

JABAL C. LASHKARI & ORS.

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v.

OFFICIAL LIQUIDATOR & ORS.

(Civil Appeal Nos. 3147-49 of 2016)

MARCH 29, 2016

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[RANJAN GOGOI AND PRAFULLA C. PANT, JJ.]

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947: ss.12, 15 – Predecessor of appellant had leased out land for 199 years – Secured creditors of lessee filed winding up petition – Pending same, appellants filed suit seeking permanent injunction against sale of assets of company particularly sale of leased property – Company judge passed winding up order and order for appointment of Official Liquidator (OL) – Company application by appellants for return of leased property on the grounds that in view of winding up order the company no longer required the leased land and furthermore default in payment of rent had occurred and that OL was not authorised to transfer the leased property in view of Rent Act of 1947 – Pending company application, advertisement for sale of leased land – Appellant filed company application for a declaration that the OL had no right to sell the leased property – Another company application filed seeking permission from the Company Court to file a suit for eviction of OL from the leased property – Company Court rejected all the applications – High Court upheld the same – On appeal, held: No notice issued by landlord for giving opportunity to tenant to pay unpaid rent – In such situation, the readiness and willingness of the tenant to pay the rent, though may have continued for a fairly long time without actual payment, will not deprive the tenant of the protection under the Rent Act – Therefore, landlord cannot seek eviction on the ground of non-payment of rent – Case of sub-letting and non user was also not made out by the appellant-landlord – Mere fact that the company has been ordered to be wound up cannot be a ground to direct OL to handover possession of the land to the owners inasmuch as the company in liquidation continues to maintain its corporate existence until it stands dissolved upon completion of the liquidation proceedings in the manner contemplated by the Companies Act – In the instant case, it has been submitted before this Court that presently

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- A *revival of the company is a live issue pending before High Court, a fact which cannot be ignored by this Court in deciding the above issue against the appellants – For these reasons, the order of the High Court is upheld.*

Disposing of the appeals, the Court

- B **HELD: 1.** Section 12 of the Rent Act confers protection on a tenant who is regularly paying or is ready and willing to pay the rent. In the present case, while there is no doubt that rent has not been paid, equally, there is no doubt that the secured creditors including the State Bank of India had all along been ready and willing to pay the rent and the reasons for non payment appears to be lack of communication by the official liquidator to the SBI of the precise amount of rent due. While there can be no doubt that mere readiness and willingness to pay without actual payment cannot enure to the benefit of the tenant in perpetuity what is required under Sub-section (2) of Section 12 is a notice in writing
- C by the landlord raising a demand of rent and only on the failure of the tenant to comply with such notice within a period of one month that the filing of a suit for recovery of possession is contemplated. The service of notice giving an opportunity to the tenant to pay the unpaid rent is the first chance/opportunity that the Rent Act
- E contemplates as a legal necessity incumbent on the landlord to afford to the tenant. Admittedly, in the present case, no such notice as contemplated by Section 13(2) has been issued by the landlord. In such a situation, the readiness and willingness of the tenant to pay the rent, though may have continued for a fairly long time without actual payment, will not deprive the tenant of the
- F protection under the Rent Act. Though the order of the High Court has been placed before the Court as an order under Section 12(3)(b) of the Rent Act, the said order is not of the kind contemplated by Section 12(3)(b) inasmuch as not only the order does not mention any specific rent which has to be tendered in
- G Court but what is encompassed therein is a direction to the official liquidator to let the State Bank of India know the precise amount that is required to be paid on account of rent and, thereafter, to pay the same to the official liquidator whereafter it has been left open for the lessors to withdraw the said amount from the official liquidator. Such an order by no stretch of reasoning would be
- H one contemplated under Section 12(3)(b). In the said situation,

the finding of the High Court that the landlord is not entitled to seek eviction on the ground of non payment of rent under Section 12 of the Bombay Rent Act cannot be said to be so inherently infirm so as to require the interference of this Court. [Para 17] [577-D-H; 558-A-C] A

2. Next question for consideration is relating to the liability of the official liquidator to a decree of eviction on the ground contemplated under Section 13(1)(e) of the Bombay Rent Act. The non obstante clause of Section 13 (1) overrides only the other provisions of the Bombay Rent Act and is also subject to the provisions of Section 15. Section 15 which deals with sub-letting and transfer, though overrides the provisions contained in any other law, is subject to any contract to the contrary. Though the lease deed is capable of being read as permitting sub-letting and not assignment what has been held by the High Court is that in view of the limited operation of the non obstante clause in Section 15 of the Bombay Rent Act, unlike Section 21 of the Karnataka Act, the provisions of the Transfer of Property Act [Section 118 (o)] will not become irrelevant to the relationship between the parties in which event assignment may also be permissible notwithstanding the specific content of clause 7 of the lease deed in question. [Para 18] [558-D-G] B C D

3. The case of sub-letting of the leased premises on which basis eviction has been prayed for is not sub-letting/assignment by the official liquidator but assignment of the leased premises to Prasad Mills by the original managing agents in whose favour the initial lease was executed by the predecessors of the present owners. The ground of unauthorized and impermissible assignment by the official liquidator on the strength of the notice/advertisement for disposal of the leased land thereby making the said authority liable for eviction is an argument advanced only at the hearing of the appeals. That apart the said argument overlooks the fact that the assignment was only sought to be made by the advertisement/notice issued and did not amount to a completed action on the part of the official liquidator so as to attract the relevant provisions of the Bombay Rent Act dealing with the consequential liability for eviction. Such argument also belies the injunctive/prohibitory relief sought for in the Company E F G H

- A Applications, insofar as the contemplated sale/transfer/assignment of the leased property by the official liquidator is concerned. [Para 18] [559-A-D]

4. Insofar as liability under Section 13(1)(k) of the Bombay Rent Act is concerned, the requirement of unjustified non-user for a period exceeding 6 months which evidently is not attracted to the present case in view of the pendency of the liquidation proceedings. That apart, Clause 5 of the lease deed which deals with non-user of the leased land does not contemplate eviction on account of such non-user but merely entitles the lessor to receive rent for the period of such non-user of the land.
- C The mere fact that the company has been ordered to be wound up cannot be a ground to direct the official liquidator to handover possession of the land to the owners inasmuch as the company in liquidation continues to maintain its corporate existence until it stands dissolved upon completion of the liquidation proceedings
- D in the manner contemplated by the Companies Act. In the present case, it has been repeatedly submitted before this Court by both sides that presently revival of Prasad Mills is a live issue pending before the Gujarat High Court, a fact which cannot be ignored by this Court in deciding the above issue against the appellants. For these reasons, the order of the High Court is upheld. [Paras 19, 20, 21] [559-E-H; 560-A]
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- Laxmidas Bapudas Darbar & Anr. vs. Rudravva (Smt.) & Ors.* 2001 (7) SCC 409; 2001 (2) Suppl. SCR 229; *V. Dhanapal Chettiar vs. Yesodai Ammal* 1979 (4) SCC 214; 1980 (1) SCR 334; *Shri Lakshmi Venkateshwara Enterprises (P) Ltd. vs. Syeda Vajhiunnissa Begum (Smt.) & Ors.* 1994 (2) SCC 671; *Hans Raj vs. Bejoy Lal Sel* AIR 1930 PC 59; *Ram Kinkar Banerjee vs. Satya Charan Srimani* AIR 1939 PC 14 – referred to.
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Case Law Reference

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|---|-------------------------|--------------|---------|
| G | 2001 (2) Suppl. SCR 229 | referred to. | Para 10 |
| | 1980 (1) SCR 334 | referred to. | Para 10 |
| | 1994 (2) SCC 671 | referred to. | Para 10 |
| | AIR 1930 PC 59 | referred to. | Para 15 |
| H | AIR 1939 PC 14 | referred to. | Para 15 |

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3147- A
49 of 2016

From the Judgment and Order dated 17.10.2008 of the High Court
of Gujarat at Ahmedabad in OJ Appeal Nos. 65, 66 and 67 of 2006

WITH

C.A. NOS. 3153, 3157, 3158, 3159, 3160, 3161, 3162, 3163, 3164, B
3165, 3166, 3167, 3168, 3169-3170, 3171 AND 3172 OF 2016

Mihir Thakur, Sanjiv Sen, V. Giri, Ms. Meenakshi Arora, Colin
Gonsalves, Shekhar Naphade, Sr. Advs., Rudreshwar Singh, Gautam
Singh, Kaushik Poddar, D. N. Ray, Lokesh K. Choudhary, Mrs. Sumita C
Ray, Mrs. Nandini Gore, Abhishek Roy, Ms. Trishala Kulkarni, Kartik
Bhatnagar, Mrs. Manik Karanjawala, Abhigya, Abhay Singh Kushwaha,
Pradeep Kumar Dubey, Ms. Anushree Kapadia, C. George Thomas,
Ejaz Maqbool, Faraz Maqbool, Nikhil Goel, Chankya B., Ms. Naveen
Goel, Marsook Bafaki, Mrs. Sheela Goel, B. K. Satija, Ms. Aparna Bhat, D
Runjun Borah, A. Venayagam Balan, Nachiketa Joshi, Ms. Sucheta Joshi,
Ritwiz Rishabh, Venkita Subramoniam T. R., Dharmesh V. Shah, Divya
Jyoti Jaipuiror, Satya Mitra, Mohit D. Ram, Advs., with them for the
Appellants.

Tushar Mehta, P. S. Narsimha, ASGs, S. H. Shalet, Jaideep Gupta,
Sanjay R. Hegde, Mahendra Anand, Mihir Joshi, Shekhar Naphade, E
Mahendra Anand, Yashank Adhyaru, Sr. Advs., Mukund G. Nagarkar,
S. Nithin, Anil Kumar Mishra-I, Aditya Kr. Choudhary, Harshul Singh,
Ms. Kanika Gaur, Dharmendra Kumar Sinha, Mahesh Agarwal, Vivek
Jain, Apoorva Vakil, E. C. Agrawala, Rishabh Parikh, Ms. Devika Mohan,
Gaurav Agrawal, Mohit D. Ram, Ram Lal Roy, R. N. Keshwani, Rajesh
Kumar, Gaurav Kumar Singh, Rakesh Chaurasiya, M/s. Mitter & Mitter F
Co., K. R. Sasiprabhu, Somiran Sharma, Biju P. Raman, Manish K.
Bishnoi, Venkat Poonia, Ms. Hemantika Wahi, Ms. Jesal Wahi, Ms.
Vinakshi Kadan, Aditya Kr. Choudhary, Upendra S. Dindsha, D. K.
Sinha, R. Chandrachud, S. K. Sabharwal, D. N. Ray, Mrs. Sumita Ray,
Dinesh Mathur, Ms. Aparna Singh, (For M/s. Dua Associates), Ritesh G
Kumar, Kaushik P., Ms. Madhavi Divan, Ms. Nidhi Khanna, Sridhar
Potaraju, Ms. Sushma Sur, Ankur Mittal, (For M/s. Khaitan & Co.),
Ayushya Kumar, Abhijeet Sinha, Advs., with them for the Respondents.

The Judgment of the Court was delivered by

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A **RANJAN GOGOI, J.** 1. Leave granted in each of the Special Leave Petitions.

2. The facts arising in the Civil Appeals arising from SLP(C) Nos. 29282-29284 of 2008, which is being taken as the lead case, may be noticed at the outset.

B 3. One Durgaprasad Lashkari (predecessor of the appellants) had leased out land admeasuring 35,772 sq. mtrs. in favour of one Bechardas Spinning and Weaving Mills Ltd. (subsequently known as Prasad Mills Ltd.) for a period of 199 years by a lease deed dated 10.12.1916. A secured creditor of Prasad Mills Ltd. had in the year 1984 filed a company
C petition seeking the winding up of the aforesaid Prasad Mills Ltd. While the company petition was pending some of the legal heirs of Durgaprasad Lashkari had filed a suit in the Small Causes Court seeking permanent injunction against the sale of assets of company more particularly the sale of the leased property.

D 4. An order dated 5.5.1989 was passed by the learned Company Judge of the Gujarat High Court directing the winding up of Prasad Mills Ltd. and the appointment of an official liquidator. The official liquidator was directed to take charge and possession of all the assets of the company. An application was filed by another heir of Durgaprasad Lashkari in the winding up petition seeking direction to further prosecute
E the suit pending before the Small Causes Court. The learned Company Judge by order dated 24.2.1995 ordered that the suit may be withdrawn and instead directions may be sought from the Company Court for return of the leased property. Pursuant thereto a Company Application (C.A. No.462 of 1999) was filed by some of the heirs of Durgaprasad Lashkari
F for return of the leased property and also for orders restraining the official liquidator from selling/transferring the leased property. While the return of the leased land was sought on the twin grounds that in view of the winding up order the Company no longer required the land and furthermore default in payment of rent had occurred, for the second relief sought it was urged that the official liquidator was not authorised
G to transfer/alienate the leased property in view of the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as it then existed (hereinafter referred to as 'the Bombay Rent Act'). While the above Company Application was pending the building, superstructure, plant and machinery of the company was sold in a public auction. It
H appears that on 6.2.2004 an advertisement was issued by the official

liquidator for the sale of the leased property. As against the aforesaid advertisement, the appellant had filed Company Application No.33 of 2004 for a declaration that the official liquidator had no right to sell the leased property. The grounds urged were principally on the basis of lack of any such empowerment in the lease agreement and in view of the bar/restriction contained in Section 15 of the Bombay Rent Act. Another Company Application i.e. C.A. No.34 of 2004 was filed seeking permission from the Company Court to file a suit before the appropriate court for eviction of the official liquidator from the leased property. Eviction of the official liquidator was claimed, *inter alia*, on the ground that –

- (i) the occupant Company i.e. Prasad Mills had no document in its favour entitling it to be in possession of the demised land;
- (ii) admitted non payment of rent for a period of over 15 years rendering the company and now the official liquidator liable to eviction under Section 12 of the Bombay Rent Act;
- (iii) admitted non user of the land for a period of over 6 years attracting Section 13(1)(k) of the Rent Act;
- (iv) sub-letting in favour of the company, Prasad Mills, in violation of Section 13(1)(e) of the Rent Act.

5. The learned Company Judge by a very elaborate order dated 13.10.2004 rejected all the three company applications. Aggrieved, the appellant and other legal heirs of Durgaprasad Lashkari filed three separate appeals before the Division Bench of the High Court. The High Court by a common order dated 17.10.2008 dismissed all the appeals on grounds and reasons that will be noticed shortly. It is against the aforesaid common order dated 17.10.2008 that the present appeals have been filed.

6. We have heard Shri Mihir Thakur learned senior counsel appearing for the appellants in civil appeal arising out of SLP(C) No. 29282-84/2008; Shri P.S. Narasimha, learned Additional Solicitor General appearing for the official liquidator; Shri Tushar Mehta, learned Additional Solicitor General and Shri S.N. Shlute learned senior counsel appearing for the Gujarat State Textile Corporation.

A 7. We have also heard learned counsels appearing for the parties in all the other cases.

8. At the very outset the relevant provisions of the Bombay Rent Act, (hereinafter referred to as the 'Rent Act') as applicable to the State of Gujarat and the provisions of the lease agreement dated

B 10.12.1916 may be noticed -

"12. - No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases

C *(1) 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.*

D *[(1A) Where by reason of riot or violence of a mob any material part of the premises in a disturbed area is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let, the landlord shall not be entitled to;—*

E *(a) the standard rent and permitted increases due for the premises,*

F *(b) recover possession of such premises merely on the ground of non payment of standard rent and permitted increases due, during the period in which such premises remain so destroyed or unfit.]*

G *(2) 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 (IV of 1882).*

H *(3) (a) 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 month's 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. A

(b) 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.³[and thereafter:— B

(i) continues to pay or tender in Court such rent and permitted increases till the suit is finally decided; and C

(ii) pays costs of the suit as directed by the Court.

(4) Pending the disposal of any such suit, the Court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increases due to him as the court thinks fit.] D

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." E

"13. - When land-lord may recover possession- F

(1) Notwithstanding anything contained in this Act¹[but subject to the provisions of section 15]; a landlord shall be entitled to recover possession of any premises if the Court is satisfied—

*(a) to (d) **** G

(e) that the tenant has, since the coming into operation of this Act²[unlawfully sub-let] the whole or part of the premises or assigned or transferred in any other manner his interest therein; or H

A (ee) to (i) ***

(k) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit; "

B "15. - In absence of contract to the contrary tenant not to sublet or transfer

(1)] Notwithstanding anything contained in any law,³[but subject to any contract to the contrary,] it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein:

C [Provided that the²[State] Government may, by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification.]

D [(2) The bar against sub-letting, assigning or transferring premises contained in sub-section (1) shall be deemed not to have had any effect before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959 (Bom. Ord. No. III of 1959), in any area in which this Act was in operation before such commencement; and accordingly, notwithstanding anything contained in any contract or in the judgement, decree or order of a Court any such sub-lease, assignment or transfer in favour of such persons as have entered into possession despite the bar as sub-lessees, assignees or transferees, and have continued in possession at the commencement of the said Ordinance, shall be deemed to be valid and effectual]."

F "19. - Unlawful charges by tenant

G (1) [Save in cases provided for under the proviso to section 15.] it shall not be lawful for the tenant or any person acting or purporting to act on behalf of the tenant to claim or receive any sum, or any consideration as a condition of the relinquishment²[transfer or assignment] of his tenancy of any premises.

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(2) Any tenant or person who in contravention of the provision of sub-section (1) receives any sum or consideration shall, on conviction, be punished with imprisonment for a term which may extend to six months and shall also be punished with fine which shall not be less than the sum of the value of the consideration received by him." A

The terms of the lease deed are as follows : B

".....;And whereas the above mentioned three pieces of land are owned by the First Party, and the Second Party has rented the same from First Party;

And whereas the rent is fixed at Rs.3501-00 - Rs. three thousand five hundred and one. for one year of 12 months to be paid to First Party, by the Second Party; as rent on the following conditions : C

(1) The said rent will be given to First Party, by Second Party every year and if the Second Party does not pay the rent due to them every year, the First Party will give registered notice for recovery of rent; and in spite of such notice the Second Party or their successors, heirs or administrators do not pay the rent, First Party or their successors, heirs, attorneys or administrators are entitled to obtain possession of the land with buildings, either by mutual understanding or through government. D E

(2) This rent note is valid for 199, in words one hundred ninety nine years, agreed by Second Party and on expiry of the said period, we, the Second Party will vacate the land, resurface it and will give it to the First Party or their successor with any amount of rent due, by the Second Party or their successors or administrators, whosoever would be, and while giving back the possession, Second Party will not raise any dispute or objection, and even if raised will not be admissible by virtue of this agreement. F G

(3) The First Party, or their successors, heir, are not entitled to sale or pledge, or give possession of these pieces of land, to any other party, and even if they do so, it will be void by virtue of this agreement. H

- A *(4) In case the government needs this land and/or if the government purchase some part of this land; then the right to receive compensation for such acquisition is of First Party; however, interest at the rate of one percent per hundred of whatever amount the First Party thus receive. will be adjusted by the Second Party from the rent payable, or the Second*
- B *Party will give such reduced rent to First Party after adjusting the said amount, in the following years; and the First Party will have no right to any objection or dispute, and even if they raise any dispute it will be not sustainable by virtue of this agreement.*
- C *(5) In case the Second Party, or their successors, attorneys. administrators, assinee or executors do not stay, or do not make use of, or do not store material, on the land; or vacate the land and give possession to the First Party, before the specified period, then the First Party is entitled to receive*
- D *rent till the date of possession so given; and the First Party has no right to claim rent for the remaining period.*
- E *(6) The municipal tax for the land is Rs.500-00 per year. which will be paid by the Second Party; and the Second Party will give rent of Rs.3501/- to First Party every year. However, the Second Party do not pay the municipal tax of Rs.500/- and the same has to be paid by the First Party, then the Second*
- F *Party, or their successors will reimburse such amount with six percent interest per hundred per year thereon.*
- F *(7) The First Party will not object upto 199 years, if the Second Party, or their successors, heirs or administrators, construct buildings with necessary government permission, or use a free land or the Second Party give on rent or on lease, and the First Party is entitled to take possession of the land immediately on expiry of 199 years.*
- G *(8) The First Party, or their successors, heirs, administrators or attorneys are entitled to take possession of the land before the expiry of rent period, if the Second Party fail to pay rent to First Party every year.*
- H *(9) The government tax on this land is to be paid by we, First Party; but if some additional tax is levied because of*

construction on the land, it will be borne by the Second Party. A
Municipal tax is Rs.500/- per year at present. However,
hereafter if municipality levies some additional tax on First
Party or on Second Party; or the government decide to levy
some new tax; then all such taxes will be borne by the Second
Party, and will not claim it from First Party; nor will adjust it B
against rent payable to the First Party; and the First Party
has no right to take possession of the land before expiry of
199 years, but the First Party has right to receive amount of
rent till the above period.

(10) The First Party and the Second Party and their successors, C
heirs, administrators, attorneys and assignees, are accepting
the terms and conditions set out in this agreement.

Thus the Second Party has rented the pieces of land, from the
First Party under the terms set out in this agreement, at our
will, and signed and sealed this agreement."

9. Before cataloguing the arguments advanced on behalf of the D
rival parties it will be apposite to take note of the reasoning of the High
Court which had prompted it to arrive at the impugned conclusions
recorded in the order under appeal.

10. The Division Bench of the High Court in answering the appeals E
before it exhaustively considered a 3-Judge Bench decision of this Court
in Laxmidas Bapudas Darbar & Anr. vs. Rudravva (Smt.) & Ors.¹.
The Division Bench took note of the fact that in Laxmidas Bapudas
Darbar (supra) the Bench had occasion to consider the purport and
effect of the decision of this Court in V. Dhanapal Chettiar vs. Yesodai
Ammal² (7-Judges) before holding that "as a matter of fact the question F
of curtailment of fixed-term contractual lease was not involved in the
case of Dhanapal Chettiar" (Para 14). In fact in paragraph 15 of the
judgment in Laxmidas Bapudas Darbar (supra) it was held :

"It has nowhere been held that by virtue of the provisions of
the Rent Act the contract of term lease is completely obliterated
in all respects. The effect of the Rent Act on tenancy under G
contract has been considered only to a limited extent, confining
it to the necessity of giving notice under Section 106 of the
Transfer of Property Act."

¹ 2001 (7) SCC 409

² 1979 (4) SCC 214

- A In *Laxmidas Bapudas Darbar* (supra) another decision of this Court in *Shri Lakshmi Venkateshwara Enterprises (P) Ltd. vs. Syeda Vajhiunnissa Begum (Smt.) & Ors.*³ rendered in the context of Section 21 of the Karnataka Rent Act and, specifically, the provisions of the aforesaid Section of the Karnataka Act were considered. The non-obstante clause in Section 21 of the Karnataka Act which gives an overriding effect over any provision in any other law was specifically taken note of and eventually it was held that the effect of the non-obstante clause contained in Section 21 of the Karnataka Act on a fixed-term contractual lease would be as follows :

- C “18. The effect of the non obstante clause contained under Section 21 of the Karnataka Rent Act on the fixed-term contractual lease may be explained as follows:

- D (i) On expiry of period of the fixed-term lease, the tenant would be liable for eviction only on the grounds as enumerated in clauses (a) to (p) of sub-section (1) of Section 21 of the Act.

- (ii) Any ground contained in the agreement of lease other than or in addition to the grounds enumerated in clauses (a) to (p) of sub-section (1) of Section 21 of the Act shall remain inoperative.

- E (iii) Proceedings for eviction of a tenant under a fixed-term contractual lease can be initiated during subsistence or currency of the lease only on a ground as may be enumerated in clauses (a) to (p) of sub-section (1) of Section 21 of the Act and it is also provided as one of the grounds for forfeiture of the lease rights in the lease deed, not otherwise.

- F (iv) The period of fixed-term lease is ensured and remains protected except in the cases indicated in the preceding paragraph.”

- G 11. The Division Bench of the High Court took note of the fact that the non-obstante clause in Section 13 of the Rent Act only gave the said Section 13 an overriding effect over the other provisions of the Act. Section 13 was also made subject to the provisions of Section 15 of the Bombay Act. This is in contrast to Section 21 of the Karnataka Act which had an overriding effect over any other law or contract to the contrary. Section 15 which deals with the authority of the lessee to sub-

H ³ 1994 (2) SCC 671

lease or assign the leased rights/property, though, gives an overriding effect over any other law has been made subject to any contract to the contrary. Therefore, the terms of the lease and other cognate provisions of law is not obliterated. The Division Bench, in view of the above provisions of the Bombay Rent Act, went on to hold that the “ratio of the decision of 3-Judge Bench of the Apex Court in *Laxmidas Bapudas Darbar* (supra) would apply with much greater force for the benefit of the lessee under fixed long term lease in the State of Gujarat.” It is on the aforesaid basis that the Division Bench came to the conclusion that the Rent Act did not obliterate the effect of the provisions of Section 108(j) of the Transfer of Property Act which would vest a right in the lessee not only to sublet but also to assign the subject matter of the lease granted to him by the original lessor. A
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12. So far as the contention of the appellants that as the company has been wound up it no longer required the leased land for its use is concerned, the High Court, in the impugned judgment, disagreed with the aforesaid proposition as a viable and acceptable proposition of law. Furthermore, it was held that the liability/obligation to pay rent for the leased land does not constitute an onerous obligation on the company in liquidation so as to justify surrender of the leased land by the Official Liquidator or any direction to the said effect under Section 525 of the Companies Act. D
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13. So far as the issue with regard to default in the payment of rent is concerned, the High Court, in the light of its views with regard to the applicability of the provisions of the Transfer of Property Act, had invoked both Section 114 of the Transfer of Property Act and Section 12 (3) of the Rent Act to hold that as “the secured creditors and workers have always shown their readiness and willingness to pay the rent and arrears thereof the lessors are not entitled to claim or get possession of the land leased to the company presently in winding up”. However, in the operative part of its order the Bombay High Court was pleased to observe as follows : F

“In view of the statement of Mr. RM Desai, learned counsel for the secured creditor that the arrears of rent, if any, remaining unpaid by the company in liquidation shall be paid by the secured creditor, we direct that within one month from today, the Official Liquidator shall supply to the secured creditor the particulars of the rent for the demised land for G
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A *the period upto 31st October, 2008, remaining unpaid so far, and the secured creditor – State Bank of India shall deposit the amount with the Official Liquidator within one month thereafter. It will be open to the lessors to withdraw such amount.*”

B 14. On behalf of the appellants it is urged that the company in
liquidation i.e. Prasad Mills Ltd. and the official liquidator appointed by
the learned Company Judge in the liquidation proceedings involving the
said company have rendered themselves liable to eviction on the ground
of default in payment of rent under Section 12 of the Rent Act. It is
C further contended on behalf of the appellants that eviction of the official
liquidator is required to be ordered on the grounds enumerated in Sections
13(1)(e) and 13(1)(k) of the Rent Act. Pointing out the provisions of
Section 15 of the Rent Act it has been urged that the official liquidator
has assigned the property contrary to the provisions of Section 15, such
act not being saved either by express term of the contract/lease deed or
D by the proviso to Section 15 of the Rent Act. Sections 18 and 19 of the
Rent Act have also been relied upon by the appellants to show that the
official liquidator is not entitled to receive any payment apart from the
standard rent. It is urged that in the absence of any such enabling provision
not only receipt of such consideration upon assignment is illegal but the
property itself has become onerous being incapable of earning any profit.
E Besides, the property has ceased to serve the purpose of lease in view
of the liquidation of the company. Accordingly, the official liquidator is
liable to surrender the same to the original owners, it is urged.

15. Shri P. S. Narasimha, learned Additional Solicitor General on
the other hand has submitted that the provisions of default in the matter
F of payment of rent would not be attracted as the secured creditors
including the State Bank of India had all along been ready and willing to
pay all rents due. In fact, the learned Additional Solicitor General has
drawn the attention to the directions of the High Court contained in para
43 of the impugned judgment (extracted above) to contend that the same
G is an order passed under Section 12(3)(b) of the Rent Act which, however,
could not be honoured in view of the interim order passed by this Court
at the time of entertaining the special leave petitions. Insofar as the
arguments advanced on behalf of the appellants with regard to Section
13(1)(e) is concerned, it is urged by the learned Additional Solicitor
General that under Clause 7 of the lease deed dated 10.12.1916 subletting

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is admittedly permissible. In the present case, according to the learned Additional Solicitor General, there is no assignment. In this regard reliance is placed on two decisions of the Privy Council in Hans Raj vs. Bejoy Lal Sel⁴ and Ram Kinkar Banerjee vs. Satya Charan Srimani⁵ to contend that the law, as prevailing in India, does not recognize any substantial difference between subletting and assignment. So far as Section 13(1)(k) is concerned, it is urged that the purpose of lease is not spelt out in the lease deed and in any event Section 13(1)(k) contemplates non-user of the leased premises without a reasonable cause. In the present case, such non-user is on account of the fact that the company was ordered to be wound up as far back as in the year 1989.

16. The main plank on which the appellants have based their case, as already noticed, is the operation of Sections 12 (default), 13(1)(e) (unauthorized assignment) and 13(1)(k) (non-user of the leased land). We may now take up the aforesaid issues in seriatim.

17. Section 12 of the Rent Act confers protection on a tenant who is regularly paying or is ready and willing to pay the rent. In the present case while there is no doubt that rent has not been paid, equally, there is no doubt that the secured creditors including the State Bank of India had all along been ready and willing to pay the rent and the reasons for non payment appears to be (para 43 of the impugned order of the High Court) lack of communication by the official liquidator to the SBI of the precise amount of rent due. While there can be no doubt that mere readiness and willingness to pay without actual payment cannot enure to the benefit of the tenant in perpetuity what is required under Sub-section (2) of Section 12 is a notice in writing by the landlord raising a demand of rent and only on the failure of the tenant to comply with such notice within a period of one month that the filing of a suit for recovery of possession is contemplated. The service of notice giving an opportunity to the tenant to pay the unpaid rent is the first chance/opportunity that the Rent Act contemplates as a legal necessity incumbent on the landlord to afford to the tenant. Admittedly, in the present case, no such notice as contemplated by Section 13 (2) has been issued by the landlord; at least none has been brought to our notice. In such a situation, the readiness and willingness of the tenant to pay the rent, though may have continued for a fairly long time without actual payment, will not deprive the tenant of the protection under the Rent Act. Though the

⁴ [AIR 1930 PC 59]

⁵ [AIR 1939 PC 14]

- A order of the High Court in para 43 of the impugned judgment has been placed before the Court as an order under Section 12(3)(b) of the Rent Act we do not find the said order to be of the kind contemplated by Section 12(3)(b) inasmuch as not only the order does not mention any specific rent which has to be tendered in Court but what is encompassed therein is a direction to the official liquidator to let the State Bank of India know the precise amount that is required to be paid on account of rent and, thereafter, to pay the same to the official liquidator whereafter it has been left open for the lessors to withdraw the said amount from the official liquidator. Such an order by no stretch of reasoning would be one contemplated under Section 12(3)(b). In the aforesaid situation, the finding of the High Court that the landlord is not entitled to seek eviction on the ground of non payment of rent under Section 12 of the Bombay Rent Act cannot be said to be so inherently infirm so as to require the interference of this Court.

18. This will bring the Court to a consideration of the liability of the official liquidator to a decree of eviction on the ground contemplated under Section 13(1)(e) of the Bombay Rent Act. As already discussed in a preceding paragraph of the present order, the non obstante clause of Section 13 (1) overrides only the other provisions of the Bombay Rent Act and is also subject to the provisions of Section 15. Section 15 which deals with sub-letting and transfer, though overrides the provisions contained in any other law, is subject to any contract to the contrary. Though in the present case the lease deed (clause 7) is capable of being read as permitting sub-letting and not assignment what has been held in the present case by the High Court, by virtue of the decision of this Court in Laxmidas Bapudas Darbar vs. Rudravva (supra), is that in view of the limited operation of the non obstante clause in Section 15 of the Bombay Rent Act, unlike Section 21 of the Karnataka Act, the provisions of the Transfer of Property Act [Section 118 (o)] will not become irrelevant to the relationship between the parties in which event assignment may also be permissible notwithstanding the specific content of clause 7 of the lease deed in question. However, we need not dwell on this issue at any length or would also be required to consider the efficacy of the arguments of the learned Additional Solicitor General on the strength of the two Privy Council decisions mentioned above i.e. Hans Raj vs. Bejoy Lal Sel and Ram Kinkar Banerjee vs. Satya Charan Srimani (supra) inasmuch as from Company Application No. 34 of 2004, which deals with the claim of the appellants for eviction of

the official liquidator from the leased property, what is clear and evident is that the case of sub-letting of the leased premises on which basis eviction has been prayed for is not sub-letting/assignment by the official liquidator but assignment of the leased premises to Prasad Mills by the original managing agents in whose favour the initial lease was executed by the predecessors of the present owners. The ground of unauthorized and impermissible assignment by the official liquidator on the strength of the notice/advertisement for disposal of the leased land thereby making the said authority liable for eviction is an argument advanced only at the hearing of the appeals before us. That apart the said argument overlooks the fact that the assignment was only sought to be made by the advertisement/notice issued and did not amount to a completed action on the part of the official liquidator so as to attract the relevant provisions of the Bombay Rent Act dealing with the consequential liability for eviction. Such argument also belies the injunctive/prohibitory relief sought for in the Company Applications, as already noticed, insofar as the contemplated sale/transfer/assignment of the leased property by the official liquidator is concerned. The arguments advanced on the strength of the provisions of Section 19 of the Bombay Rent Act would also stand answered on the above basis.

19. Insofar as liability under Section 13(1)(k) of the Bombay Rent Act is concerned what is to be noticed is the requirement of unjustified non-user for a period exceeding 6 months which evidently is not be attracted to the present case in view of the pendency of the liquidation proceedings. That apart, Clause 5 of the lease deed which deals with non-user of the leased land does not contemplate eviction on account of such non-user but merely entitles the lessor to receive rent for the period of such non-user of the land.

20. The mere fact that the company has been ordered to be wound up cannot be a ground to direct the official liquidator to handover possession of the land to the owners inasmuch as the company in liquidation continues to maintain its corporate existence until it stands dissolved upon completion of the liquidation proceedings in the manner contemplated by the Companies Act. In the present case it has been repeatedly submitted before this Court by both sides that presently revival of Prasad Mills is a live issue pending before the Gujarat High Court, a fact which cannot be ignored by this Court in deciding the above issue against the appellants.

A 21. For the aforesaid reasons we affirm the order of the High Court dated 17.10.2008 in O.J. Appeal Nos. 65 of 2006, 66 of 2006 and 67 of 2006 and dismiss the civil appeals arising out of SLP(C) Nos. 29282-29284 of 2008 wherein the said order is under challenge.

B 22. The other civil appeals, which have been heard analogously, can be divided into two categories. The first is where the order dated 17.10.2008 passed in O.J. Appeal No. 65 of 2006 [Jabal C. Lashkari & Ors. Vs. Official Liquidator & Ors.] impugned in civil appeals arising out of SLP(C) Nos. 29282-29284 of 2008 has been followed. In the other group are the cases where the said order has been followed and also an additional ground has been cited namely that in view of the order dated 17.07.2006 passed in Company Application No. 250 of 2006 a direction has been issued to handover possession of the leased premises to the State Government; hence the question of putting the property to sale does not arise.

D 23. Though we have affirmed the order dated 17.10.2008 of the Gujarat High Court passed in O.J. Appeal Nos. 65 of 2006, 66 of 2006 and 67 of 2006 and dismissed the civil appeals arising out of SLP(C) Nos. 29282-29284 of 2008 [Jabal C. Lashkari & Ors. Vs. Official Liquidator & Ors.], our decision to affirm the said judgment of the High Court is based on a consideration of the specific clauses in the lease deed between the parties to the case. What would be the effect of the principles of law underlying the present order *vis-a-vis* the specific clauses of the lease deed between the parties in the other cases is a question that has to be considered by the High Court in each of the cases. That apart whether the order dated 17.07.2006 passed in Company Application No. 250 of 2006 has attained finality in law and forecloses the question raised and further whether constructions have been raised on such land by the State Government for the benefit of the general public, as has been submitted to dissuade us from interfering with the order of the High Court, are questions that would require a full and complete consideration by the High Court on the materials available. To enable the said exercise to be duly performed, we set aside the order of the High Court impugned in each of the aforesaid civil appeals and remit all the matters to the High Court for a fresh consideration in accordance with the observations and principles of law contained in the present order.

Devika Gujral

Appeals disposed of.