist, and by order of the Rent Controller, its name was struck off from the array of parties in the pending application. By an order dated October 10, 1962, the Rent Controller passed an order of eviction against the appellant. An appeal by the appellant to the Rent Control Tribunal, Delhi was dismissed on January 23, 1963, and a second appeal to the Punjab High Court was dismissed on May 10, 1963. A Letters Patent Appeal from the order dated May 10, 1963 was dismissed on December 11, 1963 on the ground that the appeal was not maintainable, and an appeal to this Court from the last order was dismissed on January 18, 1965. The appellant has now preferred this appeal from the order dated May 10, 1963 by special leave granted by this Court.

The respondents-landlords instituted the proceeding for eviction of the tenant and its assignee relying on the provisions of

A s. 14(1) of the Delhi Rent Control Act, 1958 (Act 59 of 1958), the relevant portion of which is as follows:

"14(1). Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

B

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds, namely:—

C

* * *

(b) that the tenant has, on or after the 9th day of June, 1962 sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;"

D

The case of the landlords is that "the tenant has ... assigned... the whole of the premises without obtaining the consent in writing of the landlord", and, therefore, the Controller had jurisdiction to make an order for possession. The tenant is forbidden by s. 16(3)(b) of the Act to make the assignment, for contravention of E s. 16(3)(b) he is punishable with fine under s. 48(2), and the assignment is a ground for eviction under s. 14(1), proviso, paragraph (b), and so, the landlords submit that the Controller had jurisdiction to make the order for possession against the tenant and its assignee, and on the dissolution of the tenant, against the assignee alone.

F

Counsel for the appellant contended that the Controller had no jurisdiction to make the order for possession in the absence of the original tenant. I cannot accept this submission. Both the tenant and the assignee were properly parties to the proceedings for possession, and if the tenant-company had not been dissolved, G the Controller would have been competent to make the order for possession. The tenant has since been dissolved and ceased to exist, no one can be substituted in its place, and I do not see why the proceedings cannot now continue against the assignee alone. Paragraph (b) of the proviso to s. 14(1) evidently contemplates proceedings for possession against both the tenant and the assignee, who as a result of the assignment has been put in possession H of the premises. Counsel for the appellant made the alternative submission that paragraph (b) contemplates an assignment by the tenant against whom the order for eviction is made, and as the appellant was the assignee and not the assignor, there was no ground for its eviction under paragraph (b). It is true that other paragraphs of the proviso contemplate the eviction of the tenant on the ground of some act on the part of the tenant against whom

the proceeding for possession is brought, but under paragraph (b), the assignment is a ground of eviction of both the assigning tenant and the assignee, and in the event of an assignment without the consent in writing of the landlord, the Controller has jurisdiction to make an order for possession not only against the assigning tenant but also against the assignee.

Counsel for the appellant next referred us to cl. 7 of the lease, which is in these terms:

> "That, whenever such an interpretation would be necessary in order to give the fullest scope and effect legally possible to any covenant or contract herein contained, the expression 'The Lessor' hereinbefore used shall include his heirs, executors, administrators and assigns and the expression 'The Lessee' hereinbefore used shall include their representatives and assigns."

Counsel for the appellant submitted that by cl. 7 of the lease, the landlords have given their consent in writing to the assignment. I cannot accept this submission. The consent in writing within the meaning of paragraph (b) of the proviso to s. 14(1) may be either general or special, but no such consent was given by cl. 7. The effect of cl. 7 is that the assignee of the lease enjoys the benefits and is subject to the burden of the covenants in the lease, but the clause does not amount to a consent by the landlord to an assignment either expressly or by necessary implication. The assignment to the appellant was without the consent in writing of the respondents. The Controller rightly passed the order for possession of the premises.

Counsel for the appellant contended that the contractual term of the lease not having expired on October 6, 1959, the proceeding before the Controller was not maintainable. We indicated in the course of the argument that this contention not having been raised in the Courts below, we are not inclined to allow the appellant to raise it here for the first time.

In the result, the appeal is dismissed with costs.

ORDER

In accordance with the opinion of the majority, the appeal is dismissed with costs. The appellant will have a month's time from today to vacate the premises.