A

SMT. SHAKUNTALA S. TIWARI

v.

HEM CHAND M. SINGHANIA

MAY 6, 1987

B

[E.S. VENKATARAMIAH AND SABYASACHI MUKHARJI, JJ.]

Bombay Rents, Hotels and Lodging House Rates Control Act, 1947: Sections 12 and 13—Harmonious construction—Necessity for as provisions co exist—Suit for recovery of possession by landlord—
C *Period of limitation—What is.*

Limitation Act 1963: Recovery of possession by landlord under section 13 of the Bombay Rent Act—Period of limitation—Would be 12 years under Articles 66 or 67 and not 3 years under
D *Article 113.*

The appellant in the appeals was the tenant of the demised premises who was inducted as a monthly tenant for the purpose of conducting the ice-cream business carried on by her husband. The letting was
E **done on an agreement dated December 29, 1975 by the landlord-respondent which was to become effective from January 1, 1976.**

The landlord alleged that in breach of the agreement and the terms of the tenancy, as also in violation of the prohibition prescribed under section 13(1) of the Bombay Rents, Hotels & Lodging House
F **Rates (Control) Act, 1947 the tenant had indulged in serveral acts of commission by which not only there had been permanent alterations of major nature, but the entire structure of the demised premises was completely changed. It was also alleged that the tenant had indulged in acts of waste and damage to the property, and that she had changed the user of the premises when some of the employees started residing there.**

G

On the basis of the aforesaid allegations the landlord gave a notice to quit dated 20th September, 1978 to the tenant. Thereafter in 1979 the landlord filed a suit against the tenant in the Small Causes Court for possession of the demised premises. The Trial Court on 11th November,
H **1982 decreed the suit upholding the allegation that the tenant had made**

alterations of permanent nature in the demised premises and had committed acts or waste and damage. A

Aggrieved by the aforesaid decision the tenant filed an appeal before the Appellate Bench of the Small Causes Court on 28th September, 1985, and the respondent's suit for eviction was dismissed on the ground that the suit was barred by lapse of time under Article 113 of the Limitation Act, 1973, which prescribed a period of three years. B

The landlord thereafter filed a writ petition under Article 227 which was allowed by the High Court which held that Article 66 or Article 67 was applicable which prescribed a period of 12 years. The writ petition filed by the tenant was however dismissed. C

In the appeals by the tenant to this Court the only question for consideration was: whether Article 113 or either of Articles 66 or 67 of the Limitation Act would be applicable, and what would be the date of the accrual of the cause of action. D

On behalf of the tenant-appellant it was contended that on the facts of the case Article 113 of the Limitation Act alone would apply and that neither Article 66 nor Article 67 would have any application. Article 67 of the Limitation Act had no application inasmuch as time begins to run only when the tenancy is determined and that E determination of tenancy which takes place under the Transfer of Property Act is wholly irrelevant for cause of action in ejectment. That Article 66 contemplates an immediate right to recover possession. Breach of a condition only leads to an immediate right to possession without more, and not a determination in law. That Article 66 is a general article which does not apply to landlord or tenant, and that F when a specific Article applied the general Article should not be applied specially when it was not free from doubt.

On behalf of the respondent—landlord it was however submitted that for any suit by a landlord against the tenant for recovery of possession under the Rent Act the Limitation Act was inherently inapplicable. G

Dismissing the Appeals,

HELD: 1. Recovery of possession is by a suit and there is no section in the scheme of the Limitation Act to indicate that the Limitation Act was inherently inapplicable. In the scheme of the Rent Act or in H

A **the various contingencies contemplated under the Rent Act, there is nothing to indicate or warrant that there would be no limitation of any period. [311E-F]**

2. Sections 12 and 13 of the Bombay Rent Act co-exist and must be harmonised to effect the purpose and intent of the legislature for the B **purpose of eviction of the tenant. In that view of the matter Article 113 of the Limitation Act has no scope of application. [316C-D]**

3. Article 67 indicates that time begins to run only when the tenancy is determined. It comprehends suit by a landlord and deals with the right to recover possession from the tenant. Therefore it deals C **with landlord and tenant. [311F-G]**

4. On the strict grammatical meaning Article 67 of the Limitation Act would be applicable. This is indubitably a suit by the landlord against the tenant to recover possession from the tenant. Therefore, the suit clearly comes within Article 67 of the Limitation Act. The suit was D **filed because the tenancy was determined by the combined effect of the operation of Sections 12 and 13 of the Bombay Rent Act. At the most it would be within Article 66 of the Limitation Act if it is held that forefeitures have been incurred by the appellant in view of the breach of the conditions mentioned in Section 13 of the Bombay Rent Act, and on lifting of the embargo against eviction of tenant in terms of section 12 of** E **the said Act. That being so, either of the two, Article 66 or Article 67 would be applicable to the facts of the instant case. There is no scope for the application of Article 113 of the Limitation Act in any view of the matter. The period of limitation in this case would therefore be 12 years. The suit was therefore not barred. [315H; 316A-E]**

F *Dhanpal Chettiar* **v.** *Yesodai Ammal,* **[1980] 1 S.C.R. 334;** *Pradesh Kumar Bajpai* **v.** *Binod Behari Sarkar,* **[1980] 3 S.C.R. 93,** *Gian Devi Anand* **v.** *Jeevan Kumar & Other,* **[1985] 2 S.C.C. 683;** *Hiralal Vallabhram* **v.** *Kastorbhai Lalbhai & Others,* **[1967] 3 S.C.R. 343 at 349 and 350;** *Bahadur Singh & Anr.* **v.** *Muni Subrat Dass & Anr.,* **[1969] 2 S.C.R. 432 at 436,** *Kaushalaya Devi & Others* **v.** *Shri* G *K.L. Bansal,* **[1969] 2 S.C.R. 1048 at 1050;** *Ferozi Lal Jain* **v.** *Man Mal and another,* **A.I.R. 1970 S.C. 794 at 795 and 796; and** *Haji Suleman Haji Ayub Bhiwandiwala* **v.** *Narayan Sadashiv Ogale,* **[1967] 84 Bombay Law Report p. 122, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 116-
H 117 of 1987.

From the Judgment and Order dated 28.11.1986 of the Bombay High Court in Civil Writ Petition Nos. 5391 And 5515 of 1985. A

F.S. Nariman, R.F. Nariman, Ashok Goel, Rajan Karanjawala and Ejaz Mazbool for the Appellant.

H.C. Tunara, M.N. Shroff, A.G. Parekh and K.M.K. Khan for the Respondent. B

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This appeal by special leave is by the tenant from the judgment and order of the High Court of Bombay dated 28th of November, 1986. The only question involved in this appeal is what is the period of limitation for the recovery of possession of the demised premises. The premises in question is located on the Municipal Street No. 16 in Fanaswadi area of Bombay. The tenant was inducted as a monthly tenant in respect of the said premises at a monthly rent of Rs.105.60 for the purpose of conducting ice-cream business which was being carried on by her husband who was the holder of the power of attorney on her behalf. The premises consisted of the entire structure on the ground floor with a loft covering the entire area with corrugated iron sheets. The letting was done on an agreement dated 29th of December, 1975 which was to become effective from the 1st of January, 1976. It is the case of the landlord, the respondent herein, that in breach of the agreement and the terms of tenancy as also in violation of the prohibition prescribed under section 13(1) of the Bombay Rents, Hotel & Lodging House Rates (Control) Act, 1947 (hereinafter referred to as the Rent Act), the tenant had indulged in several acts of commission by which not only there has been permanent alterations of major nature but the entire structure was completely changed so much so that even the height of the structure was increased and thus, the loft lost its initial character and became almost as a first floor which was the creation of the appellant–tenant herein. Several other breaches were alleged to have been committed in respect of the terms of tenancy. It was alleged that the tenant had indulged in the acts of waste and damage to the property and that further she had changed the user of the suit premises when some of the employees started residing there. On the basis of those and other allied allegations on the 20th of September, 1978 the landlord, respondent herein, gave a notice to quit to the tenant, the appellant herein, on the ground that the tenant had (1) made alterations of permanent nature in respect of the demised premises, (2) committed C D E F G H

A acts of waste and damage and (3) changed the user of the premises. In 1979 the landlord filed R.A.E. Suit No. 1326/4557 of 1979 against the tenant in the Small Causes Court, Bombay for possession of the demised premises. The Trial Court on 11th November, 1982 decreed the suit upholding, *inter alia,* that the tenant had made alterations of permanent nature in the demised premises and had committed acts of
B waste and damage. Aggrieved by the said decision Appeal No. 667 of 1982 was filed by the tenant against the decree of the Trial Court. The same was allowed by the Appellate Bench of the Small Causes Court on 28th September, 1985 and the respondent's suit for eviction was dismissed on the ground that the suit was barred by lapse of time under article 113 of the Limitation Act, 1963 (hereinafter called the Limita-
C tion Act). The High Court of Bombay on 28th of November, 1986 allowed the writ petition being Writ Petition No. 5391 of 1985 filed by the landlord under Article 227 of the Constitution against the judgment of the Appellate Bench of the Small Causes Court. The High Court allowed the said Writ Petition filed by the landlord and dismissed the Writ Petition being Writ Petition No. 5515 of 1985 filed by the
D tenant. In the premises the High Court's judgment and order dated 28th of November, 1986 impugned in this appeal restored the judgment of the Trial Court decreeing the respondent's suit for possession.

All the three courts have held that the tenant, appellant herein, had made alterations of permanent nature and had committed acts of
E waste and damage. The Appellate Bench of the Small Causes Court and the High Court, however, differed on the question of limitation. The Appellate Bench of the Small Causes Court had held that the suit was barred under article 113 of the Limitation Act which prescribed a period of 3 years while the High Court held that articles 66 or 67 was applicable which prescribed a period of 12 years. According to the
F landlord-respondent, the suit though filed after 3 years was filed within 12 years of the accrual of the cause of action. The only question which was argued in this appeal was the question of limitation. No factual aspect was agitated before this Court. This appeal must therefore, decide the question which article of the Limitation Act would be applicable, that is to say, whether article 113 or either of the article 66 or 67
G and what would be the date of the accrual of cause of action.

On behalf of the appellant, it was submitted by Mr. Nariman that on the facts of this case, article 113 of the Limitation Act would alone apply because according to him neither article 66 nor article 67 would
H have any application. It may not be inappropriate to set out article 66 and article 67 of the Schedule of the Limitation Act. The said articles

appear in Part V of the Schedule First Division dealing with suits relating to immovable property. The first column gives the description of suit, the second column gives the period of limitation and the third column deals with time from which period begins to run. Articles 66 and 67 read as follows:-

"66. For possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition.	Twelve years	When the forfeiture is incurred or the condition is broken.
67. By a landlord to recover possession from a tenant.	Twelve years	When the tenancy is determined."

Article 113 on the other hand which is in Part X dealing with suits provides that for any suit for which no period of limitation is provided elsewhere in the Schedule the period would be three years from the date when the right to sue accrues.

It was submitted by Shri Tunara, learned counsel for the respondent-landlord that for any suit by a landlord against a tenant for recovery of possession under the Rent Act, the Limitation Act was inherently inapplicable. We are, however, unable to accept this argument. Recovery of possession is by a suit and there is no section in the scheme of the Limitation Act to indicate that Limitation Act was inherently inapplicable. In the scheme of the Rent Act or in the various contingencies contemplated under the Rent Act, there is nothing to indicate or warrant that there would be no limitation of any period. Article 67 of the Limitation Act which has been set out hereinbefore indicates that time begins to run only when the tenancy is determined. It comprehends suit by a landlord and deals with right to recover possession from the tenant. Therefore, it deals with landlord and tenant. We are therefore unable to accept the argument of the respondent that limitation was inapplicable to ejectment.

On behalf of the appellant it was however submitted that article 67 of the Limitation Act had no application inasmuch as time begins to run only when the tenancy is determined. A determination of tenancy which takes place under the Transfer of Property Act is wholly irrele-

A vant for cause of action in ejectment. It is an act in law and not an act of law because under the scheme a determination of tenancy which takes place under the Transfer of Property Act, according to the appellant, is wholly irrelevant for founding a cause of action in ejectment because the provisions of the Transfer of Property Act are superseded by the provisions of the Rent Act and according to the B appellant a cause of action for eviction is to be founded only on one of the grounds mentioned in Section 13 of the Rent Act. For this reliance was placed on *V. Dhanpal Chettiar* v. *Yesodai Ammàl,* [1980] 1 S.C.R. 334 where this Court held that a lease between a lessor and a lessee comes into existence by way of contract when the parties to the contract agree on the rent, duration of tenancy and other relevant terms. C Section 111 of the Transfer of Property Act provides various methods by which a lease of immovable property can be determined. Under clause (h) of section 111 a lease determines on the expiry of a notice to determine the lease given by the landlord to the tenant. But a notice is not compulsory or obligatory nor must it fulfil all the technical requirements of section 106 of the Transfer of Property Act, because as a D result of the various State Rent Acts the liability to be evicted if incurred by the tenant, he cannot turn round and say that the contractual tenancy had not been determined. It was further reiterated that the action of the landlord in instituting a suit for eviction on the ground mentioned in the State Rent Act would tantamount to an expression of the intention of the landlord that he does not want the E tenant to continue as his lessee and the jural relationship between the lessor and the lessee would come to an end on the passing of an order or a decree for eviction. Until then, under the extended definition of 'tenant' under the various State Rent Acts, the tenant continued to be a tenant even though the contractual tenancy had been determined by giving a valid notice under section 106 of the Transfer of Property Act. F Therefore notice under section 106 of the Transfer of Property Act terminating the tenancy is no longer necessary. At page 353 of the said report, the Court was of the view that making out a case under the Rent Act for eviction of the tenant by itself was sufficient and it was not obligatory to the proceeding on the basis of the determination of the lease by issue of a notice in accordance with section 106 of the G Transfer of Property Act. This view was also reiterated again in *Pradesh Kumar Bajpai* v. *Binod Behari Sarkar*, [1980] 3 S.C.R. 93 where this Court observed that once the requirements of Rent Act were satisfied, the tenant could not claim the double protection of invoking the provisions of the Transfer of Property Act or the terms of the contract. Therefore, in the case before this Court the question of H termination of lease by forfeiture did not arise on the facts of that case

and after the Rent Act came into force, the landlord could not avail himself of clause 12 which provided for forfeiture, in that case, even if the tenant had neglected to pay the rent for over two months and further the landlord could not enter into possession forthwith without notice. The only remedy for him is to seek eviction under the provisions of the Rent Act. See also in this connection the observations in *Gian Devi Anand* v. *Jeevan Kumar & others,* [1985] 2 S.C.C. 683.

It was further submitted on behalf of the appellant that columns 1 and 3 of the Sehedule of the Limitation Act should be read together and if a case does not fall within either column 1 or column 3 the residuary article must apply. Reference may be made to the observations in *Kripal Shah Sant Singh* v. *Shri Harkishan Das Narsingh Das,* A.I.R. 1957 Punjab 273 at 275; *M/s. Swastik Agency, Madras* v. *The Madras Port Trust and another,* A.I.R. 1966 Madras 130 at 135 and *Mulla Vittil Seeti, Kutti and others* v. *K.M.K. Kunhi Pathumma and others,* A.I.R. 1919 Madras 972.

Mr. Nariman, learned counsel for the appellant submitted that the expression "determination" appears in section 111 of the Transfer of Property Act. Under section 14 of the Bombay Rent Act, the same expression was used in the context of a sub-tenant becoming a direct tenant of the landlord. This expression however, according to the appellant, is not to be found in section 13 of the Act. This Court has held that this expression contained in section 14 of the Rent Act is different from the expression contained in section 111 of the Transfer of Property Act inasmuch as the tenancy only determines under the Rent Act for a decree only for eviction is passed, and not before. Reliance was placed in support of this argument on the observation of this Court in *Hiralal Vallabhram* v. *Kastorbhai Lalbhai & Ors.,* [1967] 3 S.C.R. 343 at 349 and 350. It was further urged therefore that article 67 of the Limitation Act would not apply.

Article 66, according to the appellant, contemplates an immediate right to recover possession. Breach of a condition must lead to an immediate right to possession without more. This would not be a determination in law according to the appellant. Section 13 of the Rent Act contemplated, however, two conditions being fulfilled one is a ground for ejectment subsisting and the other is the Court's satisfaction which is a condition precedent before which there is a no immediate right to possession. Reliance in support of this proposition was placed on *Sharoop Dass Mondal* v. **Joggessur Roy Chowdhry,** I.L.R. 26 Calcutta 564 at 568; *Annamalai Pathar* v. *Sri-la-sri*

A *Vythilinga Pandara Sannadhi Avergal and another,* A.I.R. 1937 Madras 295 at 297; *Mahalinga Bandappa Lakhannavar* v. *Venkatesh Waman Karnataki,* 59 B.L.R. 227 at 233; *Bahadur Singh & Anr.* v. *Muni Subrat Dass & Anr.,* [1969] 2 S.C.R. 432 at 436; *Kaushalaya Devi & Ors.* v. *Shri K.L. Bansal,* [1969] 2 S.C.R. 1048 at 1050 and *Ferozi Lal Jain* v. *Man Mal and another,* A.I.R. 1970 S.C. 794 at 795
B and 796. Under section 13 of the Rent Act, possession is not recoverable only for breach of a condition, and it is recoverable on fulfilment of and not breach of a condition precedent to the Court's satisfaction, according to counsel for the appellant. It was further submitted on behalf of the appellant that section 13(1) of the Rent Act was to be contrasted with section 12(1)—recovery of possession under section
C 13(1) was not directly upon a breach of condition of tenancy, but only upon the Court's satisfaction that a ground for recovery of possession was made out. Under section 12(1), however, a landlord is not entitled to recover possession so long as the tenant observed the "conditions of tenancy". It was further submitted that section 13 is subject to sections 15 and 15A of the Rent Act if the landlord and the tenant respectively
D have fulfilled (not breached) according to the counsel, the provisions of these two sections, no suit for ejectment will lie. It was urged that again showed that section 13(1) of the Rent Act contained conditions that were to be fulfilled before a landlord can recover possession for a tenant's breach of condition. Section 13(1) contained grounds for eviction of a tenant which need not be for breach of any condition.
E According to the appellant only one article for recovery of possession is reserved under the Limitation Act by a landlord from a tenant, that is article 139 of the Limitation Act, 1908. This article is the exact predecessor of article 67. Article 66 is a general article, says the appellant, which does not apply to landlord or tenant and it was further submitted that when a specific article applied, a general article should
F not be applied specially when it was not free from doubt. Some authorities were referred to in this behalf.

We accept this submission on the principle of construction. It is further reiterated that a strained construction to give a more favourable limitation period is to be avoided—considerations of equity were
G out of place in construing the articles under the Limitation Act. It was submitted before us that section 12(1) of the Rent Act did not apply to the facts of the present case. The decree for eviction was grounded upon section 13(i)(b) of the Rent Act and not on section 12(1). It was further reiterated that the non-obstante clause of section 13 made it clear that where a condition of tenancy coincided with a ground for
H eviction, the ground for eviction alone is to be looked at—and to that

extent, any breach of the condition of tenancy was superseded by the ground for eviction. Also in the instant case, clause 3 of the agreement dated 29th December, 1975 is inconsistent with the provisions of the Act inasmuch as even temporary structures were not allowed to be erected and there is no provision for the written consent of the landlord. It was further submitted without prejudice to the aforesaid submission that section 12(1) of the Rent Act was a section that was designed to afford protection to a tenant if his lease was determined under the Transfer of Property Act and it was thus designed to be a shield but not a word. It was submitted that the decision in *Haji Suleman Haji Ayub Bhiwandiwala* v. *Narayan Sadashiv Ogale*, [1967] 84 Bombay Law Report p. 122 is against the current of modern rent jurisprudence.

Haji Suleman Haji Ayub Bhiwandiwala v. *Narayan Sadashiv Ogale*, (supra) which is a decision of the Bench of three judges and as such binding on this Court held that sections 12 and 13 of the Bombay Rent Act dealt with different topics and have different objects. It was held that section 12(1) clothed a tenant with the cloak of statutory protection against eviction so long as he performs the conditions of tenancy. Section 13 provides that notwithstanding that protection the landlord can sue for eviction provided he established any one of the circumstances set out in that section. This Court further observed that it was impossible to say that it was only when circumstances set out in section 13 arose that a landlord could evict and that eviction on the ground of the failure to perform the conditions of tenancy would not deprive the tenant of the protection under section 12(1) of the Rent Act. Such a reading would be contrary to the whole scheme underlying the objects of the two sections. We accept the aforesaid legal position. It is not against the trend of the principle behind rent legislation. It affords protection to the tenant inasmuch as it says that it was only on the fulfilment of the condition stipulated in the two sections and on satisfaction of the contingencies mentioned in section 12 which would deprive the tenant of the protection that the tenant can be evicted. Much argument was advanced to the contrary—but in our opinion to prevent unreasonable eviction, in balancing and harmonising the rights of the landlords and tenant if the sections are so read as done in *Haji Suleman's* case, it would meet the ends of justice and that would be proper construction.

If that is so then on the strict grammatical meaning article 67 of the Limitation Act would be applicable. This is indubitably a suit by the landlord against the tenant to recover possession from the tenant.

A Therefore the suit clearly comes within article 67 of the Limitation Act. The suit was filed because the tenancy was determined by the combined effect of the operation of sections 12 and 13 of the Bombay Rent Act. In this connection, the terms of sections 12 and 13 of the Bombay Rent Act may be referred to. At the most it would be within article 66 of the Limitation Act if we hold that forfeiture has been B incurred by the appellant in view of the breach of the conditions mentioned in section 13 of the Bombay Rent Act and on lifting on the embargo against eviction of tenant in terms of section 12 of the said Act. That being so, either of the two, article 66 or article 67 would be applicable to the facts of this case; there is no scope of the application of article 113 of the Limitation Act in any view of the matter. Sections C 12 and 13 of the Bombay Rent Act co-exist and must be harmonised to effect the purpose and intent of the legislature for the purpose of eviction of the tenant. In that view of the matter article 113 of the Limitation Act has no scope of application. Large number of authorities were cited. In the view we have taken on the construction of the provisions of articles 67 and 66 of the Limitation Act and the nature of D the cause of action in this case in the light of sections 12 and 13 of the Bombay Rent Act, we are of the opinion that the period of limitation in this case would be 12 years. There is no dispute that if the period of limitation be 12 years, the suit was not barred.

In that view of the matter, the appeals fail and are accordingly E dismissed with costs.

N.V.K. Appeals dismissed.