PSN A70

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10866-10867 OF 2010

IN THE MATTER OF: -

M. Siddiq (D) Thr. Lrs. ... Appellant

VERSUS

Mahant Suresh Das & Ors. etc. etc. ... Respondents

AND
OTHER CONNECTED CIVIL APPEALS

NOTE ON CLARITY OF PLEADINGS

BY

DR. RAJEEV DHAVAN, SENIOR ADVOCATE

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ADVOCATE-ON-RECORD: EJAZ MAQBOOL

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CASE NOTE ON CLARITY OF PLEADINGS

1. There cannot be a pedantic or a dogmatic approach in the matter of analysis of pleadings or of the evidence adduced thereto. It is no doubt true that if the pleadings are clearly set out, it would be easy for the court to decide the matter. But if the pleadings are lacking or vague and if both parties have understood what was the case pleaded and put forth with reference to requirement of law and placed such material before the court, neither party is prejudiced. If we analyse from this angle, we do not think that the High Court was not justified in interfering with the order made by the Rent Controller.

(*Ram Narain Arora v. Asha Rani*, (1999) 1 SCC 141, para 11)

2. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.

(*A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*, (2012) 6 SCC 430, para 43.4)

3. The pleadings must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the court must

carefully look into it while deciding a case and insist that those who approach the court must approach it with clean hands.

(*A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*, (2012) 6 SCC 430, para 27)

4. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide *Trojan & Co.* v. *Nagappa Chettiar* [AIR 1953 SC 235] , *State of Maharashtra* v. *Hindustan Construction Co. Ltd.* [(2010) 4 SCC 518 : (2010) 2 SCC (Civ) 207 : AIR 2010 SC 1299] and *Kalyan Singh Chouhan* v. *C.P. Joshi* [(2011) 11 SCC 786 : (2011) 4 SCC (Civ) 656 : AIR 2011 SC 1127] .

(*National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad*, (2011) 12 SCC 695, para 12)

5. In *Ram Sarup Gupta* v. *Bishun Narain Inter College* **[(1987) 2 SCC 555**: AIR 1987 SC 1242] this Court held as under: (SCC p. 562, para 6)

> "*6.* ... in the absence of pleading, evidence, if any, produced by the parties cannot be considered. ... no party should be permitted to

travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it."

Similar view has been reiterated in *Bachhaj Nahar* v. *Nilima Mandal* [(2008) 17 SCC 491 : (2009) 5 SCC (Civ) 927 : AIR 2009 SC 1103]

(*National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad*, (2011) 12 SCC 695, para 13)

6. In *Syed and Co.* v. *State of J&K* **[1995 Supp (4) SCC 422]** this Court held as under: (SCC pp. 423-24, paras 7-8)

> "*7.* ... Without specific pleadings in that regard, evidence could not be led in since it is a settled principle of law that no amount of evidence can be looked unless there is a pleading.
>
> Therefore, without amendment of the pleadings merely trying to lead evidence is not permissible."

(*National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad*, (2011) 12 SCC 695, para 15)

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

(*National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad*, (2011) 12 SCC 695, para 18)

(1987) 2 Supreme Court Cases 555

(BEFORE SABYASACHI MUKHARJI AND K. N. SINGH, JJ.)

RAM SARUP GUPTA (DEAD) BY LRs .. Appellants ;

Versus

BISHUN NARAIN INTER COLLEGE AND OTHERS .. Respondents.

Civil Appeal No. 638 of 1980,
decided on April 8, 1987

Easements Act, 1882 — Section 60 — Irrevocability of licence — Clauses (a) and (b) of Section 60 not exhaustive — Parties by agreement can make licence irrevocable even if it is not covered by clause (a) or (b) — Where licence is oral, purpose of its grant and circumstances leading to the grant as also conduct of the parties have to be considered to determine whether it is irrevocable — On facts held, the oral licence was irrevocable

Civil Procedure Code, 1908 — Order 6 Rules 2, 4, 12 and Order 7 Rules 1, 3 — Pleadings — Should be liberally construed — Substance to be seen — If parties are aware of the plea involved and proceeded in the trial on that basis, question of absence of that plea cannot be raised by any of the parties — Pleadings need not contain the exact statutory language or expression in order to attract the statutory provisions — If plea relates to terms and conditions of an oral agreement, absence of written deed of the agreement not fatal to the plea as the terms can be gathered from the circumstances and conduct of the parties — Practice and Procedure

Hindu Law — Karta — Alienation — Long term lease of joint family property by karta with consent of co-sharers — When valid

One 'R', who was President of an education society, permitted the society to run a school on rent in a building and open land attached to it owned by him. Since the building was not owned by the society, the Education Department of the Government could not recognise the school. Therefore, 'R' wrote a letter in 1941 to the Inspector of Schools that he had given away the building to the school free of rent by way of his permanent contribution to the cause of the school. The education department thereupon recognised the school. The Committee of Management of the school in a meeting presided over by 'R' passed a resolution expressing their gratitude to 'R' and naming the school on the name of the late father of 'R'. Thereafter, 'R' did not realise rent from the school and he allowed the school to occupy the building and the land. 'R' continued to be the President of the Committee of Management of the school till 1961 and thereafter his wife became the President. To meet the need for additional accommodation, the management made permanent constructions on the open land attached to the main building. 'R' did not object to it. Nor any co-sharer or member of the joint family ever raised any objection. In 1961 'R' as Karta of his joint family along

with his three minor sons executed a sale deed transferring the building to the plaintiff-appellant in order to repay loan taken from bank. The purchaser-appellant thereupon served notice on the school and its Committee of Management terminating their licence and directing them to restore possession of the building to him within a specified period. The building having not been restored to the appellant, he filed a suit for recovery of possession of the school building. On the pleading of the parties the trial court framed 8 issues and the parties produced evidence in support of their case. Taking the view that the donation of the school building amounted to an irrevocable licence, and that the plaintiff-transferee acquired no right to revoke the licence, the trial court dismissed the suit. The High Court upheld the judgment of the trial court.

Before Supreme Court the plaintiff-appellant raised the following contentions :

(1) The requirements of Section 60(b) of the Easements Act were not satisfied.

(2) The defendant-respondents in their written statements had not raised the necessary pleading that the licence was irrevocable as contemplated by Section 60(b) of the Act and in absence thereof it was not open to the trial court and the High Court to make out a new case for the defendants, holding the licence irrevocable.

(3) The defendants-licensees failed to plead and prove by positive evidence that the licensee "acting upon the licence" executed work of a permanent character and incurred expenses in its execution so as to attract Section 60(b).

(4) The appellant urged that in the absence of any document containing the terms and conditions of the licence, the courts below committed error in holding that licence was irrevocable.

(5) 'R' being karta of joint family could not create a permanent licence in favour of the school without the consent of other co-sharers, to the detriment of his minor sons.

Dismissing the plaintiff-appellants' appeal Supreme Court

Held :

(1) The principle behind Section 60 is that if a person allows another to build on his land in furtherance of the purpose for which he had granted licence, subject to any agreement to the contrary, he cannot turn round later on to revoke the licence. Section 60 is not exhaustive. The parties may agree expressly or impliedly that a licence which is prima facie revocable not falling within either of the two categories of licence as contemplated by Section 60 of the Act shall be irrevocable. Similarly, even if the two clauses of Section 60 are fulfilled to render the licence irrevocable yet it may not be so if the parties agree to the contrary. Such agreements may be in writing or otherwise and their terms or conditions may be express or implied. A licence may be oral also and in that case terms, conditions and the nature of the licence can be gathered from the

purpose for which the licence is granted coupled with the conduct of the parties and the circumstances which may have led to the grant of the licence. (Paras 9 and 15)

Muhammad Ziaul Haque v. Standard Vacuum Oil Co., 55 CWN 232; Dominion of India v. Sohan Lal, AIR 1950 EP 40 and M. F. De Souza v. Children's Education Uplift Society, AIR 1959 Bom 533: 61 Bom LR 750: ILR 1959 Bom 1127, approved

The pleadings, evidence and the circumstances available on record, have fully established that 'R' had granted licence to the school in respect of the building and the land attached to it for the purpose of imparting education and the school in furtherance of that purpose constructed additional buildings and it further incurred expenses in carrying out modification and extensive repairs in the existing buildings. During that period 'R' continued to be the President of the Managing Committee of the school. He never raised any objection to it nor he retained right to revoke the licence As such Section 60(b) of the Easements Act would be applicable. Moreover, conduct of the parties has been such that equity will presume the existence of a condition of the licence by plain implication to show that licence was perpetual and irrevocable. That being so, 'R' could not revoke the licence or evict the school and the appellant being transferee from him could not and did not acquire any better right. The appellant therefore has no right to revoke the licence or to evict the school, so long the school continues to carry on the purpose for which the licence was granted. (Para 15)

Jagat Singh v. District Board, Amritsar, AIR 1940 Lah 18: 186 IC 890 and Thakur Prasad v. J. Thomkinson, AIR 1927 Oudh 206: 102 IC 26, approved

Raghubir Saran v. Param Kirti Saran, AIR 1962 All 444: 1962 All LJ 297; Deep Chand v. Kasturi Devi, AIR 1975 Pat 17: 1975 BLJR 5; Karan Singh v. Budh Sen, AIR 1938 All 342: 1938 All LJ 465; Mohammad Ali v. Ahmad Husain, AIR 1932 Oudh 264: 139 IC 365; Babulal Choukhani v. Caltex (India) Ltd., AIR 1967 Cal 205: 71 CWN 82; Hashmat Jahan v. Sheo Dularey, AIR 1942 Oudh 180; 198 IC 184; Brun Daban Jena v. Ram Chandra Misra, (1963) 29 Cut LT 37 and Banamali Dalbehura v. Ratnamani Dei, (1954) 20 Cut LT 319, referred to

(2) All necessary and material facts should be pleaded by the party in support of the case set up by it. In the absence of pleadings, evidence, if any, produced by the parties cannot be considered. No party should be permitted to travel beyond its pleading. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the part should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly

make out a case in accordance with strict interpretation of law. In such a case it is the duty of the court to ascertain the substance of the pleadings and not the form to determine the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, it would not be open to a party to raise the question of absence of pleadings in appeal. The substance of the pleading in the present case was clear. The plaintiff went to trial knowing fully well that defendant's claim was that the licence was irrevocable.

(Paras 6 and 7)

Bhagwati Prasad v. Chandramaul, (1966) 2 SCR 286 : AIR 1966 SC 735, relied on

(3) The substance of the respondents' pleadings clearly informed that their case was that they had made constructions on the land acting upon the licence which substantially met the requirement of law. If a man executes work of permanent character and incurs expense on the property of other person under a licence he may have done so "acting upon the licence". Therefore, absence of reproduction of the statutory expression "acting upon the licence" in the pleading was not fatal. The pleadings need not reproduce the exact words or expressions as contained in the statute, nor the question of law is required to be pleaded. (Paras 8 and 11)

Gujrat Ginning and Manufacturing Co. Ltd. v. Motilal Hirabhai Spinning and Manufacturing Co. Ltd., AIR 1936 PC 77 : 63 IA 140, explained

Shankar Gopinath Apte v. Gangabai Hariharrao Patwardhan, (1976) 4 SCC 112 : (1977) 1 SCR 411 : AIR 1976 SC 2506, distinguished

(4) Since no written document was executed by the parties containing the terms and conditions of the licence, the terms and conditions could be inferred from the attending circumstances and the conduct of the parties. Facts and circumstances point out the terms and conditions of the licence that the school was permitted to occupy and enjoy the land permanently for the purpose of education. In this background, it would be reasonable to infer an implied condition that the licence was irrevocable and the school was permitted to occupy and use the premises so long as it continued the purpose of imparting education to the students. (Para 13)

(5) The contention regarding creation of a permanent lease by 'R' without consent of the co-sharers is devoid of merit. The co-sharers had not raised any objection. The minor sons of 'R' on whose behalf 'R' executed the sale deed in 1961 were not shown to have been born prior to 1941. Moreover title in the property was not transferred to the school ; instead a permanent licence was granted, in which every member of the joint family must have been interested as the school perpetuated the memory of the common ancestor. The question of any legal necessity did not arise and the grant of permanent licence in favour of the school could not be rendered void merely because 'R' was karta of the joint family.

No co-sharer has challenged the validity of the licence on that ground. On the other hand they acquiesced in it (Para 14)

R-M/7882/C

The Judgment of the Court was delivered by

SINGH. J.—This appeal by special leave is directed against the judgment of the High Court of Allahabad dated February 18, 1978 dismissing the appeal preferred by the appellant against the judgment and decree of the Additional Civil Judge, Lucknow, dismissing the suit instituted by him for possession of the property in dispute.

2. The property in dispute situate at Nawal Kishore Road, Lucknow, consists of buildings and land which have been in the occupation of the Bishun Narain School. In 1938, certain public spirited persons of Lucknow city formed a society registered as the Progressive Education Society for establishing an educational institution for imparting education. Raja Ram Kumar Bhargava who owned considerable property, in the Lucknow city, was elected Chairman of the Society. He permitted the Society to run an English Middle School on rent in his building, which stood on the site in dispute : the school was commonly known as the "Narhi Middle School". The school was not recognised by the Education Department of the government as it had no endowment and no building of its own. After protracted correspondence with the authorities of the Education Department Raja Ram Kumar Bhargava president of the Society by his letter dated November 26, 1941 (Ex. C-B-6) informed the Inspector of Schools, Lucknow that he had given away the premises occupied by the school free of rent which may be considered his permanent contribution to the cause of the school. In pursuance to the declaration made by Raja Ram Kumar Bhargava the Education Department of the State Government recognised the institution. The members of the Committee of Management felt obliged to the Raja for his charitable disposition in donating the building to the school : accordingly, they unanimously passed a resolution expressing their gratitude to the Raja and they further resolved to change the name of the institution as the "Bishun Narain Anglo-Vernacular School" to perpetuate the memory of late Bishun Narain Bhargava, the father of Raja Ram Kumar Bhargava This meeting was presided over by Raja Ram Kumar Bhargava himself as the President of the Society. Thereafter Raja Ram Kumar Bhargava did not realise rent from the school and he allowed the school to occupy the building and the open land attached to it for the use of the school. With the passage of time the school progressed, it was raised to the status of a High School and then to the status of an Intermediate College which was also named after Bishun Narain Bhargava. Subsequently, the primary section of the

institution was separated from the college section and it was given the name as "Bishun Narain Basic School". This school has been occupying the property in dispute ; however, the school and the college both were managed by Committee of Management of which Raja Ram Kumar Bhargava continued to be the President till 1961 and thereafter his wife Rani Lila Bhargava became the President, which office she continues to occupy since then. As there was considerable increase in the number of students, the institution felt short of accommodation. To meet the need for additional accommodation, the management made permanent constructions on the open land attached to the main building, to provide three classrooms and other facilities including bathrooms to the students without any objection by the Raja or any of his family members.

3. It appears that Raja Ram Kumar Bhargava had taken considerable amount of money as loan from Central Bank of India and to secure the loan he executed a mortgage deed on March 27, 1957 mortgaging a number of properties including the property in dispute occupied by the school, in favour of the Central Bank of India. The loan, however, could not be repaid. Raja Ram Kumar Bhargava offered to sell the mortgaged property and on negotiations, the Bank agreed to release the property from mortgage to enable Raja Ram Kumar Bhargava to sell the same for raising money to pay off the loan. The Bank released the property under a written agreement dated June 27, 1961 and in pursuance thereof Raja Ram Kumar Bhargava along with his three minor sons executed a sale deed on June 27, 1961 transferring the property in dispute occupied by the school along with other property to Ram Sarup Gupta, the plaintiff-appellant. In the registered sale deed the property in dispute was described as Portion II of ITD Block in Hazratganj, Lucknow, bearing house No. C-43/III in the occupation of Bishun Narain High School. Ram Sarup Gupta the appellant after purchasing the property served notice on the school and its managing committee terminating their licence and directing them to restore the possession of the property to him within a specified period. Since the property was not restored to him, he filed a suit for possession against Bishun Narain Inter College, members of the Committee of Management of the college and the Progressive Education Society in the court of Civil Judge, Lucknow. Subsequently under the order of the trial court the members of the committee of the management of the Bishun Narain Basic School were also impleaded as defendants 11 to 17. The defendants inter alia pleaded that the Raja had donated the property in dispute to the school permanently and the school had made permanent constructions by incurring expenses ; for that reason licence was irrevocable.

4. On the pleading of the parties the trial court framed 8 issues

and the parties produced evidence in support of their case. The trial court recorded findings that the property in dispute belonged to the joint family of which Raja Ram Kumar Bhargava was karta. Raja Ram Kumar Bhargava had donated the property in dispute to the school, but no title passed to the school or to any of the defendants as the property being immovable could not be transferred except under a registered deed. In the absence of transfer deed Raja Ram Kumar Bhargava continued to be owner and he could transfer title in the property to the plaintiff. The defendants' plea that the civil court had no jurisdiction to entertain the suit or pass decree for possession was negatived on the findings that under the U. P. (Temporary) Control of Rent and Eviction Act, 1947 (U.P. Act 3 of 1947), no allotment could validly be issued in favour of the school as there was no vacancy or likelihood of vacancy. The trial court recorded findings that Raja Ram Kumar Bhargava had given away the property to the school as his permanent contribution but in the absence of registered deed the transaction amounted to a licence only and since, the defendants had made permanent constructions on the premises in suit, the licence was irrevocable under Section 60(*b*) of the Indian Easements Act, 1882 (hereinafter referred to as the Act). The trial court further held that Raja Ram Kumar Bhargava himself had no power in law to revoke the licence ; consequently the plaintiff being transferee from him could not acquire any better right ; therefore he was not entitled to revoke the licence or to obtain possession of the property. On these findings the trial court dismissed the suit. The appellant took the matter in appeal before the High Court : the appeal came up for hearing before a Division Bench consisting of D. N. Jha and K. S. Verma, JJ. There was difference of opinion between the two learned Judges. D. N. Jha, J. affirmed the findings of the trial court and opined that since licence granted to the school was irrevocable, the appellant was not entitled to any relief. K. S. Verma, J. took a contrary view ; according to him the defendants had failed to raise requisite plea that the licence granted to them was irrevocable as contemplated by Section 60(*b*) of the Act and they had further failed to produce any positive evidence to prove the terms and conditions of the licence showing that the licence was irrevocable. The learned Judge held that the defendants' plea that they had made permanent constructions on the land in pursuance of the licence incurring expenses, could not be considered as the defendants had failed to plead the necessary facts in their written statement, the evidence produced by them could not be considered. On these findings the learned Judge proposed to set aside the trial court's order and decree the plaintiff's suit. Since there was difference of opinion the matter was referred to a third Judge. The appeal was then heard by T. S. Misra, J. He discussed the questions in respect of which the two Judges had

disagreed and by a detailed order he concurred with the view expressed by D. N. Jha, J. as a result of which the trial court's judgment was upheld and the appellant's suit was dismissed. The appellant has preferred this appeal by special leave under Article 136 of the Constitution.

5. Shri S. N. Kacker, learned counsel for the appellant contended that the trial court as well as the High Court both erred in holding that the licence was irrevocable under Section 60(*b*) of the Indian Easements Act. He urged that the defendants had failed to raise necessary pleadings on the question, no issue was framed and no evidence was produced by them. In the absence of requisite pleadings and issues it was not open to the trial court and the High Court to make out a new case for the defendants, holding the licence irrevocable. He urged that the defendants had failed to produce any evidence to prove the terms and conditions of the licence. In order to hold the licence irrevocable, it was necessary to plead and further to prove that the defendants had made construction, "acting upon the terms of the licence". Shri Kacker further urged that Raja Ram Kumar Bhargava being karta of joint family, could not alienate the property permanently to the detriment of the minor co-sharers. Shri U. R. Lalit, appearing on behalf of the defendant-respondents supported the findings recorded by the trial court and the High Court and urged that both the courts have recorded findings of facts on appreciation of evidence on record that the licence granted by Raja Ram Kumar Bhargava was irrevocable and that acting upon the licence the school had made construction for the purposes of running the school and the licence was irrevocable. He took us through the record to show that necessary pleadings had been raised by the defendants and there was sufficient evidence in support of the pleadings.

6. The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the licence was irrevocable as contemplated by Section 60(*b*) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction ; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes, pleadings are

expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings ; instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal. In *Bhagwati Prasad* v. *Chandramaul*[1] a Constitution Bench of this Court considering this question observed :

> If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it ? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the court cannot do injustice to another.

7. Before we examine the pleas raised by the defendants in their written statement it is necessary to keep in mind that the plaintiff himself stated in paragraph 4 of the plaint that the property in dispute has been in occupation of the school as licensee under the permission of Raja Ram Kumar Bhargava erstwhile owner of the property.

1. (1966) 2 SCR 286, 291 : AIR 1966 SC 735

Defendants 11 to 17 in paragraphs 10 to 16 of their written statement while dealing with the question of licence expressly stated that the school had made pucca constructions and had been making various substantial additions and alterations in the building without any objection. Raja Ram Kumar Bhargava had given away the premises in dispute permanently to the school and they have been in occupation of the premises for the last 20 years and during that period they have been making substantial additions and alterations in the building including re-plastering, re-flooring etc. by incurring heavy expenses. In paragraph 18 of their written statement they pleaded that the licence was coupled with a grant and in any case it was a permanent and irrevocable licence in favour of the school and the same could not be revoked by the plaintiff. The pleadings so raised make it abundantly clear that the defendants had raised a specific plea that the licence was coupled with grant, it was a permanent and irrevocable licence and in pursuance of the licence the licensee had carried out work of permanent character incurring expenses for the advancement of the purpose for which the licence had been granted. In fact, issues 4, 5 and 6 framed by the trial court relate to the question whether licence was irrevocable. The issues so framed involved the question of irrevocability of the licence under both the clauses (*a*) and (*b*) of the Section 60 of the Act. The plaintiff went to trial knowing fully well that defendants' claim was that the licence was irrevocable, on the ground that they had made permanent constructions and incurred expenses in pursuance of the licence granted for the purpose of school. The plaintiff knew the case he had to meet, and for that purpose he produced Raja Ram Kumar Bhargava in evidence in support of his plea that the licence was a simple licence and it was not irrevocable as pleaded by the defendants. This question has been considered in great detail by T. S. Misra, J. and we are in agreement with the view taken by him.

8. Mr Kacker then contended that mere execution of work of a permanent character and incurring expenses by the licensee is not sufficient to make the licence irrevocable ; instead licensee must plead and prove by positive evidence that the licensee "acting upon the licence". executed work of a permanent character and incurred expenses in its execution. The defendants failed to raise any such plea before the trial court that they had executed the work of permanent character and incurred expenses "acting upon the licence" and they further failed to produce any evidence in support thereof. He urged that by making constructions and incurring expenses a licensee could not make the licence irrevocable as the law requires that constructions, if any, and expenses incurred thereon must be shown to have been made "acting upon the licence". He placed reliance on the Privy Council decision in *Gujrat Ginning and Manufacturing Co. Ltd.* v. *Motilal Hirabhai*

Spinning and Manufacturing Co. Ltd.[2] and also on a decision of this Court in *Shankar Gopinath Apte* v. *Gangabai Hariharrao Patwardhan*[3]. In addition to these cases he referred to a number of High Court decisions in support of his submission that benefit of Section 60(*b*) of the Act could not be granted to the respondent school. Similar grievance had been raised by the appellant before the High Court on the ground of absence of requisite pleadings with regard to the respondents' claim for the licence being irrevocable under Section 60(*b*) of the Act. The majority of the Judges of the High Court repelled the appellants' submission on a detailed scrutiny of the pleadings. We have already referred to the pleadings raised by the defendants which contain necessary facts to sustain the pleading of the licence being irrevocable under Section 60(*b*) of the Act. It is well settled that the pleadings need not reproduce the exact words or expressions as contained in the statute, nor the question of law is required to be pleaded. The substance of the respondents' pleadings clearly informed that their case was that they had made constructions on the land acting upon the licence which substantially met the requirement of law. Before we discuss the authorities cited by the appellants' counsel we consider it necessary to briefly refer to the provisions of the Act regulating the grant, revocation of licence and other allied matters and also the evidence available on record.

9. Licence as defined by Section 52 of the Act means grant of permission, by a person to the other, a right to do or continue to do, in or upon, the immovable property of the grantor, something which would, in the absence of such right, be unlawful. Such right does not amount to an easement or any interest in the property. The rights so conferred is licence. The grant of licence may be express or implied which can be inferred from the conduct of the grantor. Section 60 provides that a licence may be revoked by the grantor unless ; (*a*) it is coupled with a transfer of property and such transfer is in force ; (*b*) the licensee, acting upon the licence, has executed a work of permanent character and incurred expenses in the execution. Revocation of licence may be express or implied. Section 62 enumerates circumstances on the existence of which the licence is deemed to be revoked. One of such conditions contemplates that where licence is granted for a specific purpose and the purpose is attained, or abandoned, or if it becomes impracticable, the licence shall be deemed to be revoked. Sections 63 and 64 deal with licensee's right on revocation of the licence to have a reasonable time to leave the property and remove the goods which he may have placed on the property and the licensee is further entitled to compensation if the

2. AIR 1936 PC 77 : 63 IA 140
3. (1977) 1 SCR 411 : (1976) 4 SCC 112 : AIR 1976 SC 2506

licence was granted for consideration and the licence was terminated without any fault of his own. These provisions indicate that a licence is revocable at the will of the grantor and the revocation may be expressed or implied. Section 60 enumerates the conditions under which a licence is irrevocable. Firstly, the licence is irrevocable if it is coupled with transfer of property and such right is enforced and secondly, if the licensee acting upon the licence executes work of permanent character and incurs expenses in execution. Section 60 is not exhaustive. There may be a case where the grantor of the licence may enter into agreement with the licensee making the licence irrevocable, even though, neither of the two clauses as specified under Section 60 are fulfilled. Similarly, even if the two clauses of Section 60 are fulfilled to render the licence irrevocable yet it may not be so if the parties agree to the contrary. In *Muhammad Ziaul Haque* v. *Standard Vacuum Oil Co.*[4], the Calcutta High Court held that where a licence is prima facie irrevocable either because it is coupled with a grant or interest or because the licensee erected the work of permanent nature there is nothing to prevent the parties from agreeing expressly or by necessary implication that licence nevertheless shall be revocable. On the same reasoning there is nothing to prevent the parties agreeing expressly or impliedly that the licence which may not prima facie fall within either of the two categories of licence (as contemplated by Section 60) should nevertheless be irrevocable. The same view was taken by Das, J. (as he then was) in *Dominion of India* v. *Sohan Lal*[5]. Bombay High Court has also taken the same view in *M. F. De Souza* v. *Childrens Education Uplift Society*[6]. The parties may agree expressly or impliedly that a licence which is prima facie revocable not falling within either of the two categories of licence as contemplated by Section 60 of the Act shall be irrevocable. Such agreement may be in writing or otherwise and its terms or conditions may be express or implied. A licence may be oral also in that case, terms, conditions and the nature of the licence, can be gathered from the purpose for which the licence is granted coupled with the conduct of the parties and the circumstances which may have led to the grant of the licence.

10. In their pleadings the defendants had invoked the protection of both the clauses of Section 60 of the Act, firstly, they pleaded that the licence was coupled with the transfer of property inasmuch as the school had been realising rent from third parties who were permitted to use a portion of the land. Secondly, they pleaded that the licensee, namely, the school had executed permanent constructions

4. 55 CWN 232
5. AIR 1950 EP 40
6. AIR 1959 Bom 533 : 61 Bom LR 750 : ILR 1959 Bom 1127

and incurred expenses in execution thereof acting on the licence. The trial court as well as the High Court both rejected the respondents' claim of licence being irrevocable under Section 60(*a*) of the Act. But they upheld the respondents' plea of licence being irrevocable under clause (*b*) of Section 60 of the Act. It is true that the pleadings raised in the written statement of defendants did not expressly use the expression that the school had executed work of permanent character "acting upon the licence". But reading the entire written statement one cannot escape the conclusion that the defendants had raised the plea that Raja Ram Kumar Bhargava the grantor of the licence had granted licence for running the school in the building and for using the open land for the purpose of school and in pursuance of the licence, so granted, the school had executed work of permanent character and incurred expenses in making the same. The defendants further pleaded that no objection had been raised by the grantor of the licence or by anyone else against the school in making the constructions. Repeated assertions have been made in their written statement that Raja Ram Kumar Bhargava, had granted a permanent licence which was irrevocable. Substance of the pleading was clear that defendants had raised a specific plea that the school had in pursuance of the licence executed work of permanent character and incurred expenses in execution and that no objection was raised by the licensor ; therefore the licence was irrevocable. The licence had been granted to the school for the purpose of running school and imparting education to the students ; the licence was not merely in respect of building alone but it was also in respect of open land attached to the building. Additional accommodation was required to provide classrooms for the students which was an integral part of the purpose for which the licence had been granted and the school carried out works on the open land which was appurtenant to the main building, with the knowledge of the licensor as has been found by the trial court and the High Court. In view of the licensor's donation of the property to the school, and his subsequent conduct, the licensee could reasonably entertain a belief that the licensor had permitted the construction on the land, and in pursuance thereof, the licensee made constructions and incurred expenses. The result is that the respondents "acting upon the licence" had executed works by incurring expenses which rendered the licence irrevocable. As regards evidence we have perused the statement of Ganga Prasad Dhayani, DW 1, Shanker Dutt, DW 2, and Bhola, DW 3. Their testimony fully established that the school had constructed three classrooms, latrines and urinals and incurred expenses. Raja Ram Kumar Bhargava in his testimony claimed that the aforesaid constructions had been made by a trust constituted by his family members, but no account books were filed in support of the statement although it was admitted that the trust maintained

accounts ; on the other hand vouchers were produced on behalf of the defendants showing that the management had spent money for making constructions. Raja Ram Kumar Bhargava who was examined as a witness on behalf of the plaintiff admitted in his testimony that he continued to be the president of the school since 1938 to 1961 and thereafter his wife has continued to be the president ; it is therefore difficult to believe that he had no knowledge of the constructions. If the licence did not permit the school to execute any permanent constructions, Raja Ram Kumar Bhargava would have certainly raised objections. His conduct of acquiescence to the raising of constructions, is eloquent enough to show that the licence was irrevocable. No doubt Raja Ram Kumar made attempts to support the plaintiff's case by saying that he had not given the property to the school permanently but the trial court and the High Court both have discarded his testimony and we find no good reason to take a different view.

11. In *Gujrat Ginning and Manufacturing Co. Ltd.* v. *Motilal Hirabhai Spinning and Manufacturing Co. Ltd.*[2], protection of Section 60(*b*) of the Act was invoked by a party who had made constructions on his own land and not on the land of the licensor and in that factual backdrop the Privy Council held that the expression "acting upon the licence" must mean "acting upon a right granted to do upon the land of the grantor something which would be unlawful in the absence of such right". A man does not "acting upon a licence" execute works and incur expense upon his own property as that he can do without anyone's licence. These observations do not support the appellant ; on the other hand they show that if a man executes work of permanent character and incurs expenses on the property of other person under a licence he may have done so "acting upon the licence". In *Shankar Gopinath Apte* v. *Gangabai Hariharrao Patwardhan*[3] the plaintiff had raised plea of tenancy failing which he claimed to be in possession of the land, in part performance of an agreement for sale. On the rejection of both the pleas the plaintiff-appellant therein raised a further plea that he was protected under Section 60(*b*) of the Indian Easements Act as he had executed works of permanent character on the land incurring heavy expenses. This Court rejected the submission on the ground of absence of pleadings, issues and evidence. While rejecting the appellant's submissions the court observed that even assuming that the appellant had executed work of a permanent character on the land it could not be said that he had done so "acting upon the licence" as required by Section 60(*b*) of the Easements Act. The court observed that the appellant improved the land by executing work of a permanent character, he did so, in the belief that being a tenant he would become statutory purchaser of the land or that the oral agreement of sale will one fine day be

implemented. The execution of the work was done either in the capacity as a tenant or as a prospective purchaser but not as a licensee. The decision has no application to the facts of the present case as admittedly the school was a licensee and in that capacity it executed works of a permanent character, by incurring expenses and this plea was raised at the initial stage before the trial court.

12. Reference was made to a number of decisions of the High Courts in support of the proposition that a licence is irrevocable under Section 60(*b*) of the Act only if three conditions are fulfilled, namely, (*i*) the licensee executed work of a permanent character, (*ii*) he did so acting upon the licence, and (*iii*) he incurred expenses in doing so. The onus of proving these facts lie upon the licensee and in the absence of any evidence on these questions the licence could not be irrevocable under Section 60(*b*) of the Act. Decisions relied are *Raghubir Saran* v. *Param Kirti Saran*[7], *Deep Chand* v. *Kasturi Devi*[8], *Karan Singh* v. *Budh Sen*[9], *Mohammad Ali* v. *Ahmad Husain*[10], *Babulal Choukhani* v. *Caltex (India) Ltd.*[11], *Hashmat Jahan* v. *Sheo Dularey*[12], *Brun Daban Jena* v. *Ram Chandra Misra*[13], *Banamali Dalbehura* v. *Ratnamani Dei*[14]. We do not consider it necessary to discuss these authorities in detail as in our opinion all the three conditions as required by Section 60(*b*) of the Act have been made out to show that the licence was irrevocable. The respondents placed reliance on the decisions of Lahore High Court and Oudh High Court in *Jagat Singh* v. *District Board, Amritsar*[15], and *Thakur Prasad* v. *J. Thomkinson*[16]. In these decisions the court held that where a licence was granted to a school in respect of a land, and in pursuance thereof the licensee constructed work of permanent character on the land, the licence was irrevocable under Section 60(*b*) of the Indian Easements Act. In our view the court rightly held that where licence is granted for the purpose of running a school without reserving any right to revoke the licence and if the licensee erected works of permanent nature, the grantor of licence is not entitled to recover land, as the execution of work was for the purpose of school and it falls within the expression "acting upon the licence".

13. Learned counsel for the appellant urged that in the absence of any document containing the terms and conditions of the licence,

7. AIR 1962 All 444 : 1962 All LJ 297
8. AIR 1975 Pat 17 : 1975 BLJR 5
9. AIR 1938 All 342 : 1938 All LJ 465
10. AIR 1932 Oudh 264 : 139 IC 365
11. AIR 1967 Cal 205 : 71 CWN 82
12. AIR 1942 Oudh 180 : 198 IC 184
13. (1963) 29 Cut LT 37
14. (1954) 20 Cut LT 319
15. AIR 1940 Lah 19 : 186 IC 890
16. AIR 1927 Oudh 206 : 102 IC 26

the courts below committed error in holding that licence was irrevocable. Since no written document was executed by the parties containing the terms and conditions of the licence, the terms and conditions could be inferred from the attending circumstances and the conduct of the parties. Raja Ram Kumar Bhargava was the President of the Society which was running the Narhi Middle School, but it was not recognised by the Education Department of the State of U. P. The correspondence which is on record shows that the Education Department insisted that there should be some endowment and school should own building and land before it could be granted recognition. Raja Ram Kumar Bhargava gave away the disputed property donating the building and the land in favour of the school by his letter dated November 26, 1941 (Ex. C-B-6) addressed to the Inspector of Schools, Lucknow. In that letter Raja Ram Kumar stated: "I have given my building free of rent to the Narhi Middle School. I now write to inform you that the premises at present in the occupation of the school free of rent which may be considered my permanent contribution to the cause of the school." On the receipt of that letter the Education Department granted recognition to the school. The proceedings of the Managing Committee of the school held on January 6, 1942 (Ex. B-16) show that a meeting of the Managing Committee was held on that day presided over by Raja Ram Kumar Bhargava and in that meeting the Managing Committee expressed its deep sense of appreciation and grateful thanks to Raja Ram Kumar Bhargava for donating the building to the school for procuring the recognition to the school from the U. P. Government, and it further resolved to name the school as the Bishun Narain Anglo-Vernacular School to perpetuate the memory of Shri Bishun Narain Bhargava father of Raja Ram Kumar Bhargava. These documents clearly indicate that Raja Ram Kumar Bhargava had permanently donated the property in dispute to the school and in lieu thereof the institution was named after his father to perpetuate his memory. The purpose of the grant was to enable the school to carry on its activity of imparting education to the students. The school progressed and it required additional building. Management of the school which was headed by Raja Ram Kumar himself, constructed additional buildings to provide for classrooms and other amenities to the students. Raja Ram Kumar Bhargava himself never raised any objection against the school making additional constructions on the disputed land. These facts and circumstances point out the terms and conditions of the licence, that the school was permitted to occupy and enjoy the land permanently for the purpose of education. In this background, it would be reasonable to infer an implied condition that the licence was irrevocable and the school was permitted to occupy and use the premises so long as it continued the purpose of imparting education to the students.

14. The appellant's submission that Raja Ram Kumar Bhargava being karta of joint family could not create a permanent licence in favour of the school without the consent of other co-sharer's, to the detriment of his minor sons, is devoid of any merit. No co-sharer or member of the joint family ever raised any objection to the donation of the property to the school by Raja Ram Kumar Bhargava nor they raised any objection at any stage of construction of the additional buildings by the school. There is no evidence on record to show that his three minor sons, on whose behalf he executed sale deed on June 27, 1961 in appellant's favour were born prior to 1941. Moreover title in the property was not transferred to the school, instead a permanent licence was granted, in which every member of the joint famliy must have been interested, as the school perpetuated the memory of the common ancestor Shri Bishun Narain Bhargava father of Raja Ram Kumar Bhargava. The question of any legal necessity did not arise and the grant of permanent licence in favour of the school could not be rendered void merely because Raja Ram Kumar Bhargava was karta of the joint family. No co-sharer has challenged the validity of the licence, on that ground. On the other hand they have acquiesced in it. There is thus no merit in the appellant's contention.

15. In view of the above discussion we are of the opinion that the pleadings, evidence and the circumstances available on record, have fully established that Raja Ram Kumar Bhargava had granted licence to the school in respect of the building and the land attached to it for the purpose of imparting education and the school in furtherance of that purpose constructed additional buildings and it further incurred expenses in carrying out modification and extensive repairs in the existing buildings during the period, Raja Ram Kumar Bhargava continued to be the President of the Managing Committee of the school. He never raised any objection to it and there is nothing on record to show that licensor had retained right to revoke the licence. If a person allows another to build on his land in furtherance of the purpose for which he had granted licence, subject to any agreement to the contrary (*sic* he) cannot turn round, later on, to revoke the licence. This principle is codified in Section 60(*b*) of the Act. Moreover, conduct of the parties has been such that equity will presume the existence of a condition of the licence by plain implication to show that licence was perpetual and irrevocable. That being so, Raja Ram Kumar Bhargava could not revoke the licence or evict the school and the appellant being transferee from him could not and did not acquire any better right. The appellant therefore has no right to revoke the licence or to evict the school, so long the school continues to carry on the purpose for which the licence was

granted. The trial court and the High Court have therefore rightly dismissed the suit.

16. Before concluding, we would like to observe that the appellant purchased the property in dispute from Raja Ram Kumar Bhargava for valuable consideration and he continues to be the owner of the property, his desire to get the possession of the property is quite natural but at the same time we cannot shut our eyes to the hard reality that Raja Ram Kumar Bhargava erstwhile owner of the property had granted an irrevocable licence in favour of the school. On June 27, 1961 when Raja Ram Kumar Bhargava executed the sale deed in appellant's favour, the property in dispute was in possession of the school under an irrevocable licence. The appellant should have known that the institution was occupying the property and it was rendering public service in imparting education to the students and it would be difficult to get possession ; in spite of that, the appellant purchased the property. The school has been occupying the property since 1939 and it has made permanent constructions without any demur from any quarter. In this situation it is not possible to grant any relief to the appellant. To evict the school may result in closure of the institution and that would certainly be against public interest. Having regard to these facts and circumstances, we gave opportunity to the parties to evolve a settlement to adjust equities without disturbing the cause of education. We regret to say that the parties could not settle the matter. We have therefore decided the appeal on merits.

17. In view of the above discussion we do not find any merit in the appeal. It is accordingly dismissed. In the circumstances of the case parties shall bear their own costs.

(1987) 2 Supreme Court Cases 572

(BEFORE M. P. THAKKAR AND B. C. RAY, JJ.)

JAGANNATHAN PILLAI .. Appellant ;

Versus

KUNJITHAPADAM PILLAI AND OTHERS .. Respondents.

Civil Appeal No. 1196 of 1973†,
decided on April 21, 1987

Hindu Succession Act, 1956 — Section 14(1) — "Full owner" — Property acquired by a Hindu female as limited owner transferred by her

†From the Judgment and Decree dated September 20, 1971 of the Madras High Court in Appeal No. 425 of 1964

1995 Supp (4) Supreme Court Cases 422

(BEFORE S. MOHAN AND S.P. BHARUCHA, JJ.)

SYED AND COMPANY AND OTHERS .. Appellants;

Versus

STATE OF JAMMU & KASHMIR AND OTHERS .. Respondents.

Civil Appeals Nos. 543 and 544 of 1985 and No. 1084 of 1986,
decided on November 20, 1992

A. **Civil Procedure Code, 1908 — Or. 41, R. 27 read with Or. 6, R. 17 — Evidence cannot be let in without pleading — Agreement between J & K Govt. and lessee for extraction of timber from forest — Such agreements held void by judgment of Full Bench of J & K High Court in AIR 1974 J & K 1 — However, State Govt. filing suit against lessee for recovery of arrears of royalty with interest — Suit dismissed and while appeal against the same was pending before the High Court, decision rendered in AIR 1982 J & K 16, holding that though royalty could not be recovered by Govt. in view of the FB decision, the prescribed authority could calculate the value of the timber extracted by the lessee and the same could be recovered by Govt. — Thereupon Govt. in the pending appeal before the High Court filing application for letting in evidence regarding the valne of the timber removed by the lessee — High Court rejecting application on the ground that a party could not be allowed to lead evidence on a plea not taken by it — Held, no doubt a prayer was made in the suit that a decree might be granted for the price of timber extracted by the lessee — But that prayer alone was not enough — The pleading ought to have been there as to what exactly was the basis of the prayer — The entire case of the State in the suit proceeded only with reference to royalty and interest thereon but not with reference to the price of timber — It was settled law that no evidence could be let in without the pleading — Hence the High Court was right in rejecting the application — Practice and Procedure — Pleading and proof — J & K Forest Act, 1987, Ss. 52 and 52-B**

B. **Jammu and Kashmir Forest Act, 1987 — Ss. 52 and 52-B — Prescribed authority under S. 52 not a court — Not competent to direct the drawing up of a decree**

State of Jammu and Kashmir v. *Goodwill Forest Lessees*, AIR 1974 J & K 1 (FB), *referred to*

Malik Abdul Ahmad Shah Jalil Ahmad Akhtar v *State of Jammu and Kashmir*, AIR 1982 J & K 16, *considered*

Appeals dismissed V-M/12721/S

ORDER

In Civil Appeals Nos. 543 & 544 of 1985 :

1. Both these appeals by grant of special leave can be dealt with under a common order as they arise from the same proceedings.

2. During the period from March 7, 1963 to April 14, 1965, lease agreements were executed between the Government of State of Jammu and Kashmir and private lessees for cutting timber from the forest of Jammu and Kashmir. These leases were held to be void by a Full Bench decision, rendered on June 15, 1973, of the Jammu and Kashmir High Court. The decision is reported in *State of Jammu and Kashmir* v. *Goodwill Forest Lessees*[1]. In order to get over the judgment, the J & K Forest Act, 1987 was amended by incorporating Sections 52-A, 52-B and 52-C in the Act whereby the prescribed authority was constituted to determine the quantum of advantages received by

1 AIR 1974 J & K 1 (FB)

the parties with reference to leases which were rendered void as a result of the judgment of the Full Bench.

3. The parties will be referred to as arrayed in C.A. No. 544 of 1985.

4. On January 7, 1976 the State filed a suit for recovery of a sum of Rs 7,61,953.52 on account of royalty arrears together with interest against Syed & Co. On August 8, 1981, the prescribed authority rendered a judgment holding that the respondent has in all paid Rs 25,37,384.15; against this amount he had actually removed timber valued at Rs 21,36,611.50. In the result, it was held that he would be entitled to be paid a sum of Rs 3,45,762.09. Ultimately, the suit was dismissed. However, the authority was directed to draw up decree sheet of the order which would include the figures mentioned above. Aggrieved by this order, Civil First Appeal No. 59 of 1981 was preferred to the High Court. While the appeal was pending, the High Court in *Malik Abdul Ahmad Shah Jalil Ahmad Akhtar* v. *State of Jammu and Kashmir*[2] held that it was open to the prescribed authority to calculate the value of timber removed by the lessees. In view of this decision an application for amendment under Order 41 Rule 27 of the Code of Civil Procedure was preferred. The High Court rejected the application on two grounds, one, it was hopelessly belated and second, in any event, the party could not be allowed to lead in evidence on a plea not taken by it though it was supported by the judgment in *Malik Abdul Ahmad Shah Jalil Ahmad Akhtar*[2]. In the result, the appeal was dismissed. But at the same time, it was held that the authority under Section 52 of the Jammu and Kashmir Forest Act, 1987 was not competent to direct the drawing up of a decree. Therefore, that part of the order of the prescribed authority was set aside. The State has preferred Civil Appeal No. 544 of 1985 against the dismissal while the respondent has preferred Civil Appeal No. 543 of 1985 challenging that part of judgment, directing deletion of drawing up of the decree.

5. The only contention urged on behalf of the State is that by virtue of the ruling in *Malik Abdul Ahmad Shah Jalil Ahmad Akhtar*[2] it is open to the prescribed authority to calculate the value of timber removed with reference to the market rates prevailing on the respective dates. Hence, evidence ought to have been allowed on that aspect. All the more so because the prayer by the State before the prescribed authority was alternative in character. That was to the effect a decree might be granted in favour of the State for the amount of price of the timber extracted from the inception of the lease up to the period extended by the authority on the current market value. Therefore, there was enough pleading with reference to this prayer that being the evidence ought not to have been shut out. Thus, the rejection of the application under Order 41 Rule 27 is wrong.

6. As regards the finding of the High Court that it was hopelessly barred by limitation, that finding overlooks the fact that the necessity for amendment arose only in view of the judgment in *Malik Abdul Ahmad Shah Jalil Ahmad Akhtar*[2]. Therefore, limitation should not have been put against the State.

7. In opposition to this, the learned counsel for the respondent would urge by looking at the entire pleadings of the State before the prescribed authority, it can be seen nowhere, it has been stated as to what exactly was the basis for claiming the price of timber extracted by the respondent. Without specific pleadings in that regard, evidence could not be led in since it is a settled

2 AIR 1982 J & K 16

principle of law that no amount of evidence can be looked unless there is a pleading.

8. Therefore, without amendment of the pleadings merely trying to lead evidence is not permissible. The High Court was right in holding so. In addition on the point of limitation it has held correctly.

9. As regards the Civil Appeal No. 543 of 1985, the contention of the appellant Syed and Company is as under:

> No doubt, under Section 52 of the Act, the prescribed authority could not have drawn up a decree. Nevertheless while setting aside this order, the High Court should have directed that it was open to the party to recover the same in accordance with law. This Court may give such directions.

10. We have carefully considered the above submissions. We are of the view that no exception could be taken to the judgment of the High Court. No doubt a prayer was made before the prescribed authority by the State requesting that a decree might be granted for the amount of price of timber extracted by the party. But that prayer alone was not enough. The pleadings ought to have been there as to what exactly was the basis of the prayer. We are afraid that the entire case of the State before the prescribed authority proceeded only with reference to royalty and interest thereof, but not with reference to the price of the timber. It is true that in *Malik Abdul Ahmad Shah Jalil Ahmad Akhtar*[2] it has been held that the prescribed authority under Section 52 is empowered to determine the price of timber extracted. The State at that stage, should have amended the pleading and incorporated the basis for the claim for the price of timber. But for reasons best known the State merely took out an application under Order 41 Rule 27 to lead in evidence. Of course, evidence could have been allowed if there were pleadings to that effect. In this case, there was none. It is settled law that no evidence can be let in without the pleading. The High Court was fully justified in rejecting the application.

11. We are equally convinced that the High Court was right in setting aside that part of the order of the prescribed authority asking the drawal of the decree in accordance with the observations contained in paragraph 7 of the order. The prescribed authority is not a civil court. However, we may add that it is open to the appellant in Civil Appeal No. 543 of 1985 (Syed & Co.) to recover the said amount in accordance with law. The appeals are dismissed. However, there shall be no order as to costs.

In Civil Appeal No. 1084 of 1986 :

12. In view of the above order, this civil appeal will stand dismissed. There shall be no order as to costs.

1995 Supp (4) Supreme Court Cases 424

(BEFORE KULDIP SINGH AND P.B. SAWANT, JJ.)

STATE OF T.N. AND OTHERS .. Appellants;

Versus

VEDAPATASALA TRUST AND OTHERS .. Respondents.

Civil Appeals Nos. 1385-88 of 1984 with Civil Appeal No. 3010 of 1980, decided on November 5, 1992

of the building. The burden of proof of such material impairment is on the landlord."

21. An Advocate Commissioner visited the building and pointed out the following features in his report regarding the damage noticed by him:

> "There is only concrete flooring with uneven surface. Due to the use of machinery, there is a hole in the flooring on the eastern side and it was meant for inserting pipe. There was no damage to the roof and walls. Some nail holes were also noticed. When the lathe machines were operated the Advocate Commissioner noticed that there was no vibration either on the ground floor or on the walls of the main building, though very slight vibration was noticed on the parapet walls of the first floor."

22. Both the fact-finding courts found that the above items of damage are only trivial and will not affect the building. But the High Court found that "the landlords proved that the tenant caused damage to the demised premises by causing holes and leaving spaces between the shutter and the wall as seen from the Commissioner's report". It was not open to the High Court to substitute the findings of the lower courts with its own findings so easily as that while exercising the limited supervisory jurisdiction.

23. For the aforementioned reasons, we are unable to sustain the impugned judgment of the High Court which has manifestly crossed its jurisdiction. We, therefore, allow this appeal and set aside the impugned judgment.

(1999) 1 Supreme Court Cases 141

(BEFORE DR A.S. ANAND AND S. RAJENDRA BABU, JJ.)

RAM NARAIN ARORA .. Appellant;

Versus

ASHA RANI AND OTHERS .. Respondents.

Civil Appeal No. 8494 of 1995†, decided on August 31, 1998

A. Rent Control and Eviction — Bona fide requirement of landlord — Whether landlord has any other reasonably suitable residential accommodation — Question intermixed with the question regarding bona fide requirement — That landlord has another reasonably suitable accommodation is a good defence for the tenant — If so, then the further question would be whether that accommodation is more suitable than the suit premises and it would not solely depend upon pleadings — Non-disclosure by landlord about his having another accommodation would not be fatal to the eviction proceedings if both the parties understood the case and placed materials before the court and case of neither party was prejudiced — Delhi Rent Control Act, 1958 (59 of 1958), S. 14(1)(e)

B. Rent Control and Eviction — Revision — Scope of — Pure findings of fact — When can be interfered with by High Court in revision — Findings of fact rendered on a wrong premise of law can be interfered with — Rent

† From the Judgment and Order dated 3-2-1995 of the Delhi High Court in C.R. No. 991 of 1985

Controller taking the view that non-disclosure by landlord about his having another accommodation was fatal to the eviction proceedings — In such a situation, held, High Court was justified in re-examining the matter and taking a different view — Delhi Rent Control Act, 1958, S. 25-B(8) proviso — Civil Procedure Code, 1908, S. 115 — Revision — Scope of

C. Practice and Procedure — Pleadings — Defective or vague pleadings — Held, would not be fatal if both parties understood what the case pleaded was and accordingly placed material before the court and neither party was prejudiced

The respondent-landlord filed a petition under Section 14(1)(*e*) read with Section 25-B of the Delhi Rent Control Act for eviction of appellant tenant on ground of his bona fide requirement of the house. The appellant filed his written statement contending that the landlord had alternate accommodation at Subzi Mandi, Delhi and he had deliberately shifted to the disputed premises with an ulterior motive to make out a case for the eviction of the respondent and this fact of availability of the said premises in Subzi Mandi had not been disclosed in the petition. In the course of the proceedings the Rent Controller recorded a finding that the accommodation in occupation of the landlord was too short and if he was not having any other suitable residential accommodation, he should be entitled to an eviction order. On the question whether the respondent had disclosed the full facts necessary for the disposal of the petition filed by him, the Rent Controller noticed that from the evidence recorded, the allegation of the appellant in the written statement in respect of the accommodation in possession and available to the respondent in Subzi Mandi stood proved and therefore, he had not come to the court with clean hands and had done so with the mala fide intention to evict the appellant. The matter was carried to the High Court in revision. The High Court agreed with the finding of the Rent Controller as regards bona fide requirement of the landlord-respondent. On the controversy of the non-mentioning of the availability of accommodation in Subzi Mandi and absence of a true disclosure of facts, the High Court examined the matter in detail. The High Court noticed that the father of the respondent, *D* had rented the premises in Subzi Mandi from a trust in the year 1944 and thereafter he was residing in the said premises with his family. *D* died in 1980. After his death, *R*, the original petitioner in the eviction petition continued to reside in that accommodation at Subzi Mandi where his father was a tenant. *R* shifted from the said accommodation to the ground floor accommodation when the same became available to him sometime in 1982. The landlord of the Subzi Mandi property had served a notice upon the respondent to vacate the premises in the year 1981. The actual possession of the Subzi Mandi house was handed over to the landlord in March 1984 as per receipts. The said receipts disclosed the name of *D* as a tenant. For about two years prior to the actual handing over of the possession of the premises, the same remained locked and in possession of the respondent, since *R* had shifted to the suit property along with his family in the year 1982. The High Court felt that in the peculiar facts of this case it was necessary to examine whether the said accommodation could be said to be "other reasonably suitable residential accommodation available to the respondent" and held, firstly, that the respondent had shifted to the ground floor in the suit premises long before filing of the present eviction petition and the Subzi Mandi accommodation was not a reasonably suitable residential accommodation available for him and his family. Secondly, in view of the notice of eviction served on the respondent by the landlord of the Subzi Mandi property, he was under pressure of being evicted from the said premises. The High Court was of the view that the respondent could not be said to have other reasonably suitable accommodation and therefore non-disclosure thereof could not be fatal to the petition and on that basis allowed the petition. Dismissing the appeal

Held :

Section 14(1)(*e*) of the Delhi Rent Control Act contemplates that in making a claim that the suit premises is required bona fide for the landlord's own occupation as a residence for himself and other members of his family dependent on him and that he has no other reasonably suitable accommodation is a requirement of law before the court can state whether the he requires the premises bona fide for his use and occupation. In doing so, the court must also find out whether the landlord or such other person for whose benefit the premises is required has no other reasonably suitable residential accommodation. It cannot be said that the requirement of the landlord is not intermixed with the question of finding out whether he has any other reasonably suitable accommodation. If he has other reasonably suitable accommodation, then necessarily it would mean that he does not require the suit premises and his requirement may not be bona fide. In such circumstances, further inquiry would be whether that premises is more suitable than the suit premises. Therefore, the questions raised before the court would not necessarily depend upon only the pleadings. It could be a good defence that the landlord has other reasonably suitable residential accommodation and thereby defeat the claim of the landlord. (Para 10)

There cannot be a pedantic or a dogmatic approach in the matter of analysis of pleadings or of the evidence adduced thereto. If the pleadings are clearly set out, it would be easy for the court to decide the matter. But if the pleadings are lacking or vague and if both parties have understood what was the case pleaded and put forth with reference to requirement of law and placed such material before the court, neither party is prejudiced. Analysing from this angle the High Court was justified in interfering with the order made by the Rent Controller. (Para 11)

Though the scope of a revision petition under Section 25-B(8) proviso of the Delhi Rent Control Act is a very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. Pure findings of fact may not be open to be interfered with, but if in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the revisional court to interfere with such a matter. In this case, the Rent Controller proceeded to analyse the matter that non-disclosure of a particular information was fatal and, therefore, dismissed the claim made by the landlord. It is in these circumstances that it became necessary for the High Court to re-examine the matter and then decide the entire question. (Para 12)

Hari Shankar v. *Rao Girdhari Lal Chowdhury*, AIR 1963 SC 698 : 1962 Supp (1) SCR 933; *Sushila Devi* v. *Avinash Chandra Jain*, (1987) 2 SCC 219; *Meenal Eknath Kshirsagar* v. *Traders & Agencies*, (1996) 5 SCC 344; *Ram Dass* v. *Ishwar Chander*, (1988) 3 SCC 131, *referred to*

In the facts and circumstances of the case, it would be appropriate that the appellant be allowed time to vacate the premises till 31-5-1999, subject to his furnishing the usual undertaking in the Court within four weeks from today. (Para 14)

R-M/ATDZ/20229/C

Suggested Case Finder Search Text (*inter alia*) :

(1) rent bona fide (need or require*) landlord

(2) delhi rent revision

Advocates who appeared in this case :
Ranjit Kumar, Chandra Bhushan Prasad, Ms Binu Tamta and Ms Anu Mohla, Advocates, for the Appellant;
Gopal Subramanium, Senior Advocate (S.K. Mathur and V.B. Saharya, Advocates, for Saharya & Co., Advocates, with him) for the Respondents.

Chronological list of cases cited *on page(s)*

1. (1996) 5 SCC 344, *Meenal Eknath Kshirsagar* v. *Traders & Agencies* 147*b*
2. (1988) 3 SCC 131, *Ram Dass* v. *Ishwar Chander* 147*b-c*
3. (1987) 2 SCC 219, *Sushila Devi* v. *Avinash Chandra Jain* 146*f-g*
4. AIR 1963 SC 698 : 1962 Supp (1) SCR 933, *Hari Shankar* v. *Rao Girdhari Lal Chowdhury* 146*f-g*

The Judgment of the Court was delivered by

RAJENDRA BABU, J.— This is a tenant's appeal arising out of certain proceedings initiated under the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act"). The respondent-landlord filed a petition under Section 14(1)(*e*) read with Section 25-B of the Act seeking for the possession of the house by evicting the appellant as he required the same for his bona fide need and occupation. The appellant before us filed his written statement contending that the landlord has alternate accommodation at Subzi Mandi and he has deliberately shifted to the disputed premises with an ulterior motive to make out a case for the eviction of the respondent and this fact of availability of the said premises in Subzi Mandi had not been disclosed in the petition.

2. In the course of the proceedings before the Rent Controller, a finding was recorded by him as to the bona fide requirement of the respondent in the following terms:

> "If the accommodation in the occupation of the petitioner on the ground floor of the house in dispute is compared with the extent of the family members of the petitioner excluding, of course, Kishan Sarup Bhatnagar, the petitioner *would be said to be too short of accommodation and if the petitioner does not have any other suitable residential accommodation, he should be entitled to an eviction order.*"
> (emphasis supplied)

3. On the question whether the respondent had disclosed the full facts necessary for the disposal of the petition filed by him, the Rent Controller noticed that from the evidence recorded, the allegation of Respondent 1 (*sic* appellant) in the written statement in respect of the accommodation in possession and available to the respondent in No. 2772, Subzi Mandi, Delhi stands proved, and, therefore, he has not come to the Court with clean hands. He had suppressed the information which was in his possession as to the availability of the house at Subzi Mandi at the time of filing of the petition and as well as filing of their replication. He surrendered this accommodation only on 21-8-1984, that is, during the pendency of the petition. Respondent 1 has alleged that the appellant shifted to the ground floor of the house in dispute about a year prior to 1-1-1983 and the petition was filed on 24-7-

1983. He accepted the stand of the appellant that the respondent had done so with the mala fide intention to evict him.

4. The matter was carried to the High Court in revision. The High Court agreed with the finding of the Rent Controller as regards bona fide requirement of the landlord-respondent. On the controversy of the non-mentioning of the availability of accommodation at 2772, Subzi Mandi and that there was not a true disclosure of facts, the High Court examined the matter in detail. The High Court noticed that the father of the respondent, Din Dayal Bhatnagar had rented the premises at 2772, Subzi Mandi from a trust in the year 1944 and thereafter he was residing in the said premises with his family. Din Dayal Bhatnagar died in the month of August 1980. After his death, Rameshwar Sarup Bhatnagar, the original petitioner in the eviction petition continued to reside in that accommodation at Subzi Mandi where his father was a tenant. Rameshwar Sarup Bhatnagar shifted from the said accommodation to the ground floor accommodation when the same became available to him sometime in 1982. The landlord of the Subzi Mandi property had served a notice upon the respondent to vacate the premises in the year 1981. The actual possession of the Subzi Mandi house was handed over to the landlord in March 1984 as per receipts at Exs. AW-1/1 to AW-1/3. The said receipts disclose the name of Din Dayal Bhatnagar though he had demised long back and thus the landlord did not accept or recognize the respondent, Rameshwar Sarup Bhatnagar as a tenant. For about two years prior to the actual handing over of the possession of the premises, the same remained locked and in possession of the respondent, since Rameshwar Sarup Bhatnagar had shifted to the suit property along with his family in the year 1982. The High Court felt that in the peculiar facts of this case it was necessary to examine whether the said accommodation could be said to be "other reasonably suitable residential accommodation available to the respondent" and held, firstly, that the respondent had shifted to the (*sic* ground floor) in the suit premises long before filing of the present eviction petition and the Subzi Mandi accommodation was not a reasonably suitable residential accommodation available for him and his family. Secondly, in view of the notice of eviction served on the respondent by the landlord of the Subzi Mandi property, he was under pressure of being evicted from the said premises. The High Court was of the view that the respondent could not be said to have other reasonably suitable accommodation and therefore non-disclosure thereof could not be fatal to the petition and on that basis allowed the petition.

5. Shri Ranjit Kumar, learned counsel for the appellant, submitted that the landlord had not approached the Court with the necessary candour required under law in not disclosing the availability of the premises. In the petition filed before the Rent Controller by the landlord at column 18, he has claimed that the suit premises is required by him for his occupation for himself and the members of his family dependent on him and he has no other reasonably suitable residential accommodation. Again in column 19 at

para (*vi*), the respondent states that he has no other residential accommodation except the suit property. In the affidavit filed by the respondent, the appellant has no answer to the petition filed by the respondent for his eviction. He has referred to the accommodation in House No. 2772, Gali Lala Ram Roop, Subzi Mandi on the 1st floor and the 2nd floor. He also refers to one more accommodation in Subzi Mandi which the respondent has deliberately concealed from the Court. It is claimed that in the written statement, this position is reiterated. In the rejoinder-affidavit filed by the respondent, he stated that it is wrong to state that he has any residential accommodation in House No. 2772, Gali Lala Ram Roop, Subzi Mandi as alleged and he has no portion in his possession and he has also denied that he has any other residential house in Subzi Mandi. The Secretary of the trust which owns the property at No. 2772, Subzi Mandi, Delhi stated that the property had been originally let out to Din Dayal Bhatnagar and he died about three years back. The original respondent was the son of Din Dayal Bhatnagar and the same remained locked for about two years and thereafter Ram Sarup Bhatnagar delivered vacant possession to them in 1984. He stated that he has no personal knowledge of the accommodation available in the suit premises.

6. In the course of the affidavit of Ram Sarup Bhatnagar, it was stated that he was not in possession of any part of the property and Din Dayal Bhatnagar was a tenant of the property which he had vacated on 21-3-1984. His father was a tenant of the first floor and the barsati on the second floor. Three rooms with a kitchen and a bath were in the tenancy of his father and he cannot say that the size of one room was 14' x 18' and that the barsati was a pucca room and had a door. The trust had given a notice to him to vacate the premises in 1981.

7. Shri Ranjit Kumar, learned counsel for the appellant, contended that under Section 25-B(8) proviso, the powers of revision of the High Court were limited and would not extend to the re-examination of findings of fact in the case and suppression of the fact as to the availability of the premises was one such finding. The Rent Controller also found that with a mala fide intention to evict the appellant from the suit premises, he shifted the suit premises from Subzi Mandi. In support of his contention, he relied upon the decision in *Hari Shankar* v. *Rao Girdhari Lal Chowdhury*[1] and *Sushila Devi* v. *Avinash Chandra Jain*[2]. He submitted that unless the findings are manifestly unjust, the High Court could not have interfered in the matter.

8. Shri Gopal Subramanium, learned Senior Advocate in his reply submitted that the power of revision includes correction of errors of law and on occasions would include intervention of findings of facts where the right of a party is involved which is conferred on a party; that when the bona fide requirement of the landlord was established, the fact that there was

1 AIR 1963 SC 698 : 1962 Supp (1) SCR 933
2 (1987) 2 SCC 219

suppression of a certain fact becomes extraneous; that the trial court having taken into consideration the accommodation available in the Subzi Mandi premises came to the conclusion that the requirement of the landlord was bona fide, but even so it came to the conclusion that the suppression would not affect the case at all; that pleas are raised in order to put the other party to notice and when the other party is already in the knowledge of such information, the relevance of the lack of pleadings is of no effect; that ascertainment of facts for the purpose of finding whether requirement is bona fide or not is a matter of detail and that exercise has been done in this case. Therefore, he submitted relying on the decisions in *Meenal Eknath Kshirsagar* v. *Traders & Agencies*[3] and *Ram Dass* v. *Ishwar Chander*[4] that the view taken by the High Court must be upheld.

9. Section 14(1)(*e*) of the Act reads as follows:

> "14. (1)(*e*) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and *that the landlord or such person has no other reasonably suitable residential accommodation*;
> (emphasis supplied)

10. In making a claim that the suit premises is required bona fide for his own occupation as a residence for himself and other members of his family dependent on him and that he has no other reasonably suitable accommodation is a requirement of law before the court can state whether the landlord requires the premises bona fide for his use and occupation. In doing so, the court must also find out whether the landlord or such other person for whose benefit the premises is required has no other reasonably suitable residential accommodation. It cannot be said that the requirement of the landlord is not intermixed with the question of finding out whether he has any other reasonably suitable accommodation. If he has other reasonably suitable accommodation, then necessarily it would mean that he does not require the suit premises and his requirement may not be bona fide. In such circumstances, further inquiry would be whether that premises is more suitable than the suit premises. Therefore, the questions raised before the court would not necessarily depend upon only the pleadings. It could be a good defence that the landlord has other reasonably suitable residential accommodation and thereby defend (*sic* defeat) the claim of the landlord.

11. There cannot be a pedantic or a dogmatic approach in the matter of analysis of pleadings or of the evidence adduced thereto. It is no doubt true that if the pleadings are clearly set out, it would be easy for the court to decide the matter. But if the pleadings are lacking or vague and if both parties have understood what was the case pleaded and put forth with reference to requirement of law and placed such material before the court,

3 (1996) 5 SCC 344
4 (1988) 3 SCC 131

neither party is prejudiced. If we analyse from this angle, we do not think that the High Court was not justified in interfering with the order made by the Rent Controller.

12. It is no doubt true that the scope of a revision petition under Section 25-B(8) proviso of the Delhi Rent Control Act is a very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. Pure findings of fact may not be open to be interfered with, but (*sic* if) in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the revisional court to interfere with such a matter. In this case, the Rent Controller proceeded to analyse the matter that non-disclosure of a particular information was fatal and, therefore, dismissed the claim made by the landlord. It is in these circumstances that it became necessary for the High Court to re-examine the matter and then decide the entire question. We do not think that any of the decisions referred to by the learned counsel decides the question of the same nature with which we are concerned. Therefore, detailed reference to them is not required.

13. In the result, this appeal stands dismissed, but in the circumstances of the case, parties shall bear their own costs.

14. In the facts and circumstances of the case, it would be appropriate that the appellant be allowed time to vacate the premises till 31-5-1999, subject to his furnishing the usual undertaking in the Court within four weeks from today.

(1999) 1 Supreme Court Cases 148

(BEFORE G.T. NANAVATI AND S. RAJENDRA BABU, JJ.)

KISHORI .. Appellant;

Versus

STATE OF DELHI .. Respondent.

Criminal Appeals No. 147 of 1998 with No. 148 of 1998†, decided on December 1, 1998

Criminal Procedure Code, 1973 — S. 354(3) — Choice of sentence, death or life imprisonment — Considerations — Delhi riot of 1984 following assassination of Prime Minister of India — Mob attack resulting in death of three persons — Absence of evidence to establish that the death was caused only on account of injuries inflicted by the appellant — Appellant neither leader of the mob nor exhorting others to do any particular act — Murder of several persons having taken place in a chain of events occurring on one night and day the appellant cannot be said to have indulged in criminal activities one after another — Acts attributed to the said mob only the result of temporary frenzy

† From the Judgment and Order dated 24-10-1997 of the Delhi High Court in Murder Ref. No. 1 of 1997

19. However, the learned counsel appearing for the applicants have submitted that the NBA has rendered great service for a long number of years to the downtrodden and poor farmers and thus NBA should not be deprived of the opportunity to represent the poor peasants. Mr Sanjay Parikh, learned counsel has expressed remorse on behalf of the applicants that the applicants ought to have acted with more responsibility.

20. In view of the above, para 168 of *Narmada Bachao Andolan case*[1] stands modified to the extent as under:

> "In view of the above, we reach the inescapable conclusion that NBA has not acted with a sense of responsibility and not taken appropriate pleadings as required in law. However, in a PIL, the Court has to strike a balance between the interests of the parties. The Court has to take into consideration the pitiable condition of the oustees, their poverty, inarticulateness, illiteracy, extent of backwardness, unawareness also. It is desirable that in future the Court must view presentation of any matter by NBA with caution and care, insisting on proper pleadings, disclosure of full facts truly and fairly and should insist for an affidavit of some responsible person in support of facts contained therein."

21. With these observations, the applications stand disposed of.

(2011) 12 Supreme Court Cases 695

(BEFORE P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.)

Civil Appeal No. 7448 of 2011†

NATIONAL TEXTILE CORPORATION LIMITED .. Appellant;

Versus

NARESHKUMAR BADRIKUMAR JAGAD AND OTHERS .. Respondents.

And

Civil Appeals No. 7449 of 2011‡ with No. 7450 of 2011

TATA MILLS (A UNIT OF THE NATIONAL TEXTILE CORPORATION LIMITED) .. Appellant;

Versus

TATA HOUSING DEVELOPMENT COMPANY LIMITED .. Respondent.

Civil Appeals No. 7448 of 2011 with Nos. 7449-50 of 2011,
decided on September 5, 2011

A. **Rent Control and Eviction — Statutory tenant/Protection of Rent Act — National Textile Corporation (NTC) — Status of — Protection available to Government under Rent Control Act, held, not available to it**

† From the Judgment and Order dated 3-8-2009 of the High Court of Judicature of Bombay in Civil Revision Application No. 564 of 2008

‡ From the Judgment and Order dated 22-10-2010 of the High Court of Judicature of Bombay in Civil Revision Application No. 699 of 2009

— NTC, held, is merely a government company, and neither "Government" nor "government department" nor "agent" of Central Government within meaning of S. 182, Contract Act, 1872, in regard to tenancy concerned, the tenancy having vested absolutely in NTC itself, although it might be "agency" or "instrumentality" of Central Government for limited purpose of being labelled as "State" within ambit of Art. 12 of Constitution — Explaining meaning of "Government", and "government department", held, expression "Government" may have to be interpreted in the context of a particular statute

— In the present case, contractual tenancy period of textile mills *P* whose management in terms of 1983 Act vested in Central Government, expired in 1990 but *P* continuing as tenant by holding over leased premises — 1995 Act coming into effect — In such circumstances, what vested in Central Government and vested absolutely thereafter in NTC in terms of Ss. 3(1) and (2) of 1995 Act, held, was the right in tenancy in suit premises — Hence, rejecting NTC's contention that Central Government still continued to be tenant and that NTC was merely its "agent", held, tenancy having vested absolutely in NTC itself, NTC was not entitled to protection of either S. 3(1)(a) or S. 3(1)(b) of Maharashtra Rent Control Act, 1999 against tenancy termination notice — Textile Undertakings (Nationalisation) Act, 1995 — Ss. 3(1) & (2), 2(g) & (m) and Sch. I Col. (2) — Textile Undertakings (Taking Over of Management) Act, 1983 — Ss. 3, 2(d) & (e) and Sch. I — Companies Act, 1956 — Ss. 617 & 2(18) — Maharashtra Rent Control Act, 1999 (18 of 2000) — Ss. 3(1)(a) & (b) — Contract Act, 1872 — S. 182 — Constitution of India, Arts. 12 and 298 to 300

B. Rent Control and Eviction — Eviction suit — Maintainability — New plea challenging maintainability, raising purely factual question for first time before Supreme Court, not entertained — Lessee textile mills' right to tenancy in suit premises vesting in Central Government and thereafter vesting in National Textile Corporation (NTC) in terms of S. 3 of 1995 Act — Eviction suit filed by owner of suit premises against NTC decreed, and appeal and revision petition thereagainst dismissed — NTC's plea against maintainability of eviction suit on ground that NTC was merely agent of real tenant Central Government, having not been taken before courts below, held, did not warrant review of impugned judgment as it involved a question of fact — Civil Procedure Code, 1908 — Or. 6 Rr. 1, 2, 4 & 17 and Or. 8 R. 2 — Contract Act, 1872, Ss. 182 and 230

C. Constitution of India — Art. 136 — New plea in respect of any factual controversy although cannot be taken, held, raising of a new ground which raised a pure legal issue, for which no inquiry/proof is required, can be permitted at any stage of the proceedings — Legal position summarised — Held, such however was not the case herein — New plea raising only factual question, not entertained — Practice and Procedure — Pleadings/ New plea

D. **Constitution of India — Arts. 12, 298 to 300, 73, 77, 162 and 166 — Meaning of expressions "Government", "government department", restated — Administrative Law — Executive Wing of State — General Clauses Act, 1897 — S. 3(23) — Civil Procedure Code, 1908 — S. 80 — Penal Code, 1860, S. 17**

E. **Practice and Procedure — Pleadings — Generally — Purpose of pleadings, explained — Civil Procedure Code, 1908, Or. 6 Rr. 1, 2, 4 and 17 and Or. 8 R. 2**

F. **Corporate Laws — Textile Undertakings (Nationalisation) Act, 1995 — S. 4(6) — Scope and applicability — Held, it does not affect even pending cases adversely, much less proceedings arising subsequent to commencement of the Act**

G. **Rent Control and Eviction — Relief — Eviction suit against National Textile Corporation (NTC) — Eviction decree upheld, but, considering nature of NTC's business and in interest of justice, time from date of judgment i.e. 5-9-2011 to 31-12-2013 granted to vacate premises**

H. **Textile Undertakings (Nationalisation) Act, 1995 — Ss. 3(1) & (2) — Vesting provision in S. 3(2) — Scope — Meaning and manner of, interpretation of words "vesting" and "vest" — Vesting or conveyance of tenancy by statutory transfer — Where textile undertaking had tenancy right in suit premises, held, said right vested in Central Government and stood thereafter transferred to and vested absolutely in National Textile Corporation (NTC) — Contention that Central Government still remained tenant and therefore was protected under exemption provisions in Rent Control Act since NTC was merely its agent, rejected — Property Law — Conveyancing — Transfer of Property Act, 1882, Ss. 5, 8, 19 and 105 (Paras 37 to 39 and 42)**

I. **Contract and Specific Relief — Specific Contracts — Agency — Agent's rights and liabilities — Suit or proceeding against agent when principal known — Maintainability of — Challenge to, raised for first time before Supreme Court, being a question of fact, not entertained — Contract Act, 1872 — S. 230 — Civil Procedure Code, 1908, Or. 8 R. 2 (Para 43)**

J. **Debt, Financial and Monetary Laws — Banks and financial institutions (FIs), held, though may be part of "State" under Art. 12 for limited purposes are not part of Government nor are they government departments — State Financial Corporations Act, 1951, Ss. 2(aa) & (b), 3 and 3-A (Paras 24 to 28 and 33)**

K. **Public Sector — Government Companies/PSUs — If, and when can be held to be agencies of Government — Constitution of India, Art. 12 (Paras 24 to 28 and 33)**

Held :

The questions do arise as to whether in the facts and circumstances of the present case the Government is a tenant or the appellant can be termed as the "Government" or "government department" or "agent" of the Central Government in the context of the 1999 Act. (Para 20)

The Government loosely means the body of persons authorised to administer the affairs of, or to govern, a State. It commands and its decision becomes binding upon the members of the society. The Government includes, both the Central Government as well as the State Government. The Government is impersonal in character having three independent functionaries as its branches. It performs regal and sovereign functions, which are not alienable to any other person e.g. defence, security, currency, etc. The Government means a group of people responsible for governing the country. It consists of the activities, methods and principles involved in governing a country or other political unit. (Para 21)

The Government is a body that governs and exercises control by issuing directions and is not governed by any other agency. It is a body politic that formulates policies and the laws by which a civil society is controlled. It is a political concept formulated to rule the nation. It is not a profit and loss establishment. Thus, government department means something purely fundamental i.e. relating to a particular Government or to the practice of governing a country. It has different wings. However, the expression "Government" may be required to be interpreted in the context used in a particular statute. The expression denotes the executive and not the legislature. (Paras 22 and 23)

State of Rajasthan v. *Sripal Jain*, AIR 1963 SC 1323 : (1963) 2 Cri LJ 347; *Pashupati Nath Sukul* v. *Nem Chandra Jain*, (1984) 2 SCC 404; *R.S. Nayak* v. *A.R. Antulay*, (1984) 2 SCC 183 : 1984 SCC (Cri) 172; *V.S. Mallimath* v. *Union of India*, (2001) 4 SCC 31 : 2001 SCC (L&S) 629, *relied on*

To perform the functions, the Government has its various departments and to facilitate its working, the Government itself may be divided into various sections. To carry out the commercial activities by the State, the corporations have been established by the enactment of statutes and the "power to charter corporations as incidental to or in aid of governmental functions". Such corporations would ex-hypothesis be agencies of the Government. (Para 24)

Sukhdev Singh v. *Bhagatram Sardar Singh Raghuvanshi*, (1975) 1 SCC 421 : 1975 SCC (L&S) 101; *Ramana Dayaram Shetty* v. *International Airport Authority of India*, (1979) 3 SCC 489, *relied on*

Banks and financial institutions carrying out financial transactions, are independent to do business subject to the regulatory laws made by the legislature. They are not under the direct executive control of the Government. They are profit and loss earning organisations coupled with all connected financial and economic activities. They are a body corporate with a limited role to play and do not "govern" people as understood by governance. (Para 25)

Federal Bank Ltd. v. *Sagar Thomas*, (2003) 10 SCC 733, *relied on*

Food Corporation of India has been held to be not a government department but a government company. The identity of the government company remains distinct from the Government. (Paras 26 to 28)

A.K. Bindal v. *Union of India*, (2003) 5 SCC 163 : 2003 SCC (L&S) 620, *reiterated*

State of Punjab v. *Raja Ram*, (1981) 2 SCC 66; *Food Corporation of India* v. *Municipal Committee, Jalalabad*, (1999) 6 SCC 74, *relied on*

State of Bihar v. *Union of India*, (1970) 1 SCC 67; *S.S. Dhanoa* v. *MCD*, (1981) 3 SCC 431 : 1982 SCC (L&S) 6 : 1981 SCC (Cri) 733; *K. Jayamohan* v. *State of Kerala*, (1997) 5 SCC 170 : 1997 SCC (L&S) 1140; *Hindustan Steel Works Construction Ltd.* v. *State of Kerala*, (1997) 5 SCC 171 : 1997 SCC (L&S) 1219; *Mohd. Hadi Raja* v. *State of Bihar*, (1998) 5 SCC 91 : 1998 SCC (Cri) 1265; *State* v. *Kulwant Singh*, (2003) 9 SCC

193 : 2003 SCC (Cri) 1786; *Electronics Corpn. of India Ltd.* v. *Govt. of A.P. (Deptt. of Revenue)*, (1999) 4 SCC 458, *referred to*

a An agent who receives property from or for his principal, obtains no interest for himself in the property for the reason that possession of the agent is the possession of the principal and in view of the fiduciary relationship the agent cannot claim his own possession. The appellant may be called the "agency" or "instrumentality" of the Central Government for a limited purpose, namely, to label it to be the "State" within the ambit of Article 12 of the Constitution. However, even by a stretch of imagination, the appellant cannot be held to be an b "agent" of the Central Government as defined under Section 182 of the Contract Act. Hence, the appellant is neither the Government nor the department of the Government, but a government company. The appellant cannot identify itself with the Central Government. The submission made by the appellant that it is merely an agent of the Central Government is not worth consideration at all as the rights *vested* in the appellant stood crystallised after being transferred by the Central Government. The appellant is being controlled by the provisions of the c 1995 Act and not by the Central Government. Whereas an agent is merely an extended hand of the principal and cannot claim independent rights.

(Paras 29, 32 and 33)

Southern Roadways Ltd. v. *S.M. Krishnan*, (1989) 4 SCC 603, *reiterated*

Chandrakantaben v. *Vadilal Bapalal Modi*, (1989) 2 SCC 630, *referred to*

Prem Nath Motors Ltd. v. *Anurag Mittal*, (2009) 16 SCC 274; *Vivek Automobiles Ltd.* v. d *Indian Inc.*, (2009) 17 SCC 657, *followed*

Pradeep Kumar Biswas v. *Indian Institute of Chemical Biology*, (2002) 5 SCC 111 : 2002 SCC (L&S) 633, *referred to*

The provisions of Sections 3(1) and (2) of the 1995 Act require construction giving proper meaning to the expression "vesting". "Vesting" means having obtained an absolute and indefeasible right. It refers to and is used for transfer or conveyance. "Vesting" in the general sense, means vesting in possession. e However, "vesting" does not necessarily and always means possession but includes vesting of interest as well. "Vesting" may mean vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision of the Act. The word "vest" has different shades, taking colour from the context in which it is used. It does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of a f limited vesting, being limited, *in title as well as duration*. Thus, the word "vest" clothes varied colours from the context and situation in which the word came to be used in the statute. The expression "vest" is a word of ambiguous import since it has no fixed connotation and the same has to be understood in a different context under different set of circumstances. (Paras 37, 38 and 42)

Fruit & Vegetable Merchants Union v. *Delhi Improvement Trust*, AIR 1957 SC 344; *Maharaj Singh* v. *State of U.P.*, (1977) 1 SCC 155; *Municipal Corpn. of Hyderabad* v. g *P.N. Murthy*, (1987) 1 SCC 568; *Vatticherukuru Village Panchayat* v. *Nori Venkatarama Deekshithulu*, 1991 Supp (2) SCC 228; *M. Ismail Faruqui* v. *Union of India*, (1994) 6 SCC 360; *Govt. of A.P.* v. *Nizam, Hyderabad*, (1996) 3 SCC 282; *K.V. Shivakumar* v. *Appropriate Authority*, (2000) 3 SCC 485; *Municipal Corpn. of Greater Bombay* v. *Hindustan Petroleum Corpn.*, (2001) 8 SCC 143; *Sulochana Chandrakant Galande* v. *Pune Municipal Transport*, (2010) 8 SCC 467 : (2010) 3 SCC (Civ) 415, *relied on*

Right vested in the Central Government stood transferred and vested in the h appellant. Both are separate legal entities and are not synonymous. The appellant being neither the Government nor the government department cannot agitate that

as it has been substituted in place of the Central Government, and acts merely as an agent of the Central Government, thus protection of the 1999 Act is available to it. Acceptance of such a submission would require interpreting the expression "vesting" as holding on behalf of some other person. Such a meaning cannot be given to the expression "vesting". (Para 42)

It is a settled legal proposition that an agent cannot be sued where the principal is known or has been disclosed. (Paras 31 and 43)

In the instant case, the appellant has not taken the plea before either of the courts below. In view of the provisions of Order 8 Rule 2 CPC, the appellant was under an obligation to take a specific plea to show that the suit was not maintainable which it failed to do so. The vague plea to the extent that the suit was bad for non-joinder and, thus, was not maintainable, did not meet the requirement of law. The appellant ought to have taken a plea in the written statement that it was merely an "agent" of the Central Government, thus the suit against it was not maintainable. More so, whether *A* is an agent of *B* is a question of fact and has to be properly pleaded and proved by adducing evidence. The appellant miserably failed to take the required pleadings for the purpose. (Para 43)

National Textile Corpn. Ltd. v. *Nareshkumar Badrikumar Jagad*, CRA No. 564 of 2008 order dated 3-8-2009 (Bom), *affirmed*

Trojan & Co. v. *Nagappa Chettiar*, AIR 1953 SC 235; *State of Maharashtra* v. *Hindustan Construction Co. Ltd.*, (2010) 4 SCC 518 : (2010) 2 SCC (Civ) 207; *Kalyan Singh Chouhan* v. *C.P. Joshi*, (2011) 11 SCC 786 : (2011) 4 SCC (Civ) 656, *relied on*

Ram Sarup Gupta v. *Bishun Narain Inter College*, (1987) 2 SCC 555; *Bachhaj Nahar* v. *Nilima Mandal*, (2008) 17 SCC 491 : (2009) 5 SCC (Civ) 927; *Kashi Nath* v. *Jaganath*, (2003) 8 SCC 740; *Biswanath Agarwalla* v. *Sabitri Bera*, (2009) 15 SCC 693 : (2009) 5 SCC (Civ) 695; *Syed and Co.* v. *State of J&K*, 1995 Supp (4) SCC 422; *Chinta Lingam* v. *Govt. of India*, (1970) 3 SCC 768; *J. Jermons* v. *Aliammal*, (1999) 7 SCC 382, *relied on*

Sanghvi Reconditioners (P) Ltd. v. *Union of India*, (2010) 2 SCC 733; *Greater Mohali Area Development Authority* v. *Manju Jain*, (2010) 9 SCC 157 : (2010) 3 SCC (Civ) 639, *relied on*

L. **Textile Undertakings (Taking Over of Management) Act, 1983 — Preamble, S. 3 and Sch. I — Object of enactment of said Act, restated (Para 3)**

M. **Rent Control and Eviction — Maharashtra Rent Control Act, 1999 (18 of 2000) — Ss. 3(1)(a) and (b) — Validity and applicability — Decision in *Saraswat Coop. Bank Ltd. case*, (2006) 8 SCC 520, reiterated (Para 34)**

Saraswat Coop. Bank Ltd. v. *State of Maharashtra*, (2006) 8 SCC 520, *reiterated*

N. **Rent Control and Eviction — Maharashtra Rent Control Act, 1999 (18 of 2000) — S. 3(1)(b) — Provision in, excluding public sector undertakings and public limited companies having paid-up share capital of rupees one crore or more, held, applicable in facts of present case (Para 36)**

Leelabai Gajanan Pansare v. *Oriental Insurance Co. Ltd.*, (2008) 9 SCC 720, *applied*

D.C. Bhatia v. *Union of India*, (1995) 1 SCC 104, *referred to*

H-D/48558/SV

Advocates who appeared in this case :

Parag P. Tripathi, Additional Solicitor General, Mukul Rohatgi, Shyam Divan and Ramesh P. Bhatt, Senior Advocates (Kunal Bahri, Ms Anitha Shenoy, Sanjoy Ghose, Ms Mayuri Raguvanshi, Gautam Narayan, Mahesh Agarwal, Rishi Agarwal, Ranjit Shetty, Gaurav Goel, E.C. Agrawala, Rakesh Sinha and Abhijat P. Medh) Advocates for the appearing parties.

Chronological list of cases cited ***on page(s)***

34. (1987) 2 SCC 555, *Ram Sarup Gupta* v. *Bishun Narain Inter College* 705*a-b*
35. (1987) 1 SCC 568, *Municipal Corpn. of Hyderabad* v. *P.N. Murthy* 711*b*
36. (1984) 2 SCC 404, *Pashupati Nath Sukul* v. *Nem Chandra Jain* 707*a*
37. (1984) 2 SCC 183 : 1984 SCC (Cri) 172, *R.S. Nayak* v. *A.R. Antulay* 707*a*
38. (1981) 3 SCC 431 : 1982 SCC (L&S) 6 : 1981 SCC (Cri) 733, *S.S. Dhanoa* v. *MCD* 707*f*
39. (1981) 2 SCC 66, *State of Punjab* v. *Raja Ram* 707*d*
40. (1979) 3 SCC 489, *Ramana Dayaram Shetty* v. *International Airport Authority of India* 707*b-c*
41. (1977) 1 SCC 155, *Maharaj Singh* v. *State of U.P.* 711*b*
42. (1975) 1 SCC 421 : 1975 SCC (L&S) 101, *Sukhdev Singh* v. *Bhagatram Sardar Singh Raghuvanshi* 707*b-c*
43. (1970) 3 SCC 768, *Chinta Lingam* v. *Govt. of India* 705*e*
44. (1970) 1 SCC 67, *State of Bihar* v. *Union of India* 707*f*
45. AIR 1963 SC 1323 : (1963) 2 Cri LJ 347, *State of Rajasthan* v. *Sripal Jain* 707*g-h*
46. AIR 1957 SC 344, *Fruit & Vegetable Merchants Union* v. *Delhi Improvement Trust* 711*b*
47. AIR 1953 SC 235, *Trojan & Co.* v. *Nagappa Chettiar* 705*a*

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J.— This appeal has been preferred against the judgment and order dated 3-8-2009 in *National Textile Corpn. Ltd.* v. *Nareshkumar Badrikumar Jagad*[1] passed by the High Court of Judicature of Bombay affirming the judgment and order of the Small Causes Appellate Court dated 14-8-2008 in Appeal No. 627 of 2006 by which the appellate court has affirmed the judgment and decree dated 5-8-2006 in TE & R Suit No. 311/326 of 2001 passed by the Court of Small Causes at Bombay.

Facts

2. The suit premises belongs to the trust run by the respondents, Nareshkumar Badrikumar Jagad and others. Shri Damodar Dass Tapi Dass and Shri Daya Bhai Tapidas executed a lease deed dated 11-3-1893 in respect of the suit premises admeasuring 12118 sq yd bearing Plot No. 9 in Survey No. 73 of Lower Parel Division, N.M. Joshi Marg, Chinchpokli, Mumbai 400 011, in favour of a company named Hope Mills Ltd. for a period of 99 years commencing from 22-10-1891. The lease so executed was to expire on 21-10-1990. The original owners transferred and conveyed the suit property in favour of one Harichand Roopchand and Ratan Bai on 22-2-1907. Thereafter, the suit property came to be vested in and owned by a public charitable trust, namely, Harichand Roopchand Charity Trust (hereinafter called as "the Trust"). The leasehold rights in respect of the suit property stood transferred to Prospect Mills Ltd. and, thereafter to Diamond Spinning & Weaving Co. Pvt. Ltd. and, ultimately, vide a lease indenture dated 25-10-1926 to Toyo Poddar Cotton Mills Ltd. (hereinafter called "the Poddar Mills").

1 CRA No. 564 of 2008 order dated 3-8-2009 (Bom)

3. The Textile Undertakings (Taking Over of Management) Act, 1983 (hereinafter called "the 1983 Act") was enacted by Parliament in order to take over the management of 13 textile undertakings including the Poddar Mills pending their nationalisation. The lease granted in favour of the Poddar Mills expired by efflux of time on 22-10-1990. Thus, the said Poddar Mills continued as a tenant by holding over the suit premises. The Trust issued a legal notice dated 2-12-1994 to the National Textile Corporation (hereinafter called as "the appellant"), terminating its tenancy qua the suit premises. Parliament enacted the Textile Undertakings (Nationalisation) Act, 1995 (hereinafter called "the 1995 Act").

4. The Trust filed an eviction suit against the appellant under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called "the 1947 Act"). The 1947 Act stood repealed by the Maharashtra Rent Control Act, 1999 (hereinafter called "the 1999 Act"). The respondent Trust issued a notice for terminating the tenancy of the appellant vide notice dated 26-9-2000. The respondent-plaintiffs after the withdrawal of the suit filed under the 1947 Act, filed a fresh suit in the Small Cause Court at Bombay seeking eviction of the appellant and for a decree of mesne profits on 20-4-2001.

5. The appellant filed the written statement denying the pleas taken by the respondent-plaintiffs. The suit was decreed in favour of the respondent-plaintiffs vide judgment and decree dated 5-8-2006 by which the appellant was directed to hand over vacant and peaceful possession of the suit premises to the respondents within four months.

6. Being aggrieved, the appellant preferred Appeal No. 627 of 2006 to the Division Bench of the Small Cause Court at Bombay on 13-11-2006 which was dismissed by the appellate court by affirming the judgment and decree of the trial court vide judgment and decree dated 14-8-2008. The appellant preferred civil revision before the High Court of Bombay, which has been dismissed vide the impugned judgment and order dated 3-8-2009[1]. Hence, this appeal.

7. Shri Parag P. Tripathi, learned Additional Solicitor General, appearing for the appellant has submitted that the judgments and decrees of the courts below have to be set aside as none of the courts below has taken into consideration the effect of the provisions of the 1995 Act by virtue of which the textile undertaking stood absolutely vested in the Central Government and further vested in the appellant. As on the expiry of the lease of 99 years on 22-10-1990, the 1947 Act was in force, the then tenant, Poddar Mills became the statutory tenant. Such tenancy rights stood vested absolutely in the Central Government on the commencement of the 1995 Act by operation of law. The appellant stepped in the shoes of the Central Government merely as an agent, thus, the Central Government remained the tenant. The Central Government continued to be a tenant in the suit premises and thus, would be protected in terms of Section 3(1)(*a*) of the 1999 Act being premises let out

to the Government. The courts below failed to consider this vital legal issue. The suit filed by the respondents was not maintainable. The judgments and decrees of the courts below are liable to be set aside.

8. Per contra, Shri Mukul Rohatgi, learned Senior Counsel appearing for the respondents, submitted that it is not permissible for the court to travel beyond the pleadings. No evidence can be led on an issue in respect of which proper pleadings have not been taken. Findings of fact cannot be recorded on a issue on facts in respect of which no factual foundation has been laid. The appellant had never raised the issue before the courts below that the Central Government was the tenant and it was holding the premises merely as an agent. In the written statement filed by the appellants, no reference was made to the provisions of the 1995 Act. Even otherwise, the tenancy rights which had vested in the Central Government, stood vested immediately, by operation of law, in the appellant, a public sector undertaking as well as the public limited company having a paid-up share capital of more than rupees one crore, thus the appellant has no protection of the 1999 Act.

9. As the said provisions of the 1999 Act are not attracted in the instant case, the suit for eviction was filed before the Small Cause Court at Bombay. All the issues raised in the plaint have been adjudicated by the three courts. The power of the Revisional Court, in view of the provisions of Section 115 of the Code of Civil Procedure, 1908 (hereinafter called as "CPC"), remains very limited after the Amendment Act, 2002, w.e.f. 1-7-2002. Being the fourth court, in exercise of its power under Article 136 of the Constitution, this Court should not entertain the appeal. The appeal lacks merit and is liable to be dismissed.

10. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

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

12. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide

Trojan & Co. v. *Nagappa Chettiar*[2], *State of Maharashtra* v. *Hindustan Construction Co. Ltd.*[3] and *Kalyan Singh Chouhan* v. *C.P. Joshi*[4].)

13. In *Ram Sarup Gupta* v. *Bishun Narain Inter College*[5] this Court held as under: (SCC p. 562, para 6)

> "*6.* ... in the absence of pleading, evidence, if any, produced by the parties cannot be considered. ... no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it."

Similar view has been reiterated in *Bachhaj Nahar* v. *Nilima Mandal*[6].

14. In *Kashi Nath* v. *Jaganath*[7] (SCC p. 745, para 17) this Court held that where the evidence is not in line with the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon. Same remains the object for framing the issues under Order 14 CPC and the court should not decide a suit on a matter/point on which no issue has been framed. (Vide *Biswanath Agarwalla* v. *Sabitri Bera*[8] and *Kalyan Singh Chouhan*[4].)

15. In *Syed and Co.* v. *State of J&K*[9] this Court held as under: (SCC pp. 423-24, paras 7-8)

> "*7.* ... Without specific pleadings in that regard, evidence could not be led in since it is a settled principle of law that no amount of evidence can be looked unless there is a pleading.
>
> *8.* Therefore, without amendment of the pleadings merely trying to lead evidence is not permissible."

16. In *Chinta Lingam* v. *Govt. of India*[10] this Court held that unless factual foundation has been laid in the pleadings no argument is permissible to be raised on that particular point.

17. In *J. Jermons* v. *Aliammal*[11] while dealing with a similar issue, this Court held as under: (SCC p. 398, paras 31-32)

> "*31.* ... there is a fundamental difference between a case of raising additional ground based on the pleadings and the material available on record and a case of taking a new plea not borne out by the pleadings. In the former case no amendment of pleadings is required whereas in the latter it is necessary to amend the pleadings. ...

2 AIR 1953 SC 235
3 (2010) 4 SCC 518 : (2010) 2 SCC (Civ) 207 : AIR 2010 SC 1299
4 (2011) 11 SCC 786 : (2011) 4 SCC (Civ) 656 : AIR 2011 SC 1127
5 (1987) 2 SCC 555 : AIR 1987 SC 1242
6 (2008) 17 SCC 491 : (2009) 5 SCC (Civ) 927 ; AIR 2009 SC 1103
7 (2003) 8 SCC 740
8 (2009) 15 SCC 693 : (2009) 5 SCC (Civ) 695
9 1995 Supp (4) SCC 422
10 (1970) 3 SCC 768 : AIR 1971 SC 474
11 (1999) 7 SCC 382

32. ... The respondents cannot be permitted to make out a new case by seeking permission to raise additional grounds in revision."

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

19. There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings. [See *Sanghvi Reconditioners (P) Ltd.* v. *Union of India*[12] and *Greater Mohali Area Development Authority* v. *Manju Jain*[13].]

20. The questions do arise as to whether in the facts and circumstances of this case the Government is a tenant or the appellant can be termed as the "Government" or "government department" or "agent" of the Central Government in the context of the 1999 Act.

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

22. The Government is a body that governs and exercises control by issuing directions and is not governed by any other agency. It is a body politic that formulates policies and the laws by which a civil society is controlled. It is a political concept formulated to rule the nation. It is not a profit and loss establishment.

> "*12.* ... From the legal point of view, the Government may be described as the exercise of certain powers and the performance of certain duties by public authorities or officers, together with certain private persons or corporations exercising public functions."*

23. Thus, government department means something purely fundamental i.e. relating to a particular Government or to the practice of governing a country. It has different wings. However, the expression "Government" may be required to be interpreted in the context used in a particular statute. The expression denotes the executive and not the legislature. (Vide *State of*

12 (2010) 2 SCC 733 : AIR 2010 SC 1089

13 (2010) 9 SCC 157 : (2010) 3 SCC (Civ) 639 : AIR 2010 SC 3817

* **Ed.**: As observed in *Pashupati Nath Sukul* v. *Nem Chandra Jain*, (1984) 2 SCC 404, p. 412, para 12 : AIR 1984 SC 399

Rajasthan v. *Sripal Jain*[14], *Pashupati Nath Sukul* v. *Nem Chandra Jain*[15], *R.S. Nayak* v. *A.R. Antulay*[16] and *V.S. Mallimath* v. *Union of India*[17].)

24. To perform the functions, the Government has its various departments and to facilitate its working, the Government itself may be divided into various sections. To carry out the commercial activities by the State, the corporations have been established by the enactment of statutes and the "power to charter corporations as incidental to or in aid of governmental functions". Such corporations would ex-hypothesis be agencies of the Government. (Vide *Sukhdev Singh* v. *Bhagatram Sardar Singh Raghuvanshi*[18], SCC p. 450, para 84 and *Ramana Dayaram Shetty* v. *International Airport Authority of India*[19], SCC p. 506, para 13.)

25. Banks and financial institutions carrying out financial transactions, are independent to do business subject to the regulatory laws made by the legislature. They are not under the direct executive control of the Government. They are profit and loss earning organisations coupled with all connected financial and economic activities. They are a body corporate with a limited role to play and do not "govern" people as understood by governance. (See *Federal Bank Ltd.* v. *Sagar Thomas*[20].)

26. In *State of Punjab* v. *Raja Ram*[21], this Court considered the provisions of the Food Corporation Act, 1964 and held that Food Corporation of India was not a government department but a government company. The Court observed: (SCC p. 69, para 9)

> "*9.* ... A government department has to be an organisation which is not only completely controlled and financed by the Government but has also no identity of its own. The money earned by such a department goes to the exchequer of the Government and losses incurred by the department are losses of the Government. The Corporation, on the other hand, is an autonomous body capable of acquiring, holding and disposing of property and having the power to contract. It may also sue or be sued by its own name and the Government does not figure in any litigation to which it is a party."

(See also *State of Bihar* v. *Union of India*[22]; *S.S. Dhanoa* v. *MCD*[23]; *K. Jayamohan* v. *State of Kerala*[24]; *Hindustan Steel Works Construction Ltd.*

14 AIR 1963 SC 1323 : (1963) 2 Cri LJ 347
15 (1984) 2 SCC 404 : AIR 1984 SC 399
16 (1984) 2 SCC 183 : 1984 SCC (Cri) 172 : AIR 1984 SC 684
17 (2001) 4 SCC 31 : 2001 SCC (L&S) 629 : AIR 2001 SC 1455
18 (1975) 1 SCC 421 : 1975 SCC (L&S) 101 : AIR 1975 SC 1331
19 (1979) 3 SCC 489 : AIR 1979 SC 1628
20 (2003) 10 SCC 733 : AIR 2003 SC 4325
21 (1981) 2 SCC 66 : AIR 1981 SC 1694
22 (1970) 1 SCC 67 : AIR 1970 SC 1446
23 (1981) 3 SCC 431 : 1982 SCC (L&S) 6 : 1981 SCC (Cri) 733 : AIR 1981 SC 1395
24 (1997) 5 SCC 170 : 1997 SCC (L&S) 1140

v. *State of Kerala*[25]; *Mohd. Hadi Raja* v. *State of Bihar*[26] and *State* v. *Kulwant Singh*[27].)

27. In *Food Corpn. of India* v. *Municipal Committee, Jalalabad*[28] this Court considered the case of imposition of house tax under the provisions of the Punjab Municipalities Act, 1911 and held that Food Corporation of India was a government company and not a government department—*a distinct entity from the Central Government*. Thus, was not entitled to exemption from tax under Article 285 of the Constitution. While deciding the said case, reliance had been placed by the Court on its earlier judgment in *Electronics Corpn. of India Ltd.* v. *Govt. of A.P. (Deptt. of Revenue)*[29].

28. In *A.K. Bindal* v. *Union of India*[30] this Court clarified: (SCC p. 175, para 17)

> "*17.* The legal position is that *identity of the government company remains distinct from the Government. The government company is not identified with the Union* but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire shareholding is owned by the Central Government will not make the incorporated company as Central Government."
>
> (emphasis added)

29. In *Southern Roadways Ltd.* v. *S.M. Krishnan*[31] this Court examined an issue whether the possession of the agent can be termed to be the possession of the principal for all purposes including the acquisition of title and held that agent who receives property from or for his principal, obtains no interest for himself in the property for the reason that possession of the agent is the possession of the principal and in view of the fiduciary relationship the agent cannot claim his own possession. While deciding the said case reliance was placed on various earlier judgments including *Chandrakantaben* v. *Vadilal Bapalal Modi*[32], SCC p. 643, para 19.

30. In *Prem Nath Motors Ltd.* v. *Anurag Mittal*[33], this Court dealt with the relationship of agent and principal and held that in view of the provisions of Section 230 of the Contract Act, 1872 (hereinafter called "the Contract Act"), an agent is not liable for the acts of a disclosed principal subject to a contract to the contrary. Where the relationship of principal and agent is

25 (1997) 5 SCC 171 : 1997 SCC (L&S) 1219 : AIR 1997 SC 2275
26 (1998) 5 SCC 91 : 1998 SCC (Cri) 1265 : AIR 1998 SC 1945
27 (2003) 9 SCC 193 : 2003 SCC (Cri) 1786 : AIR 2003 SC 1599
28 (1999) 6 SCC 74 : AIR 1999 SC 2573
29 (1999) 4 SCC 458 : AIR 1999 SC 1734
30 (2003) 5 SCC 163 : 2003 SCC (L&S) 620
31 (1989) 4 SCC 603 : AIR 1990 SC 673
32 (1989) 2 SCC 630 : AIR 1989 SC 1269
33 (2009) 16 SCC 274 : AIR 2009 SC 567

established the agent cannot be sued when the principal has been disclosed. (See also *Vivek Automobiles Ltd.* v. *Indian Inc.*[34], SCC p. 659, para 8.)

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

32. The appellant may be called the "agency" or "instrumentality" of the Central Government for a limited purpose, namely, to label it to be the "State" within the ambit of Article 12 of the Constitution. (See *Pradeep Kumar Biswas* v. *Indian Institute of Chemical Biology*[35].) However, even by a stretch of imagination, the appellant cannot be held to be an "agent" of the Central Government as defined under Section 182 of the Contract Act.

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

34. Sections 3(1)(*a*) & (*b*) provide for exemption from the application of the 1999 Act. This Court examined the validity of provisions of Section 3(1)(*a*) and (*b*) of the 1999 Act in *Saraswat Coop. Bank Ltd.* v. *State of Maharashtra*[36] and came to the conclusion that it was within the exclusive domain of the legislature to decide which section of tenants should be afforded protection on the basis of economic criteria. If a particular section of tenants is not protected considering their economic conditions it can be held to be a reasonable classification and making such distinction is valid. The exclusion of premises let or sub-let to banks or any public sector undertaking or any corporation established by or under any Central or State Act or foreign missions, international agencies, multinational companies and private and public limited companies having paid-up share capital of rupees one crore or more could not be held to be arbitrary. The Court further held that the provisions of Section 3(1)(*b*) are applicable to all the premises whether let out before or after the commencement of the 1999 Act.

35. In *Leelabai Gajanan Pansare* v. *Oriental Insurance Co. Ltd.*[37] this Court dealt with the same issue as to which of the categories of tenants have been excluded from the operation of the 1999 Act and held as under: (SCC pp. 756-57, paras 73-74)

34 (2009) 17 SCC 657
35 (2002) 5 SCC 111 : 2002 SCC (L&S) 633
36 (2006) 8 SCC 520
37 (2008) 9 SCC 720

"*73.* ... Therefore, we are of the view that on a plain meaning of the word '*PSUs*' as understood by the legislature, it is clear that, India's PSUs are in the form of statutory corporations, public sector companies, government companies and companies in which the public are substantially interested (*see* the Income Tax Act, 1961). When the word PSU is mentioned in Section 3(1)(*b*), the State Legislature is presumed to know the recommendations of the various Parliamentary Committees on PSUs. These entities are basically cash-rich entities. They have positive net asset value. They have positive net worths. *They can afford to pay rents at the market rate.*

74. ... we hold that Section 3(1)(*b*) clearly applies to different categories of tenants, all of whom are capable of paying rent at market rates. Multinational companies, international agencies, statutory corporations, *government companies, public sector companies* can certainly afford to pay rent at the market rates. This thought is further highlighted by the last category in Section 3(1)(*b*). Private limited companies and public limited companies having a paid-up share capital of more than Rs 1,00,00,000 are excluded from the protection of the Rent Act. This further supports the view which we have taken that each and every entity mentioned in Section 3(1)(*b*) can afford to pay rent at the market rates." (emphasis added)

(See also *D.C. Bhatia* v. *Union of India*[38].)

36. The case stands squarely covered by the judgment of this Court in *Leelabai Gajanan Pansare*[37] so far as the issue of exemption to the 1999 Act is concerned.

37. Sections 3(1) and (2) of the 1995 Act read as under:

"**3.** ***Acquisition of rights of owners and vesting of the textile undertakings.***—(1) On the appointed day, the right, title and interest of the owner in relation to every textile undertaking shall stand transferred to, and *shall vest absolutely* in, the Central Government.

(2) Every textile undertaking *which stands vested* in the Central Government by virtue of sub-section (1) shall, immediately after it has so vested, *stand transferred to, and vested* in, the National Textile Corporation." (emphasis added)

The aforesaid provisions require construction giving proper meaning to the expression "vesting".

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

38 (1995) 1 SCC 104

vesting in every situation and is capable of bearing the meaning of a limited vesting, being limited, *in title as well as duration*. Thus, the word "vest" clothes varied colours from the context and situation in which the word came to be used in the statute. The expression "vest" is a word of ambiguous import since it has no fixed connotation and the same has to be understood in a different context under different set of circumstances. [Vide *Fruit & Vegetable Merchants Union* v. *Delhi Improvement Trust*[39], *Maharaj Singh* v. *State of U.P.*[40], *Municipal Corpn. of Hyderabad* v. *P.N. Murthy*[41], *Vatticherukuru Village Panchayat* v. *Nori Venkatarama Deekshithulu*[42], *M. Ismail Faruqui* v. *Union of India*[43], SCC p. 404, para 41, *Govt. of A.P.* v. *Nizam, Hyderabad*[44], *K.V. Shivakumar* v. *Appropriate Authority*[45], *Municipal Corpn. of Greater Bombay* v. *Hindustan Petroleum Corpn.*[46] and *Sulochana Chandrakant Galande* v. *Pune Municipal Transport*[47].]

39. The 1995 Act has been brought for providing the acquisition and transfer of the rights, title and interest of the owners in respect of the textile undertakings. The respondents had not been the owner of the textile undertaking. They had rented out the premises to Poddar Mills and what had vested in the Central Government was only the right, title and interest of Poddar Mills and nothing else. Poddar Mills was having only right in tenancy in the suit premises. The owner had been defined in clause (*g*) of Section 2 of the 1995 Act, taking into consideration the expression in relation to a textile undertaking as a proprietor or lessee, or occupier of the textile company undertaking. It included even the Receiver and liquidator where the companies had gone under liquidation.

40. "Textile undertaking" has been defined in Section 2(*m*) which means undertaking specified in Column (2) of the First Schedule to the 1995 Act i.e. the textile undertakings, management of which had been taken over by the Central Government under the 1983 Act. The First Schedule included Poddar Mills at Sl. No. 9 and Poddar Mills had been paid compensation to the tune of Rs 7,46,30,000. Nothing has been paid so far as Respondent 1 is concerned.

41. Sub-section (6) of Section 4 of the 1995 Act provides that any suit, appeal or other proceedings of whatever nature in relation to any property which had vested in the Central Government under Section 3 on the appointed day, instituted or preferred by or against the textile company is

39 AIR 1957 SC 344
40 (1977) 1 SCC 155 : AIR 1976 SC 2602
41 (1987) 1 SCC 568 : AIR 1987 SC 802
42 1991 Supp (2) SCC 228
43 (1994) 6 SCC 360 : AIR 1995 SC 605
44 (1996) 3 SCC 282
45 (2000) 3 SCC 485
46 (2001) 8 SCC 143 : AIR 2001 SC 3630
47 (2010) 8 SCC 467 : (2010) 3 SCC (Civ) 415

pending, the same shall not abate or adversely affect the rights of the parties by reason of the transfer of textile undertaking. Thus, the commencement of the 1995 Act does not really affect even the pending cases. In view thereof, it is beyond our imagination as to how the 1995 Act would prejudice the cause of the respondents in the proceedings which arose subsequent to the commencement of this Act.

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

43. It is a settled legal proposition that an agent cannot be sued where the principal is known. In the instant case, the appellant has not taken the plea before either of the courts below. In view of the provisions of Order 8 Rule 2 CPC, the appellant was under an obligation to take a specific plea to show that the suit was not maintainable which it failed to do so. The vague plea to the extent that the suit was bad for non-joinder and, thus, was not maintainable, did not meet the requirement of law. The appellant ought to have taken a plea in the written statement that it was merely an "agent" of the Central Government, thus the suit against it was not maintainable. More so, whether *A* is an agent of *B* is a question of fact and has to be properly pleaded and proved by adducing evidence. The appellant miserably failed to take the required pleadings for the purpose.

44. Thus, in view of the above, we reach the inescapable conclusion that the appellant is not entitled for exemption under Section 3(1)(*a*) or 3(1)(*b*) of the 1999 Act. Nor can it claim the status of an "agent" of the Central Government. Submissions advanced on behalf of the appellant are preposterous. Facts and circumstances of the case do not warrant review of the impugned judgment.

45. However, considering the nature of business of the appellant, it is in the interest of justice that the appellant be given time up to 31-12-2013, to vacate the premises. The appellant shall file a usual undertaking within four weeks from today to hand over peaceful and vacant possession to Respondent 1.

46. With the aforesaid observations, the appeal stands dismissed.

CA No. 7449 of 2011 with CA No. 7450 of 2011

47. In view of our judgment pronounced today in Civil Appeal No. 7448 of 2011 (*National Textile Corpn. Ltd.* v. *Nareshkumar Badrikumar Jagad*), these appeals also stand dismissed. However, the appellant is given time up to

31-12-2011 to vacate the premises. The appellant shall file a usual undertaking within four weeks from today to hand over peaceful and vacant possession to the respondent.

(2011) 12 Supreme Court Cases 713

(BEFORE DR. M.K. SHARMA AND ANIL R. DAVE, JJ.)

COMMISSIONER OF CUSTOMS, CALCUTTA .. Appellant;

Versus

G.C. JAIN AND ANOTHER .. Respondents.

Civil Appeals Nos. 6334-35 of 2003† with No. 1757 of 2004, decided on July 4, 2011

A. **Customs — Exemptions — Duty Exemption Entitlement Certificate Scheme (DEEC Scheme)/Advance Licence Scheme/Advance Authorisation Scheme — Import of butyl acrylate monomer (BAM) as adhesive (which BAM became in its self-polymerised form) under advance licence — Permissibility — Whether BAM imported in its monomer form could be considered an "adhesive" which it became in its polymerised form — BAM, held, undergoes self-polymerisation* when it is exposed to air, light and heat on opening of container in which it is transported — Properties of BAM as an adhesive are to be determined with reference to its polymerised form which it ultimately assumes after opening container because material in packed condition is of no use — In chemical industry, polymerised butyl acrylate is understood as an adhesive — It is used as binder in leather industry — Manufacturer of BAM too had described use of product as adhesive and textile binder — Respondents therefore rightly claimed exemption of duty on BAM as an "adhesive" — Inference of misstatement or misdeclaration could not be drawn against them — DGFT Notifications/Circulars/Instructions — Customs Notifications Nos. 203/92 and 79/95 — Customs Tariff Act, 1975 — Sub-Heading 2916.12 (HS Code 2916.12) — Words and Phrases — "Adhesive" — Meaning of — Customs Act, 1962, S. 25(1) (Paras 17, 21, 24 and 25)**

* [**Ed.**: "Polymer", according to *Oxford Dictionary*, is "a substance which has a molecular structure built up chiefly or completely from a large number of similar units bonded together, e.g. many synthetic organic materials used as plastics and resins", *See* http:oxforddictionaries.com visited on August 2, 2011. Polymerisation is a process through which polymer is formed.]

B. **Customs — Exemptions — Duty Exemption Entitlement Certificate Scheme (DEEC Scheme) — "Material" required for manufacture of export product — What is — Held, term "material" encompasses not only material directly used or usable as such in manufacturing processes but also intermediates which could be used with some processing — Customs Act, 1962, S. 25(1) (Para 24)**

† From the Judgment and Order dated 17-12-2002 of the Customs, Excise and Gold (Control) Appellate Tribunal, at Kolkata, in Appeals Nos. CRV-75 and 74 of 1999

22. Respondent 1 Insurance Company is directed to pay to the appellant the total amount of compensation within a period of three months by getting prepared a demand draft in her name which shall be delivered to her at the address given in the claim petition filed before the Tribunal. While doing so, Respondent 1 shall be free to deduct the amount already paid to the appellant.

(2012) 6 Supreme Court Cases 430

(BEFORE DR DALVEER BHANDARI AND DIPAK MISRA, JJ.)

A. SHANMUGAM .. Appellant;

Versus

ARIYA KSHATRIYA RAJAKULA VAMSATHU MADALAYA NANDHAVANA PARIPALANAI SANGAM REPRESENTED BY ITS PRESIDENT AND OTHERS .. Respondents.

Civil Appeals Nos. 4012-13 of 2012†, decided on April 27, 2012

A. **Civil Suit — Abuse of process of court — Delayed administration of civil justice — Frivolous litigation to gain undue benefits — Watchman's suit seeking permanent injunction against his dispossession by owner of the premises — Such non-maintainable suit protracted for long by resorting to falsehoods, concealment, distortion, obstruction and confusion in pleadings and documents, thereby avoiding ejectment — This reflects delayed administration of civil justice prevalent in present judicial system — Principles for improving the system, reiterated — Appeal of appellant watchman dismissed with costs and vacant possession of premises directed to be handed over to respondent owner within two months, by police force, if required**

B. **Specific Relief Act, 1963 — Ss. 38, 39 and 6 — Injunction — Suit for — Maintainability — Gratuitous possessee/Permissive possessee — Suit for injunction by watchman/caretaker/agent/servant, all of them being persons in gratuitous possession/permissive possession, against dispossession by owner of the premises, reiterated, not maintainable — Such person holds property on behalf of principal (owner) and acquires no right or interest therein irrespective of long possession — Protection of court can be granted or extended only to a person who has valid subsisting rent agreement, lease agreement or licence agreement in his favour — Transfer of Property Act, 1882 — Ss. 55(1)(f), 58(d) and 108(b) — Easements Act, 1882 — Ss. 52 and 60 — Property Law — Possession — Gratuitous possessee/Permissive possessee — Extremely limited entitlement of, if any**

† Arising out of SLPs (C) Nos. 14163-64 of 2012 (Arising out of CCs Nos. 21115-16 of 2011). From the Judgment and Order dated 20-4-2011 of the High Court of Judicature of Madras in SAs Nos. 1973 of 2002 and 869 of 2009

C. **Property Law — Adverse Possession — Locus standi/standing — Gratuitous possessee/Permissive possessee — Claim by watchman/caretaker/agent/servant, all of them being persons in gratuitous possession/permissive possession — Such person being permitted by owner to occupy the property holds it on behalf of owner and acquires no right or interest therein irrespective of his long stay or occupation — Mere production of ration card or house tax receipts by such person would not establish his claim of adverse possession — Limitation Act, 1963, Art. 65**

D. **Courts, Tribunals and Judiciary — Generally — Courts — Duty of courts — To discern truth from pleadings, documents and arguments of parties — Emphasised**

E. **Civil Procedure Code, 1908 — Or. 6 Rr. 2 & 9 and Or. 30 — Pleadings — Importance — Pleadings must set forth sufficient factual details so as to dispel false or exaggerated claim or defence — Court should ensure discovery and production of documents and proper admission/denial — It should scrutinise properly pleadings and documents before dealing with the case**

F. **Civil Procedure Code, 1908 — Or. 15 Rr. 1 & 3 and Or. 10 R. 2 — Proper framing of issues, necessary — Court must critically examine pleadings before framing of issues — It should have recourse to procedure under Or. 10 R. 2 and orally examine party concerned**

G. **Specific Relief Act, 1963 — Ss. 38 and 39 — Grant or refusal of injunction — Principles laid down in *Maria Margarida Sequeria Fernandes*, (2012) 5 SCC 370, reiterated — Civil Procedure Code, 1908, Or. 39 Rr. 1, 2, 3 & 3-A, Or. 20 R. 12 and S. 144**

H. **Civil Procedure Code, 1908 — Ss. 144, 35, 35-A, 35-B and Or. 20 R. 12 — Restitution and mesne profits — Realistic costs — Restitutionary costs — Undue benefits derived by unscrupulous litigant from frivolous litigation by abusing judicial process should be neutralised by court — When court finds falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, it should, in addition to full restitution, impose actual or realistic costs**

The respondent Society is the owner of the suit land which was dedicated for construction of a dharamshala (called "choultry" in South India). The father of the appellant was engaged as a watchman on a monthly salary by the respondent to look after the dharamshala and in that capacity he lived in the premises with his family including his son, the appellant. After the death of the father, the appellant was allowed to continue to stay in the premises as a watchman. In 1994, the appellant filed a suit praying for issuance of permanent injunction against the respondent which, according to him tried to dispossess him by force. The trial court dismissed the suit. It found that the appellant's father as a watchman was permitted to stay only in a portion in the suit property while the remaining portion was in possession of the respondent. It held that the appellant did not acquire the suit property by adverse possession. It also took the view that

a person in wrongful possession is not entitled to be protected against lawful owner by an order of injunction. It also came to a definite conclusion that the appellant had concealed certain vital facts and had not approached the court with clean hands and consequently, he was not entitled to the grant of discretionary relief of injunction. However, the first appellate court reversed the judgment of the trial court and held that the appellant was entitled to the relief of injunction because of his long possession of the suit property. During pendency of the second appeal, the respondent filed a suit praying for a declaration of title and recovery of possession of the portion of the premises in occupation of the appellant. The suit was decreed. The appellant's appeal thereagainst was allowed, whereupon the respondent preferred a second appeal. The High Court heard both the second appeals together and by a common judgment set aside the judgments of the first appellate court.

Dismissing the appeals with costs, the Supreme Court

Held :

Permissive possession — Position of watchman, caretaker and servant — Gratuitous possessees or persons in gratuitous possession

In this case, the property is admittedly owned by the respondent Society and the appellant, after his father's death, continued to serve the respondent as a watchman and was allowed to live in the premises. The appellant has also failed to prove the adverse possession of the suit property. Only by obtaining the ration card and the house tax receipts, the appellant cannot strengthen his claim of adverse possession. (Paras 18 and 19)

The watchman, caretaker or agent holds the property of the principal only on behalf of the principal. The watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, the courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same. (Paras 43.6 and 43.7)

The protection of the court can be granted or extended to the person who has a valid subsisting rent agreement, lease agreement or licence agreement in his favour. (Para 43.8)

Court's duty to discern the truth

It is the bounden duty of the court to uphold the truth and do justice. The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of the justice delivery system. It is imperative that pleadings and all other presentations before the court should be truthful. (Paras 43.1, 24 and 43.3)

Maria Margarida Sequeria Fernandes v. *Erasmo Jack de Sequeria*, (2012) 5 SCC 370 : (2012) 3 SCC (Civ) 126, *applied*

Dalip Singh v. *State of U.P.*, (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324, *followed*

Mohanlal Shamji Soni v. *Union of India*, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595; *Ritesh Tewari* v. *State of U.P.*, (2010) 10 SCC 677 : (2010) 4 SCC (Civ) 315; *Jones* v. *National Coal Board*, (1957) 2 QB 55 : (1957) 2 WLR 760 : (1957) 2 All ER 155 (CA); *Chandra Shashi* v. *Anil Kumar Verma*, (1995) 1 SCC 421 : 1995 SCC (Cri) 239; *Giles* v.

Maryland, 17 L Ed 2d 737 : 87 S Ct 793 : 386 US 66 (1967); *United States* v. *Havens*, 64 L Ed 2d 559 : 100 S Ct 1912 : 446 US 620 (1980), *cited*

Pleadings

Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts. The pleadings must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the court must carefully look into it while deciding a case and insist that those who approach the court must approach it with clean hands. (Paras 43.2 and 27)

The pleadings are the foundation of litigation but experience reveals that sufficient attention is not paid to the pleadings and documents by the judicial officers before dealing with the case. It is the bounden duty and obligation of the parties to investigate and satisfy themselves as to the correctness and the authenticity of the matter pleaded. (Para 26)

Ensuring discovery and production of documents and a proper admission/denial is imperative for deciding civil cases in a proper perspective. In relevant cases, the courts should encourage interrogatories to be administered. (Para 29)

It is imperative that the Judges must have complete grip of the facts before they start dealing with the case. That would avoid unnecessary delay in disposal of the cases. (Para 28)

In this case, the appellant is guilty of introducing untenable pleas. The plea of adverse possession which has no foundation or basis in the facts and circumstances of the case was introduced to gain undue benefit. Further, all the documents have been filed to mislead the court. The first appellate court has, in fact, got into the trap and was misled by the documents and reached to an entirely erroneous finding that resulted in undue delay of disposal of a small case for almost 17 years. (Paras 42 and 41)

Framing of issues

Framing of issues is a very important stage of a civil trial. It is imperative for a Judge to critically examine the pleadings of the parties before framing of issues. Rule 2 of Order 10 CPC enables the court, in its search for the truth, to go to the core of the matter and narrow down, or even eliminate the controversy. It is a useful procedural device and must be regularly pressed into service. (Para 30)

If issues are properly framed, the controversy in the case can be clearly focused and documents can be properly appreciated in that light. The relevant evidence can also be carefully examined. Careful framing of issues also helps in proper examination and cross-examination of the witnesses and final arguments in the case. (Para 32)

Grant or refusal of injunction

The purity of pleadings has immense importance and relevance. The pleadings need to be critically examined by the judicial officers or Judges both before issuing the ad interim injunction and/or framing of issues. (Para 23)

In *Maria Margarida Sequeria Fernandes*, (2012) 5 SCC 370, the Supreme Court examined the importance of grant or refusal of an injunction stated the principles in paras 83 to 86. (Para 33)

Maria Margarida Sequeria Fernandes v. *Erasmo Jack de Sequeria*, (2012) 5 SCC 370 : (2012) 3 SCC (Civ) 126, *affirmed* and *followed*

Restitution and mesne profits

Experience reveals that a large number of cases are filed on false claims or evasive pleas are introduced by the defendant to cause delay in the administration of justice and this can be sufficiently taken care of if the courts adopt realistic approach granting restitution. False averments of facts and untenable contentions are serious problems faced by our courts. The other problem is that litigants deliberately create confusion by introducing irrelevant and minimally relevant facts and documents. The court cannot reject such claims, defences and pleas at the first look. It may take quite some time, at times years, before the court is able to see through, discern and reach to the truth. More often than not, they appear attractive at first blush and only on a deeper examination the irrelevance and hollowness of those pleadings and documents come to light. (Paras 34 and 38)

Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times even at a later stage, but once discovered, it is the duty of the court (even if the matter has reached the Supreme Court) to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants. (Para 39)

Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice. (Para 43.4)

The court must be cautious in granting relief to a party guilty of deliberately introducing irrelevant and untenable pleas responsible for creating unnecessary confusion by introducing such documents and pleas. These factors must be taken into consideration while granting relief and/or imposing the costs. (Para 42)

It is the bounden obligation of the court to neutralise any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process. (Para 43.5)

Unless wrongdoers are denied profit or undue benefit from frivolous litigations, it would be difficult to control frivolous and uncalled-for litigations. Experience also reveals that our courts have been very reluctant to grant actual or realistic costs; e.g. when a litigant is compelled to spend Rs 1 lakh on a frivolous litigation there is hardly any justification in awarding Rs 1000 as costs unless there are special circumstances of that case. The court is required to decide cases while keeping pragmatic realities in view. The court has to ensure that unscrupulous litigant is not permitted to derive any benefit by abusing the judicial process. (Para 36)

Ramrameshwari Devi v. *Nirmala Devi*, (2011) 8 SCC 249 : (2011) 4 SCC (Civ) 1 : (2011) 3 SCC (Cri) 481; *Indian Council for Enviro-Legal Action* v. *Union of India*, (2011) 8 SCC 161 : (2011) 4 SCC (Civ) 87, *followed*

Grindlays Bank Ltd. v. *ITO*, (1980) 2 SCC 191 : 1980 SCC (Tax) 230; *Ram Krishna Verma* v. *State of U.P.*, (1992) 2 SCC 620; *Jeewan Nath Wahal* v. *State of U.P.*, (2011) 12 SCC 769; *Kavita Trehan* v. *Balsara Hygiene Products Ltd.*, (1994) 5 SCC 380; *Marshall Sons & Co. (I) Ltd.* v. *Sahi Oretrans (P) Ltd.*, (1999) 2 SCC 325; *Padmawati* v. *Harijan Sewak Sangh*, (2008) 154 DLT 411; *Padmawati* v. *Harijan Sewak Sangh*, (2012) 6 SCC 460; *Ouseph Mathai* v. *M. Abdul Khadir*, (2002) 1 SCC 319; *South Eastern Coalfields Ltd.* v. *State of M.P.*, (2003) 8 SCC 648; *Zafar Khan* v. *Board of Revenue*, 1984 Supp SCC 505; *Amarjeet Singh* v. *Devi Ratan*, (2010) 1 SCC 417 : (2010) 1 SCC (L&S) 1108; *Kalabharati Advertising* v. *Hemant Vimalnath Narichania*, (2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808, *cited*

Order

The present case demonstrates widely prevalent state of affairs where litigants raise disputes and cause litigation and then obstruct the progress of the case only because they stand to gain by doing so. It is a matter of common experience that the court's otherwise scarce resources are spent in dealing with non-deserving cases and unfortunately those who were waiting in the queue for justice in genuine cases usually suffer. This case is a typical example of delayed administration of civil justice in our courts. A small suit, where the appellant was directed to be evicted from the premises in 1994, took 17 years before the matter was decided by the High Court. Unscrupulous litigants are encouraged to file frivolous cases to take undue advantage of the judicial system. (Para 20)

A well-reasoned judgment and a decree passed by the trial court ought not to have been reversed by the first appellate court. The High Court was fully justified in reversing the judgment of the first appellate court and restoring the judgment of the trial court. Therefore, no interference is called for.

(Paras 18 and 19)

Ariya Kshtriya Raja Kulavamsa v. *A. Shanmugam*, Second Appeals Nos. 1973 of 2002 and 869 of 2009, order dated 20-4-2011 (Mad), *affirmed*

Alagi Alamelu Achi v. *Ponniah Mudaliar*, AIR 1962 Mad 149, *referred to*

However, the Supreme Court would have ordinarily imposed heavy costs and would have ordered restitution but looking to the fact that the appellant is a watchman and may not be able to bear the financial burden, the appeals are dismissed with very nominal costs of Rs 25,000 to be paid within a period of two months and the appellant is directed to vacate the premises within two months from today and hand over peaceful possession of the suit property to the respondent Society. In case, the appellant does not vacate the premises within two months from today, the respondent Society would be at liberty to take police help and get the premises vacated. (Para 44)

R-D/49732/CV

Advocates who appeared in this case :

V. Prabhakar, R. Chandrachud, Ms Jyoti Prashar, S. Natesan and Arul, Advocates, for the Appellant.

Chronological list of cases cited ***on page(s)***

The Judgment of the Court was delivered by

DR DALVEER BHANDARI, J.— Delay condoned. Leave granted. These two appeals arise out of cross-suits filed before the High Court of Judicature of Madras in *Ariya Kshtriya Raja Kulavamsa* v. *A. Shanmugam*[1] dated 20-4-2011. In both these appeals, A. Shanmugam is the appellant and Ariya Kshatriya Raja Kulavamsa Madalaya Nandhavana Paripalana Sangam is the respondent which for convenience hereinafter is referred to as "the Society".

1 Second Appeals Nos. 1973 of 2002 and 869 of 2009, order dated 20-4-2011 (Mad)

2. The property in question belonged to one, Muthu Naicker, who dedicated the suit land for construction of a dharamshala. In the southern part of India, it is called as "choultry". A "dharamshala" is commonly known as "a place where boarding facilities are provided either free of cost or at a nominal cost". In the instant case, a dharamshala was to be constructed for the benefit of the Ariya Kshatriya community. The appellant's father, Appadurai Pillai was engaged as a watchman on a monthly salary by the respondent Society to look after the dharamshala and in that capacity lived in the premises with his family including the appellant.

3. According to the appellant, in the year 1994, the respondent Society claiming to be the owner of the suit property tried to dispossess the appellant by force necessitating the appellant to file a suit in OS No. 1143 of 1994 on the file of the Second Additional District Munsif, Tiruvannamalai praying for issuance of permanent injunction against the respondent Society. The said suit was, however, dismissed. As against that, the appellant preferred an appeal in AS No. 94 of 2001 on the file of the Additional District Judge, Tiruvannamalai and the said appeal was allowed and consequently, the appellant's suit was decreed.

4. The respondent Society preferred a second appeal in SA No. 1973 of 2002 before the High Court of Madras against the said judgment of the Additional District Judge.

5. The respondent Society during the pendency of the second appeal filed a suit in OS No. 239 of 2003 before the Additional Subordinate Judge, Tiruvannamalai praying for declaration of title and recovery of possession of the suit property comprised in TS No. 1646/1 of Tiruvannamalai Town having an extent of 70 ft east to west and 30 ft north to south bearing Old Door No. 116 and New Door No. 65. The said suit was decreed as prayed for. Against that, the appellant preferred an appeal in AS No. 19 of 2008 on the file of the Additional District Judge, Tiruvannamalai and the decision of the trial court was reversed in appeal resulting in the dismissal of the suit filed by the respondent Society. Aggrieved against the appeal being allowed and the suit being dismissed, the respondent Society preferred a second appeal in SA No. 869 of 2009 before the High Court of Madras.

6. The learned Judge of the Madras High Court heard both the aforesaid second appeals together and by a common judgment[1] set aside the well-considered judgments of the first appellate court. Aggrieved by the said common impugned judgment[1], the appellant has preferred these appeals by way of special leave.

1 *Ariya Kshtriya Raja Kulavamsa* v. *A. Shanmugam*, Second Appeals Nos. 1973 of 2002 and 869 of 2009, order dated 20-4-2011 (Mad)

7. It may be pertinent to mention that the appellant filed Original Suit No. 1143 of 1994 and also filed the following documents:

1.	20-11-1899	Certified copy of the registered agreement between Krishnasamy Raju and others.
2.		Certified copy of the bye-law of the plaintiff Sangam (respondent Society before us).
3.		Certified copy of memorandum of association of the plaintiff Sangam (respondent Society before us).
4.		Certified copy of the registration certificate.
5.		Certified copy of the field map book plan.
6.		Certified copy of the town survey field register.
7.		Certified copy of the demand register extent.
8.		Certified copy of the tax receipts (9).
9.		Certified copy of the indemnity card by Munusamy.
10.		Certified copy of the ration card of Munusamy.
11.		Certified copy of account of the plaintiff Sangam (respondent Society before us).
12.		Certified copy of the photocopy of silesasanam.
13.	14-5-1929	Copy of application by the President of the plaintiff Sangam to the Municipal Chairman.
14.	24-2-1932	Copy of the application by the President of the plaintiff Sangam to the Municipal Chairman.
15.	17-8-2001	Certified copy of the judgment in OS No. 1143 of 1994 of the District Munsif Court, Tiruvannamalai.
16.	31-5-2002	Certified copy of the judgment in AS No. 94 of 2001 of the Additional District Judge, Tiruvannamalai.
17.	2000-2001	House tax receipt.
18.	2001-2002	House tax receipt.
19.	2002-2003	House tax receipt.
20.		Xerox copy of the minutes book pp. 13 to 19.

8. The trial court on the basis of the pleadings has framed the following issues:

1. Whether the plaintiff has the right to possession and enjoyment of the suit property?

2. Whether the plaintiff and his father had obtained right of enjoyment through adverse enjoyment (*sic* possession)?

3. As per the averments on the defendant's side, is it true that the plaintiff's father in the capacity of the watchman of the suit property had been in enjoyment of the suit property?

4. Whether the plaintiff is entitled to a relief of permanent injunction as prayed for by him?

5. Other relief?

9. In Suit No. 239 of 2003 filed by the respondent Society against the appellant seeking a decree for possession, the following issues were framed:

1. Whether the plaintiff association is competent to file this case?

2. Whether the plaint property belongs to the plaintiff's club?

3. Is it right that the defendant's father Appadurai Pillai in the capacity of a watchman, had been maintaining the suit property?

4. When there is a second appeal pending before the High Court in SA No. 1923 of 2002 against the judgment and decree of the Court of the District Munsif in OS No. 1143 of 1994 is sustainable?

5. Whether the defendant has acquired the right of possession in the plaint property due to adverse possession?

6. Whether this case has been procedurally evaluated for the court fee and jurisdiction?

7. Is the court competent to try this case?

8. To what other relief is the plaintiff entitled to?

10. The trial court in Suit No. 1143 of 1994 has held that the appellant was in possession of the suit property in the capacity of a watchman. Regarding Issue 3, the trial court had observed as under:

> "... As per July 1949 register, Ext. D-5 it is established that the plaintiff's father has been employed as a watchman in the association. Further, it has already been decided that the suit property belongs to the defendant association. Further it has also been decided that apart from that the plaintiff's father had only been a watchman to the suit property. Only source of the plaintiff's father had been a watchman, he was permitted to stay in a portion in the suit property only because of that he had not instituted a case for the total extent 110 ft × 56 ft but only for the extent of 70 ft × 30 ft. He admits that the remaining portion is in the possession of the association. It is true that only for this reason the defendant association has permitted that the plaintiff and his family members to reside in the suit property. It is evident that only in the status of a watchman that the plaintiff's father has been occupying a portion in the suit survey number. This issue is decided accordingly."

11. Regarding Issue 2 of adverse possession, the trial court found that the appellant's father was employed by the respondent Society as a watchman on a petty monthly salary and in that capacity he was allowed to stay in the suit property. The appellant did not acquire the suit property by adverse possession and the issue was rightly decided against the appellant by the trial court. Regarding Issue 4, the trial court found that the appellant's father was residing in the suit premises as a watchman and after his death the appellant was also allowed to continue to stay in the suit property as a watchman.

12. The trial court relied on a judgment of the Madras High Court in *Alagi Alamelu Achi* v. *Ponniah Mudaliar*[2]. The Court held that a person in wrongful possession is not entitled to be protected against lawful owner by an order of injunction.

13. The trial court also came to a definite conclusion that the appellant has concealed certain vital facts and has not approached the court with clean hands and consequently, he is not entitled to the grant of discretionary relief of injunction.

14. The first appellate court reversed the judgment of the trial court and held that the appellant was entitled to the relief of injunction because of his long possession of the suit property. The first appellate court also set aside the decree passed by the trial court in OS No. 239 of 2003.

15. Suit No. 239 was decreed against the appellant. Aggrieved by this, the appellant preferred first appeal before the District Judge which was allowed on 3-4-2009. Aggrieved by this judgment, the respondent Society filed a second appeal before the High Court which was allowed. The High Court heard both the appeals filed by the respondent Society and the same were allowed by a common judgment dated 20-4-2011[1].

16. The High Court by a detailed reasoning set aside the judgment of the first appellate court and held that the first appellate court was not justified in reversing the judgments passed by the trial court in both the abovementioned suits, OS No. 1143 of 1994 and OS No. 239 of 2003. The appellant, aggrieved by the said judgment, has preferred these two appeals. We propose to decide both these appeals by this common judgment.

17. We have heard the learned counsel for the appellant at length.

18. In our considered view, a well-reasoned judgment and a decree passed by the trial court ought not to have been reversed by the first appellate court. It is reiterated that the appellant's father was engaged as a watchman on a monthly salary and in that capacity he was allowed to stay in the suit premises and after his death his son (the appellant herein) continued to serve the respondent Society as a watchman and was allowed to live in the premises. The property is admittedly owned by the respondent Society.

19. The appellant has also failed to prove the adverse possession of the suit property. Only by obtaining the ration card and the house tax receipts, the appellant cannot strengthen his claim of adverse possession. The High Court was fully justified in reversing the judgment of the first appellate court and restoring the judgment of the trial court. In our considered opinion, no interference is called for.

20. This case demonstrates widely prevalent state of affairs where litigants raise disputes and cause litigation and then obstruct the progress of the case only because they stand to gain by doing so. It is a matter of

2 AIR 1962 Mad 149

1 *Ariya Kshtriya Raja Kulavamsa* v. *A. Shanmugam*, Second Appeals Nos. 1973 of 2002 and 869 of 2009, order dated 20-4-2011 (Mad)

common experience that the court's otherwise scarce resources are spent in dealing with non-deserving cases and unfortunately those who were waiting in the queue for justice in genuine cases usually suffer. This case is a typical example of delayed administration of civil justice in our courts. A small suit, where the appellant was directed to be evicted from the premises in 1994, took 17 years before the matter was decided by the High Court. Unscrupulous litigants are encouraged to file frivolous cases to take undue advantage of the judicial system.

21. The question often arises as to how we can solve this menace within the framework of law. A serious endeavour has been made as to how the present system can be improved to a large extent.

22. In *Maria Margarida Sequeria Fernandes* v. *Erasmo Jack de Sequeria*[3] (of which one of us, Dr Bhandari, J. was the author of the judgment), this Court had laid stress on purity of pleadings in civil cases. We deem it appropriate to set out paras 61 to 77 of that judgment dealing with broad guidelines provided by the Court which are equally relevant in this case: (SCC pp. 389-91)

> "*61.* In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.
>
> *62.* Possession is an incidence of ownership and can be transferred by the owner of an immovable property to another such as in a mortgage or lease. A licensee holds possession on behalf of the owner.
>
> *63.* Possession is important when there are no title documents and other relevant records before the court, but, once the documents and records of title come before the court, it is the title which has to be looked at first and due weightage be given to it. Possession cannot be considered in vacuum.
>
> *64.* There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the courts.
>
> *65.* A suit can be filed by the title-holder for recovery of possession or it can be one for ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit under Section 6 of the Specific Relief Act to recover possession.
>
> *66.* A title suit for possession has two parts—first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.

3 (2012) 5 SCC 370 : (2012) 3 SCC (Civ) 126

67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.

68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title-holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularised specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive:

(*a*) who is or are the owner or owners of the property;

(*b*) title of the property;

(*c*) who is in possession of the title documents;

(*d*) identity of the claimant or claimants to possession;

(*e*) the date of entry into possession;

(*f*) how he came into possession—whether he purchased the property or inherited or got the same in gift or by any other method;

(*g*) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, licence fee or lease amount;

(*h*) if taken on rent, licence fee or lease—then insist on rent deed, licence deed or lease deed;

(*i*) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants, etc.;

(*j*) subsequent conduct i.e. any event which might have extinguished his entitlement to possession or caused shift therein; and

(*k*) basis of his claim that not to deliver possession but continue in possession.

71. Apart from these pleadings, the court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the court must carefully and critically examine the pleadings and documents.

72. The court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

73. Discovery and production of documents and answers to interrogatories, together with an approach of considering what in the ordinary course of human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage for issues.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the court can reject the claim or pass a decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

75. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.

76. * * *

77. The court must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence. In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case."

23. We reiterate the immense importance and relevance of purity of pleadings. The pleadings need to be critically examined by the judicial officers or Judges both before issuing the ad interim injunction and/or framing of issues.

Entire journey of a Judge is to discern the truth

24. The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of the justice delivery system. This Court in *Dalip Singh* v. *State of U.P.*[4] observed that: (SCC p. 116, para 1)

> "*1.* ... Truth constituted an integral part of the justice delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell the truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system."

25. This Court in *Maria Margarida Sequeria Fernandes*[3] had an occasion to deal with the same aspect. According to us, observations in paras 32 to 52 are absolutely germane as these paragraphs deal with relevant cases which have enormous bearing on the facts of this case, so these paragraphs are reproduced hereunder: (SCC pp. 383-88)

> "*32.* In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies.
>
> *33.* The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.
>
> *34.* In *Mohanlal Shamji Soni* v. *Union of India*[5], this Court observed that in such a situation a question that arises for consideration is whether the Presiding Officer of a court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding out the truth and administering justice? It is a well-accepted and settled principle that a court must discharge its statutory functions—whether discretionary or obligatory—according to law in dispensing justice because it is the duty of a court not only to do justice but also to ensure that justice is being done.
>
> *35.* What people expect is that the court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

4 (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324

3 *Maria Margarida Sequeria Fernandes* v. *Erasmo Jack de Sequeria*, (2012) 5 SCC 370 : (2012) 3 SCC (Civ) 126

5 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595

36. In *Ritesh Tewari* v. *State of U.P.*[6] this Court reproduced often quoted quotation which reads as under: (SCC p. 687, para 37)

> '*37.* ... "*Every trial is voyage of discovery in which truth is the quest*".' (emphasis in original)

This Court observed that the

> 'power is to be exercised with an object to subserve the cause of justice and public interest, and for getting the evidence in aid of a just decision and to uphold the truth'.

37. Lord Denning in *Jones* v. *National Coal Board*[7] has observed that: (QB p. 63)

> '... In the system of trial [that we] evolved in this country, the Judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of [the] society at large, as happens, we believe, in some foreign countries.'

38. Certainly, the above, is not true of the Indian judicial system. A Judge in the Indian system has to be regarded as failing to exercise his jurisdiction and thereby discharging his judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that 'every trial is a voyage of discovery in which truth is the quest'. In order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

39. Lord Denning further observed in *Jones*[7] that: (QB p. 64)

> '... It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth....'

40. World over, modern procedural codes are increasingly relying on full disclosure by the parties. Managerial powers of the Judge are being deployed to ensure that the scope of the factual controversy is minimised.

41. In civil cases, adherence to Section 30 CPC would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and Judges.

42. Section 30 CPC reads as under:

> '**30.** ***Power to order discovery and the like.***—Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party—
>
> (*a*) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

6 (2010) 10 SCC 677 : (2010) 4 SCC (Civ) 315

7 (1957) 2 QB 55 : (1957) 2 WLR 760 : (1957) 2 All ER 155 (CA)

(*b*) issue summons to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(*c*) order any fact to be proved by affidavit.'

43. **'Satyameva Jayate'** (literally 'truth stands invincible') is a mantra from the ancient scripture *Mundaka Upanishad*. Upon Independence of *India**, it was adopted as the *national motto** of India. It is inscribed in *Devnagri* script at the base of the national emblem. The meaning of full mantra is as follows:

'*Truth* alone triumphs; not *falsehood*. Through truth the divine path is spread out by which the sages whose desires have been completely fulfilled, reach where that supreme treasure of truth resides.' (emphasis in original)

44. The Malimath Committee on Judicial Reforms heavily relied on the fact that in discovering truth, the Judges of all courts need to play an active role. The Committee observed thus:

'**2.2.** ... In the adversarial system truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defence before a neutral Judge. The Judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt [The State discharges the obligation to protect life, liberty and property of the citizens by taking suitable preventive and punitive measures which also serve the object of preventing private retribution so essential for maintenance of peace and law and order in the society.]** and gives the benefit of doubt to the accused. It is the parties that determine the scope of dispute and decide largely, autonomously and in a selective manner on the evidence that they decide to present to the court. The trial is oral, continuous and confrontational. The parties use cross-examination of witnesses to undermine the opposing case and to discover information the other side has not brought out. The Judge in his anxiety to maintain his position of neutrality never takes any initiative to discover truth. He does not correct the aberrations in the investigation or in the matter of production of evidence before the court. ...

* * *

2.15. The adversarial system lacks dynamism because it has no lofty ideal to inspire. It has not been entrusted with a positive duty to discover truth as in the inquisitorial system. When the investigation is perfunctory or ineffective, Judges seldom take any initiative to remedy the situation. During the trial, the Judges do not bother if relevant evidence is not produced and plays a passive role as he has no duty to search for truth. ...

* **Ed.**: Emphasis supplied to "India" and "national motto" herein.

** **Ed.**: Quoted from Para 2.1 of the Malimath Committee Report.

* * *

2.16.9. Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of the criminal justice system. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice. Therefore truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. It is of seminal importance to inject vitality into our system if we have to regain the lost confidence of the people. Concern for and duty to seek truth should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth.'

45. In *Chandra Shashi* v. *Anil Kumar Verma*[8] to enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that truth alone triumphs in the courts.

46. Truth has been foundation of other judicial systems, such as, the United States of America, the United Kingdom and other countries.

47. In *Giles* v. *Maryland*[9], the US Supreme Court, in ruling on the conduct of prosecution in suppressing evidence favourable to the defendants and use of perjured testimony held that such rules existed for a purpose, as a necessary component of the search for truth and justice that Judges, like prosecutors must undertake. It further held that the State's obligation under the due process clause 'is not to convict, but to see that so far as possible, truth emerges'.

48. The obligation to pursue truth has been carried to extremes. Thus, in *United States* v. *Havens*[10] it was held that the Government may use illegally obtained evidence to impeach a defendant's fraudulent statements during cross-examination for the purpose of seeking justice, for the purpose of 'arriving at the truth, which is a fundamental goal of our legal system'.

49. Justice Cardozo in his widely read and appreciated book *The Nature of the Judicial Process* discusses the role of the Judges. The relevant part is reproduced as under:

8 (1995) 1 SCC 421 : 1995 SCC (Cri) 239
9 17 L Ed 2d 737 : 87 S Ct 793 : 386 US 66 (1967)
10 64 L Ed 2d 559 : 100 S Ct 1912 : 446 US 620 (1980)

'There has been a certain lack of candour, 'in much of the discussion of the theme [of Judges' humanity], or rather perhaps in the refusal to discuss it, as if Judges must lose respect and confidence by the reminder that they are subject to human limitations'. I do not doubt the grandeur of conception which lifts them into the realm of pure reason, above and beyond the sweep of perturbing and deflecting forces. Nonetheless, if there is anything of reality in my analysis of the judicial process, they do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do.'

50. Aharon Barak, President of the Israeli Supreme Court from 1995 to 2006 takes the position that:

'For issues in which stability is actually more important than the substance of the solution—and there are many such cases—I will join the majority, without restating my dissent each time. Only when my dissenting opinion reflects an issue that is central for me—that goes to the core of my role as a Judge—will I not capitulate, and will I continue to restate my dissenting opinion: "Truth or stability—truth is preferable".

On the contrary, public confidence means ruling according to the law and according to the Judge's conscience, whatever the attitude of the public may be. Public confidence means giving expression to history, not to hysteria. Public confidence is ensured by the recognition that the Judge is doing justice within the framework of the law and its provisions. Judges must act—inside and outside the court—in a manner that preserves public confidence in them. They must understand that judging is not merely a job but a way of life. It is a way of life that does not include the pursuit of material wealth or publicity; it is a way of life based on spiritual wealth; it is a way of life that includes an objective and impartial search for truth.'†

51. In the administration of justice, Judges and lawyers play equal roles. Like Judges, lawyers also must ensure that truth triumphs in the administration of justice.

52. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and Judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth."

26. As stated in the preceding paragraphs, the pleadings are the foundation of litigation but experience reveals that sufficient attention is not paid to the pleadings and documents by the judicial officers before dealing with the case. It is the bounden duty and obligation of the parties to

† Aharon Barak, "Foreword—A Judge on Judging: The Role of a Supreme Court in a Democracy", (2002) 116 Harv L Rev 16

investigate and satisfy themselves as to the correctness and the authenticity of the matter pleaded.

27. The pleadings must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the court must carefully look into it while deciding a case and insist that those who approach the court must approach it with clean hands.

28. It is imperative that the Judges must have complete grip of the facts before they start dealing with the case. That would avoid unnecessary delay in disposal of the cases.

29. Ensuring discovery and production of documents and a proper admission/denial is imperative for deciding civil cases in a proper perspective. In relevant cases, the courts should encourage interrogatories to be administered.

Framing of issues

30. Framing of issues is a very important stage of a civil trial. It is imperative for a Judge to critically examine the pleadings of the parties before framing of issues. Rule 2 of Order 10 CPC enables the court, in its search for the truth, to go to the core of the matter and narrow down, or even eliminate the controversy. Rule 2 of Order 10 reads as under:

> "**2.** ***Oral examination of party, or companion of party.***—(1) At the first hearing of the suit, the court—
>
> (*a*) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in court, as it deems fit; and
>
> (*b*) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in court or his pleader is accompanied.
>
> (2)-(3) * * *"

It is a useful procedural device and must be regularly pressed into service.

31. As per Rule 2(3) of Order 10 CPC, the court may if it thinks fit, put in the course of such examination questions suggested by either party. Rule 2(3) of Order 10 CPC reads as under:

> "**2. (1)-(2)** * * *
>
> **(3)** The court may, if it thinks fit, put in the course of an examination under this Rule questions suggested by either party."

32. If issues are properly framed, the controversy in the case can be clearly focused and documents can be properly appreciated in that light. The relevant evidence can also be carefully examined. Careful framing of issues also helps in proper examination and cross-examination of the witnesses and final arguments in the case.

Grant or refusal of injunction

33. In *Maria Margarida Sequeria Fernandes*[3], this Court examined the importance of grant or refusal of an injunction in paras 83 to 86 which read as under: (SCC pp. 393-94)

> "*83.* Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence and attention must be bestowed by the judicial officers and Judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the defendant.
>
> *84.* In order to grant or refuse injunction, the judicial officer or the Judge must carefully examine the entire pleadings and documents with utmost care and seriousness. The safe and better course is to give a short notice on the injunction application and pass an appropriate order after hearing both the sides. In case of grave urgency, if it becomes imperative to grant an ex parte ad interim injunction, it should be granted for a specified period, such as, for two weeks. In those cases, the plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an ex parte ad interim injunction.
>
> *85.* The court, in order to avoid abuse of the process of law may also record in the injunction order that if the suit is eventually dismissed, the plaintiff undertakes to pay restitution, actual or realistic costs. While passing the order, the court must take into consideration the pragmatic realities and pass proper order for mesne profits. The court must make serious endeavour to ensure that even-handed justice is given to both the parties.
>
> *86.* Ordinarily, three main principles govern the grant or refusal of injunction:
>
> (*a*) prima facie case;
>
> (*b*) balance of convenience; and
>
> (*c*) irreparable injury,
>
> which guide the court in this regard.
>
> In the broad category of prima facie case, it is imperative for the court to carefully analyse the pleadings and the documents on record and only on that basis the court must be governed by the prima facie case. In grant and refusal of injunction, pleadings and documents play a vital role."

Restitution and mesne profits

34. Experience reveals that a large number of cases are filed on false claims or evasive pleas are introduced by the defendant to cause delay in the

3 *Maria Margarida Sequeria Fernandes* v. *Erasmo Jack de Sequeria*, (2012) 5 SCC 370 : (2012) 3 SCC (Civ) 126

administration of justice and this can be sufficiently taken care of if the courts adopt realistic approach granting restitution.

35. This Court in *Ramrameshwari Devi* v. *Nirmala Devi*[11] (of which one of us, Dr Bhandari, J. was the author of the judgment) in paras 52(C), (D) and (G) of the judgment dealt with the aspect of imposition of actual or realistic costs which are equally relevant for this case, read as under: (SCC pp. 267-68)

> "*52.* (*C*) Imposition of actual, realistic or proper costs and/or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.
>
> (*D*) The court must adopt realistic and pragmatic approach in granting mesne profits. The court must carefully keep in view the ground realities while granting mesne profits.
>
> * * *
>
> (*G*) The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice."

36. Unless wrongdoers are denied profit or undue benefit from frivolous litigations, it would be difficult to control frivolous and uncalled-for litigations. Experience also reveals that our courts have been very reluctant to grant the actual or realistic costs. We would like to explain this by giving this illustration. When a litigant is compelled to spend Rs 1 lakh on a frivolous litigation there is hardly any justification in awarding Rs 1000 as costs unless there are special circumstances of that case. We need to decide cases while keeping pragmatic realities in view. We have to ensure that unscrupulous litigant is not permitted to derive any benefit by abusing the judicial process.

37. This Court in another important case in *Indian Council for Enviro-Legal Action* v. *Union of India*[12] (of which one of us, Dr Bhandari, J. was the author of the judgment) had an occasion to deal with the concept of restitution. The relevant paragraphs of that judgment dealing with relevant judgments are reproduced hereunder: (SCC pp. 238-41 & 243-46, paras 170-76, 183-88 & 190-93)

> "*170.* This Court in *Grindlays Bank Ltd.* v. *ITO*[13] observed as under: (SCC p. 195, para 7)
>
> > '*7.* ... When passing such orders the High Court draws on its inherent power to make all such orders as are necessary for doing complete justice between the parties. The interests of justice require

11 (2011) 8 SCC 249 : (2011) 4 SCC (Civ) 1 : (2011) 3 SCC (Cri) 481
12 (2011) 8 SCC 161 : (2011) 4 SCC (Civ) 87
13 (1980) 2 SCC 191 : 1980 SCC (Tax) 230

that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court, by the mere circumstance that it has initiated a proceeding in the court, must be neutralised. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it.'

171. In *Ram Krishna Verma* v. *State of U.P.*[14] this Court observed as under: (SCC p. 630, para 16)

'*16.* The 50 operators including the appellants/private operators have been running their stage carriages by blatant abuse of the process of the court by delaying the hearing as directed in *Jeewan Nath Wahal case*[15] and the High Court earlier thereto. As a fact, on the expiry of the initial period of grant after 29-9-1959 they lost the right to obtain renewal or to ply their vehicles, as this Court declared the scheme to be operative. However, by sheer abuse of the process of law they are continuing to ply their vehicles pending hearing of the objections. This Court in *Grindlays Bank Ltd.* v. *ITO*[13] held that the High Court while exercising its power under Article 226 the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it. In the light of that law and in view of the power under Article 142(1) of the Constitution this Court, while exercising its jurisdiction would do complete justice and neutralise the unfair advantage gained by the 50 operators including the appellants in dragging the litigation to run the stage carriages on the approved route or area or portion thereof and forfeited their right to hearing of the objections filed by them to the draft scheme dated 26-2-1959.'

172. This Court in *Kavita Trehan* v. *Balsara Hygiene Products Ltd.*[16] observed as under: (SCC p. 391, para 22)

'22. The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words:

"**144.** *Application for restitution.*—(1) Where and insofar as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose ...."

14 (1992) 2 SCC 620
15 *Jeewan Nath Wahal* v. *State of U.P.*, (2011) 12 SCC 769
13 (1980) 2 SCC 191 : 1980 SCC (Tax) 230
16 (1994) 5 SCC 380

The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court.'

173. This Court in *Marshall Sons & Co. (I) Ltd.* v. *Sahi Oretrans (P) Ltd.*[17] observed as under: (SCC pp. 326-27, para 4)

'*4.* From the narration of the facts, though it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged on for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the [Receiver with a direction to deposit the royalty amount fixed by the] Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property including further alienation.'

174. In *Padmawati* v. *Harijan Sewak Sangh*[18] decided by the Delhi High Court on 6-11-2008, the Court held as under: (DLT p. 413, para 6)

'*6.* The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where the court finds that using the courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the courts. One of the aims of every judicial system has to be to discourage unjust enrichment using

17 (1999) 2 SCC 325
18 (2008) 154 DLT 411

courts as a tool. The costs imposed by the courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.'

We approve the findings of the High Court of Delhi in the aforementioned case.

175. The High Court also stated: (*Padmawati case*[18], DLT pp. 414-15, para 9)

'*9.* Before parting with this case, we consider it necessary to observe that one of the [main] reasons for overflowing of court dockets is the frivolous litigation in which the courts are engaged by the litigants and which is dragged on for as long as possible. Even if these litigants ultimately lose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right but also must be burdened with exemplary costs. The faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make the wrongdoer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the courts to see that such wrongdoers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years' long litigation. Despite the settled legal positions, the obvious wrongdoers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the courts.'

176. Against this judgment of the Delhi High Court, Special Leave to Appeal (Civil) No. 29197 of 2008 was preferred to this Court. The Court passed the following order[19]: (SCC p. 460, para 1)

'*1.* We have heard the learned counsel appearing for the parties. We find no ground to interfere with the well-considered judgment[18] passed by the High Court. The special leave petition is, accordingly, dismissed.'

* * *

183. In *Marshall Sons & Co. (I) Ltd.* v. *Sahi Oretrans (P) Ltd.*[17] this Court in para 4 of the judgment observed as under: (SCC pp. 326-27)

'*4.* ... It is true that proceedings are dragged on for a long time on one count or the other and, on occasion, become highly technical

18 *Padmawati* v. *Harijan Sewak Sangh*, (2008) 154 DLT 411
19 *Padmawati* v. *Harijan Sewak Sangh*, (2012) 6 SCC 460
17 (1999) 2 SCC 325

accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and a person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property including further alienation.'

184. In *Ouseph Mathai* v. *M. Abdul Khadir*[20] this Court reiterated the legal position that: (SCC p. 328, para 13)

'*13.* ... [the] stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risks and costs of the party obtaining the stay. After the dismissal of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection.'

185. This Court in *South Eastern Coalfields Ltd.* v. *State of M.P.*[21] on examining the principle of restitution in para 26 of the judgment observed as under: (SCC p. 662)

'*26.* In our opinion, the principle of restitution takes care of this submission. The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see *Zafar Khan* v. *Board of Revenue*[22]). In law, the term "restitution" is used in three senses: (*i*) return or restoration of some specific thing to its rightful owner or status; (*ii*) compensation for benefits derived from a wrong done to another; and (*iii*) compensation or reparation for the loss caused to another.'

186. The Court in para 28 of the aforesaid judgment very carefully mentioned that the litigation should not turn into a fruitful industry and

20 (2002) 1 SCC 319
21 (2003) 8 SCC 648
22 1984 Supp SCC 505

observed as under: (*South Eastern Coalfields Ltd. case*[21], SCC pp. 664-65)

> '*28.* ... Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation.'

187. The Court in the aforesaid judgment also observed that once the doctrine of restitution is attracted, the interest is often a normal relief given in restitution. Such interest is not controlled by the provisions of the Interest Act of 1839 or 1978.

188. In a relatively recent judgment of this Court in *Amarjeet Singh* v. *Devi Ratan*[23] the Court in para 17 of the judgment observed as under: (SCC pp. 422-23)

> '*17.* No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court.'

* * *

21 *South Eastern Coalfields Ltd.* v. *State of M.P.*, (2003) 8 SCC 648
23 (2010) 1 SCC 417 : (2010) 1 SCC (L&S) 1108

190. In consonance with the concept of restitution, it was observed in *Kalabharati case*[24] that courts should be careful and pass an order neutralising the effect of all consequential orders passed in pursuance of the interim orders passed by the court. Such express directions may be necessary to check the rising trend among the litigants to secure the relief as an interim measure and then avoid adjudication on merits.

191. In consonance with the principles of equity, justice and good conscience Judges should ensure that the legal process is not abused by the litigants in any manner. The court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorised or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the respondent or the defendant has in fact incurred in order to defend himself in the legal proceedings. The courts would be fully justified even imposing punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage fraudulent, unscrupulous and dishonest litigation.

192. The court's constant endeavour must be to ensure that everyone gets just and fair treatment. The court while rendering justice must adopt a pragmatic approach and in appropriate cases realistic costs and compensation be ordered in order to discourage dishonest litigation. The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases.

193. This Court in a very recent case *Ramrameshwari Devi* v. *Nirmala Devi*[11] had an occasion to deal with similar questions of law regarding imposition of realistic costs and restitution. One of us (Dr Bhandari, J.) was the author of the judgment. It was observed in that case as under: (SCC pp. 268-69, paras 54-55)

> '*54.* While imposing costs we have to take into consideration pragmatic realities and be realistic as to what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter-affidavit, miscellaneous charges towards typing, photocopying, court fee, etc.

24 *Kalabharati Advertising* v. *Hemant Vimalnath Narichania*, (2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808

11 (2011) 8 SCC 249 : (2011) 4 SCC (Civ) 1 : (2011) 3 SCC (Cri) 481

55. The other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various courts. The appellants in the instant case have harassed the respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The appellants have also wasted judicial time of the various courts for the last 40 years.' "

38. False averments of facts and untenable contentions are serious problems faced by our courts. The other problem is that litigants deliberately create confusion by introducing irrelevant and minimally relevant facts and documents. The court cannot reject such claims, defences and pleas at the first look. It may take quite some time, at times years, before the court is able to see through, discern and reach to the truth. More often than not, they appear attractive at first blush and only on a deeper examination the irrelevance and hollowness of those pleadings and documents come to light.

39. Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this Court, at a later stage, but once discovered, it is the duty of the court to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.

40. Now, when we revert to the facts of this case it becomes quite evident that the appellant is guilty of suppressing material facts and introducing false pleas and irrelevant documents. The appellant has also clouded the entire case with pleas which have nothing to do with the main controversy involved in the case.

Irrelevant documents

41. All documents filed by the appellant along with the plaint have no relevance to the controversy involved in the case. We have reproduced a list of the documents to demonstrate that these documents have been filed to mislead the court. The first appellate court has, in fact, got into the trap and was misled by the documents and reached to an entirely erroneous finding that resulted in undue delay of disposal of a small case for almost 17 years.

False and irrelevant pleas

42. The appellant is also guilty of introducing untenable pleas. The plea of adverse possession which has no foundation or basis in the facts and circumstances of the case was introduced to gain undue benefit. The court must be cautious in granting relief to a party guilty of deliberately introducing irrelevant and untenable pleas responsible for creating unnecessary confusion by introducing such documents and pleas. These factors must be taken into consideration while granting relief and/or imposing the costs.

43. On the facts of the present case, the following principles emerge:

43.1. It is the bounden duty of the court to uphold the truth and do justice.

43.2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.

43.3. The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful.

43.4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.

43.5. It is the bounden obligation of the court to neutralise any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.

43.6. The watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, the courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same.

43.7. The watchman, caretaker or agent holds the property of the principal only on behalf of the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.

43.8. The protection of the court can be granted or extended to the person who has a valid subsisting rent agreement, lease agreement or licence agreement in his favour.

44. In the instant case, we would have ordinarily imposed heavy costs and would have ordered restitution but looking to the fact that the appellant is a watchman and may not be able to bear the financial burden, we dismiss these appeals with very nominal costs of Rs 25,000 to be paid within a period of two months and direct the appellant to vacate the premises within two months from today and hand over peaceful possession of the suit property to the respondent Society. In case, the appellant does not vacate the premises within two months from today, the respondent Society would be at liberty to take police help and get the premises vacated.

45. Both the appeals are, accordingly dismissed, leaving the parties to bear their own costs.