



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6679 OF 2003

Smt. Julia Rodrigues
since deceased by her heirs and
legal representatives
1(A) Dr. Uma Pradeep Divate *....Petitioner*

V/s.

1. Smt. Chandra Gulab Advani
2. Kisan Gulab Advani
3. M/s. Jain Agarwal Trust *....Respondents*

WITH
INTERIM APPLICATION NO.10801 OF 2024
IN
WRIT PETITION NO .6679 OF 2003

Mrs. Uma Pradeep Divate *....Applicant*

V/s.

G.H. Advani
(since deceased through legal
heirs)
1. Mrs. Chandra Gulab Advani
2. Kisan Gulab Advani
3. M/s. Jain Agarwal Trust
4. G.K.B. Lens Private Limited
GKB Opticals *....Respondents*

Mr. Prasad Dani, Senior Advocate with Mr. Vishal V. Kale, Mr. Ganesh M. Misal & Mr. Sunil Dude for Petitioner.

Mr. Jai Kanade i/b. Mr. Sumit Kothari for Respondent No.3.

CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 27 September 2024.
Judgment pronounced on : 7 October 2024.

JUDGMENT:

1) Petitioner -landlady has filed this Petition challenging the decree dated 1 April 2003 passed by the District Judge, Pune, allowing Civil Appeal No.790 of 1985 and setting aside the eviction decree dated 28 September 1994 passed by the Additional Small Causes Judge, Pune, in Civil Suit No.1662 of 1981.

2) Commercial premises situated at House No.324, Mahatma Gandhi Road, Camp, Pune are the suit premises. According to Petitioner/Plaintiff, Defendant No.1 was inducted as monthly tenant in respect of the suit premises for the purpose of carrying out laundry business. Plaintiff alleged that Defendant No.1 closed his laundry business in the year 1976-77 and was in the process of subletting the suit premises. Therefore, she served Notice dated 12 January 1977 upon the Defendant No.1 terminating his tenancy. The notice was replied by Defendant No.1 denying the allegations. Plaintiff thereafter received notice dated 2 May 1981 from Defendant Nos.1 and 2 informing her that ownership right in the laundry with the name of M/s. Snow White Cleaners and Dyers was transferred by Defendant No.1 and his son in favour of Defendant No.2 alongwith stock-in-trade, goodwill of the business and tenancy rights. In the above factual background, Plaintiff filed Civil Suit No.1662 of 1981 in the Court of Small Causes seeking eviction of Defendant Nos.1 and 2 from the suit premises on the ground of unlawful subletting. Plaintiff also alleged that Defendant No.1 constructed permanent structure in the suit premises and also converted verandah into room in addition to construction of bathroom without the consent of the Plaintiff. The Suit

was resisted by Defendant No.1 by filing written statement contending that Defendant No.1 was running a laundry business in the suit premises till 1981, when he transferred the entire running business of laundry together with goodwill, stock-in-trade therein, furniture fittings and machinery to the defendant No.2 by a registered conveyance in May -1981. Defendant No.1 filed additional written statement to the amended plaint raising a plea that his father first took the suit premises for commencing laundry business in March-1950, which business was sold by him to the wife of Defendant No.1. That the rent receipt was however maintained in the name of Defendant No.1. After death of first Defendant' wife, the business was being managed by Defendant No.1 and his son till the same was sold to Defendant No.2 as a running concern. Defendant No.2 filed his own written statement contending that the concern 'Snow White Cleaners and Dyers' were previously owned by wife of Defendant No.1, after whose death, the concern was inherited by Defendant No.1 and his son. That the tenancy rights were also inherited by Defendant No.1 and his son as legal heirs. It was contended by Defendant No.2 that the suit premises were not let out for conducting only laundry business and the same were let out for business purposes in general.

3) Parties led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to decree the Suit by judgment and order dated 28 September 1994 accepting the ground of unlawful subletting. The Trial Court held that the business of Defendant No.1 was not a running concern and that therefore the arrangement of transfer of business between Defendant Nos.1 and 2 amounted to unlawful subletting. The Trial Court also held that since Defendant No.1 was statutory tenant of the suit premises he had no right to assign or

transfer in the running business alongwith tenancy rights in the suit premises to Defendant No.2. The Trial Court however did not accept the ground of unauthorised additions and alterations in the suit premises. The Suit was thus decreed on 28 September 1984 on the sole ground of unauthorised subletting.

4) Defendant No.2 preferred Civil Appeal No.790 of 1985 in the District Court, Pune, challenging the eviction decree dated 28 September 1984. The Appellate Court however, dismissed the appeal by decree dated 28 September 1987. Defendant No.2 approached this Court by filing Writ Petition No.5400 of 1987 challenging the decree of the District Judge dated 28 September 1987. This Court passed judgment and order dated 2 July 2002 holding that the appeal deserved to be remanded for consideration of question as to whether the assignment by Defendant No.1 in favour of Defendant No.2 was lawful and whether the business was a running concern. Parties were accordingly permitted to lead additional evidence. This is how the appeal came to be remanded to the Appellate Court for recording a finding on the question of lawful nature of the assignment.

5) The Appellate Court accordingly granted opportunity to both the sides to lead additional evidence. After considering the pleadings and evidence on record, the Appellate Court however, proceeded to allow the appeal filed by Defendant No.2 holding that the business of Defendant No.1 was a running concern and that assignment of such business by Defendant No.1 in favour of Defendant No.2 did not amount to unlawful subletting. Plaintiff's Suit is accordingly dismissed. Petitioner- Plaintiff is aggrieved by decree dated 1 April 2003 passed by the Appellate Court and has accordingly filed the

present Petition. By order dated 6 October 2003, the Petition came to be admitted.

6) The Petitioner-original Plaintiff passed away on 11 March 2011 and accordingly, her legal heir is brought on record. By order dated 27 February 2004, this Court directed parties to maintain status quo. Plaintiff's legal heir has filed Interim Application No.10801 of 2024 complaining about violation of interim order of status quo granted by this Court, contending that structural work is carried out at the suit property. It is further contended that such structural work is being carried out by G.K.B. Lens Private Limited GKB Opticals (Respondent No.4 to the interim application), who is conducting the business in the suit premises. The interim application is filed for initiation of contempt proceedings against said Respondent No.4. The Petition is called out for final hearing today.

7) Mr. Dani, the learned Senior Advocate appearing for the Petitioner would submit that the Appellate Court has erred in reversing the eviction decree passed by the Trial Court. That the case involves clear case of unlawful subletting by Defendant No.1-tenant in favour of a rank outsider, being Defendant No.2, under the garb of assignment of business. He would submit that evidence bears out the fact that Defendant No.2 was working in Indian Oil Corporation and had no experience of conducting laundry business. Defendant No.1 had shut laundry business from the suit premises in the year 1977. That in addition to laundry in the suit premises, two other laundries were also shut by Defendant No.1. That after receipt of notice from the Plaintiff, Defendant Nos.1 and 2 created documents for the purpose of proving running of laundry in the suit premises, which was

produced before the Appellate Court for proving that the business assigned in favour of Defendant No.2 was a running concern.

8) Mr. Dani would further submit that the assignment deed is also signed by son of Defendant No.1, who was not conducting any business in the suit premises as is apparent from admissions given by Defendant No.1 that he was in service. That the Trust was formed by the Defendant No.2 solely for the purpose of transmission of the tenancy as the Trust had no other activity. That the Trust could not have conducted business of dyeing and dry cleaning. Mr. Dani would further submit that it is conclusively established in evidence that Defendant No.2 did not conduct laundry business in the suit premises and started conducting the business of selling articles like carpets, cut pieces, stoves, etc. That he also started tailoring activities in the suit premises. That he removed the sign board of Dyers and Dry Cleaners from the main board. That the factum of lack of any experience by Defendant No.2 coupled with his subsequent conduct of conducting other business in the suit premises leaves no manner of doubt that transfer of business is nothing but a subterfuge adopted for purchasing tenancy rights in respect of the suit premises.

9) Mr. Dani would submit that the Appellate Court has erred in relying on the additional evidence produced by Defendant No. 2 pertaining to the period from February-1981 to May 1981, when Plaintiff proved that the laundry business was closed by Defendant No.1 in the year 1977 itself. That the insurance policy procured at Mumbai raises serious concerns about its genuineness. That the said documents were manufactured only for the purpose of facilitating transfer of tenancy and the Appellate Court ought to have lifted the veil and ascertained the real nature of transaction. Mr. Dani would

submit that the act of unlawful subletting is thus conclusively established. He would submit that Defendant No.2 has further sublet the premises to G.K.B. Lens Private Limited GKB Opticals, which is conducting altogether different business of optician. He would pray for setting aside the decree of the Appellate Court and for passing a decree of eviction against Defendants.

10) Petition is opposed by Ms Jai Kanade, the learned counsel appearing for Defendant No. 2. She would submit that the Appellate Court has rightly appreciated the evidence on record after passing of order of remand by this Court by arriving at a finding that the business transferred by Defendant No.1 in favour of Defendant No.2 was a running concern. Inviting my attention to the order passed by this Court while remanding the appeal, Ms Kanade would submit that the remand order was made for deciding the limited issue as to whether there was transfer of running business. She would submit that Plaintiff pleaded the case that Defendant No.1 had shut his business in the year 1977 and that the same was not running at the time when assignment was executed. That the said stand taken by Plaintiff was held to be disproved on account of specific admission given by Plaintiff herself that she admitted both in examination in chief as well as in the cross-examination that Defendant No.1 was running the business in the year 1981 as well as the fact that he restarted the business. That Plaintiff's witness further admitted that after effect of sale also, business of laundry was being conducted in the premises. She would therefore submit that Plaintiff's pleaded case got disproved on account of her own admissions. That Defendant No.2 led voluminous evidence after the remand order before the Appellate Court, which has rightly been appreciated by the Appellate Court for recording a finding that the case involves genuine transfer of business

and not a mere transfer of tenancy. She would submit that the legislative objective is to promote a businessman to sell the entire assets of the business, tenancy being one of the facets of the assets of business. That transfer of tenancy is mere incidental to transfer of business. She would also submit that the Plaintiff did not plead that the assignment was bogus because Defendant No. 2 did not intend to carry on business of laundry after assignment and that the laundry business was closed after assignment and that therefore in absence of pleadings, evidence could not be lead. In support she has relied on judgment of this Court in **C.C.YI (Dr) vs. Smt. Janakidevi**¹

11) Ms Kanade would take me through various findings recorded by the Appellate Court to demonstrate that there is proper application of mind to the evidence on record relating to laundry receipts, clothes register, continuation of employment of employee after transfer of business, counter foil of cheque book, telephone bill, Shop Act license, insurance policies, etc. leaving no manner of doubt that Defendant No.1 was conducting the business at the time when the transfer of business took place in May-1981. She would submit that all the ingredients of the Government Resolution/ Notification issued by the State Government under Section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (the **Bombay Rent Act**) are fulfilled in the present case and that therefore, the arrangement of transfer by Defendant No. 1 in favour of Defendant No.2 cannot be construed as act of unlawful subletting. She would submit that the view taken by the Appellate Court is a possible view and in absence of any palpable error, this Court would not be justified in interfering in such finding in exercise of jurisdiction of this Court under Article 227 of the Constitution of India. In support, she would rely upon judgments of the Supreme Court in **Ranjeet Singh Vs. Ravi**

¹ 2001(4)MhLJ 114

Prakash², Helper Girdharbhai V/s. Saiyed Mohmad Mirasaheb Kadri and Others³ and Patel Valmik Himatlal and Others V/s. Patel Mohanlal Muljibhai⁴. She would pray for dismissal of the Petition.

12) Rival contentions of the parties now fall for my consideration.

13) The short issue that this Court is tasked upon to decide in the present Petition is whether the act of Defendant No.1 in transferring the laundry business conducted under the name 'Snow White Cleaners and Dyers' together with goodwill, stock-in-trade, furniture, fitting and machinery to Defendant No.2 vide registered conveyance executed in May-1981 would tantamount to an act of unlawful subletting within the meaning of Section 13(1)(e) of the Bombay Rent Act. Under the provisions of Section 13(1)(e), the landlord is entitled to recover possession of the premises if the Court is satisfied that the tenant has unlawfully given on license whole or part of the premises or assigned or transferred his interest therein. Section 13(1)(e) of the Bombay Rent Act reads thus:

13. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act [but subject to the provisions of sections 15 and 15A,] a landlord shall be entitled to recover possession of any premises if the Court is satisfied –

e) that the tenant has, since the coming into operation of this Act, unlawfully sub-let] or after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, unlawfully given on licence, the whole or part of the premises or assigned or transferred in any other manner his interest therein; or

14) Section 15 of the Bombay Rent imposes prohibition on tenant on subletting or transferring or giving on license the tenanted

² (2004) 3 SCC 682

³ (1987) 3 SCC 538

⁴ (1998) 7 SCC 383

premises. However, Proviso to Sub Section 1 of Section 15 empowers the State Government to issue a Notification permitting transfer of interest in premises or giving on license any premises as may be specified in the Notification. Section 15 of the Bombay Rent Act provides thus:

Section 15

In absence of contract to the contrary tenant not to sub-let or transfer or to give on license

(1) Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein and after the date of commencement of the Bombay Rents, Hotel, and Lodging House Rates Control (Amendment) Act, 1973 for any tenant to give on license the whole or part of such premises

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

(2) The prohibition against the sub-letting of the whole or any part of the premises which have been let to any tenant, and against the assignment or transfer in any other manner of the interest of the tenant therein, contained in sub-section (1), shall, subject to the provisions of this sub-section be deemed to have had no effect before the 1st day of February, 1973, in any area in which this Act was in operation before such commencement; and accordingly, notwithstanding anything contained in any contract or in the judgment, decree or order of a Court, any such sub-lease, assignment or transfer of any such purported sub-lease, assignment or transfer in favour of any person who has entered into possession, despite the prohibition in sub-section (1) as purported sub-lessee, assignee or transferee and has continued in a possession on the date aforesaid shall be deemed to be valid and effectual for all purposes, and any tenant who has sub-let any premises or part thereof, assigned or transferred any interest therein, shall not be liable to eviction under clause (e) of sub-section (1) of section 13. The provisions aforesaid of this sub-section shall not affect in any manner the operation of sub-section (1) after the date aforesaid.

15) Section 15 of the Bombay Rent Act prohibits the tenant from subletting whole or any part of the premises let out to him or from assigning or transferring his interest therein or from giving on license whole or part of the premises. As observed above, Section 13(1)(e)

confers right upon the landlord to seek recovery of possession of the suit premises if the tenant commits breach of prohibition imposed under Section 15(1) of the Act. However, three exceptions are carved out under Section 15 to the prohibition imposed on the landlord. Firstly, it is lawful for the tenant to sublet, assign or transfer his interest in the premises in accordance with specific terms of the contract. Secondly, licenses granted prior to 1 February 1973 are excluded from operation of Section 15. Thirdly, State Government has been vested with power to issue notification for permitting transfer of interest in premises under specified leases or classes of lease.

16) In exercise of power conferred under Proviso to Section 15(1) of the Bombay Rent Act, the State Government has issued Notification No. 5975/33 dated 24 September 1948. None of the parties have produced the entire Notification, and even the Appellate Court has culled out truncated portion thereof in its judgment. However the said Notification has been referred to in large number of judgments and it would be apposite to make a reference to the judgment of Division Bench of this Court in *Jayprakash Shyamsunder Mandare v. Laxminarayan Murlidhar Mundade*,⁵

6. We have already mentioned above the facts in sufficient details. We must now turn to the point of law which is to be decided by us. As is well-known, transfers of leasehold interest by the tenants are prohibited under the provisions of the Bombay Rent Act except where there is a contract to the contrary. In particular, Section 15 of the Bombay Rent Act mentions that notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein. The proviso to sub-section (1) of Section 15, however, empowers the State Government to permit in any area the transfer of interest in the premises held under such leases or class of leases and to such extent as may be specified in the notification. **In exercise of this power the State Government has issued a notification, being Notification No. 5975/33, Health and Local**

⁵. 1983 Mah LJ 362

Government Department, dated 21st September, 1948, under which it has permitted in all areas in which Part II of the Act operates, all transfers and assignments by lessees of their interest in the leasehold premises as and to the extent specified in the Schedule annexed to the said notification. Clause (2) of the Schedule to the said notification permits “transfer or assignment incidental to the sale of a business as a going concern together with the stock-in-trade and the goodwill thereof, provided that the transfer or assignment is of the entire interest of the transferor or assignor in such leasehold premises together with the business and the stock-in-trade and goodwill thereof”

(emphasis added)

17) Relevant portion of Notification dated 21 September 1948 and entry at Sr. No. (2) of its Schedule reads thus:

In exercise of the powers conferred by section 15 of this Act, the Government of Bombay is pleased to permit-in all areas to which part II of this Act extends, all transfers and assignments by lessees of their interests in leasehold premises as and to the extent specified in the Schedule hereto.

"The Transfer or assignment incidental to the sale of a business as a going concern together with the stock-in-trade of, and the goodwill thereof provided that the transfer or assignment is of the entire interest of the transferor or assigner in such lease-hold premises together with the business and the stock- in-trade and good will thereof.

18) Thus, by issuance of Notification under Proviso to Sub Section 1 of Section 15, in relation to tenancy to which Part II of the Act applied, permission is granted for transfer or assignment incidental to the sale of the business as a going concern together with stock-in-trade and goodwill, provided that the transfer or assignment is of the entire interest of the transferor or assignee in such leasehold premises together with business and stock-in-trade and goodwill thereof. Relying on the provisions of Notification dated 21 September 1948 both the Defendants took a defence in their respective written statements that the entire business of the concern ‘Snow White

Cleaners and Dyers' was sold by Defendant No.1 and his son to Defendant No.2 by way of registered conveyance in May 1981.

19) Though the Suit was initially decreed by the Trial Court and the Appellate Court had confirmed the eviction decree, this Court was not satisfied by the findings recorded by both the courts. This Court accordingly observed in paragraphs 6 and 8 of its order dated 2 July 2002 as under:

6. Having considered the rival submissions, I have no hesitation in taking the view that the Appellate Court has completely overlooked the crucial documentary and other evidence which was relied upon by the Petitioner which, prima facie, would show that when the transfer was effected in favour of the petitioner at the relevant time it was a running laundry business and the assignment was in respect of that business along with stock-in-trade and goodwill. Besides, the Appellate Court has not even adverted to the pleadings of the parties se as to discern as to whether any allegation regarding the material facts to constitute unlawful subletting has been made in the plaint inter-alia, that when the premises was transferred vide Sxh.56 at the relevant point of time, it was not in respect of a running business and assignment was not in respect of such running business or alongwith stock-in-trade and goodwill.

8.However, the only question that remains to be examined in the present petition is whether it is pleaded and proved that subject assignment is not lawful having regard to the fact that assignment was not in respect of a running business alongwith stock- in-trade and good will. This question of fact will have to be addressed afresh by taking into account the pleadings of the parties and entire evidence –oral as well as documentary - which has already come on record. Before this Court an application has been filed for permitting the Petitioner to adduce further additional evidence which would be relevant for examining the above said question. The Appellate Court may examine the said prayer and consider the same in accordance with law. If the Appellate Court is satisfied that it would be appropriate to permit the parties to adduce further evidence with regard to the said question, it may allow the party to adduce such evidence as may be permissible in law. Needless to mention that the Appellate Court may consider the request in the context of the fact that no issue was framed before the trial Court. Accordingly, instead of going into the correctness of the view expressed by the Appellate Court, I would think it appropriate to remit the case to the Appellate Court to consider the pleadings as well as entire evidence and further evidence, if any, and thereafter to record a clear finding on the said question before passing the final orders. In this view of the matter, the impugned order is set aside and the matter is remitted and restored on the file of the appellate Court to reconsider the case afresh

in accordance with law and in context of the observations made in this judgment. No order as to costs.

20) Thus, this Court remanded the Appeal for fresh decision by the Appellate Court on the issue whether it was pleaded and proved that the subject assignment is not lawful, having regard to that fact that assignment was not in respect of a running business alongwith stock-in-trade and goodwill. The Appellate Court, upon reconsideration of the evidence as well as after permitting leading of additional evidence, has arrived at a conclusion that the business of Defendant No.1 was in operation and that therefore assignment is transfer of running concern within the meaning of Notification dated 21 September 1948.

21) In my view, therefore, the limited controversy that needs to be resolved in the present Petition is whether the assignment executed between Defendants satisfies all ingredients of the Notification dated 21 September 1948 issued under Proviso to Sub Section 1 of Section 15 of the Bombay Rent Act.

22) Before considering the factual position in the present case vis-à-vis the ingredients specified under Notification issued by the State Government, it would be necessary to consider the broad intention behind excluding the transfer of businesses from the scope of subletting for attracting the ground for eviction. Companies, firms or proprietors take decisions for acquisition, merger, amalgamation or transfer of businesses to best suit their commercial interests. Such transfers, mergers, acquisitions of businesses between two entities essentially envisage conduct of business, which was being conducted by earlier entity (transferor), by the transferee entity from the date of transfer. Such transfer of business often involves transfer of assets of

the transferor entity and in a given case, assets of the transferor entity may involve tenanted premises used for conducting the business or for activities ancillary to the business. To illustrate, a company may be a tenant conducting business from tenanted property or may have several tenanted premises for being used as factory, residence for its staff or as guest house. If the business of such company is transferred, merged or acquired by or with another entity, transfer or merger of such business could be construed by the landlord as transfer of tenancy thereby putting the transferee entity to the risk of unlawful subletting. With the objective of preventing such interpretation, whereunder the tenancy rights face the risk of attracting the folly of subletting under Section 15(1) of the Act on account of transfer of business, the State Government has excluded transfer or assignment of business as an ongoing concern from the ambit of subletting within the meaning of the Bombay Rent Act. This is clear from use of the words "*The Transfer or assignment incidental to the sale of a business as a going concern ..*". Thus what is permitted under the Notification is 'transfer of business' and not 'transfer of tenancy'. The Notification seeks to exclude specific cases involving transfer of entire business from attracting the folly of unlawful subletting when the tenanted premises also change hands with such transfer of business.

23) The Notification issued under the proviso to Section 15(1) is not aimed at facilitating tenants of commercial premises to transfer their tenancy rights behind the back of landlord. There is complete prohibition on tenants of residential premises from subletting their premises or grant of licenses after 1 February 1973. The tenant of residential premises transferring his tenancy rights to an outsider attracts the ground for eviction under Section 13(1)(e) of the Bombay

Rent Act. Apart from prohibition on transfer/assignment of tenancy rights, a tenant is not even permitted to bequeath his tenancy rights to a desired person. In respect of residential premises, limited protection extended by rent control legislation is to recognize tenancy rights of only such members of family, who reside with the tenant at the time of his death. In respect of commercial tenancies, transmission of tenancies was permitted under the Bombay Rent Act only in favour of member of tenant's family using the premises along with the tenant and in absence of such member, to the legal heir. Otherwise, there is complete prohibition on transfer, assignment or bequeathing of tenancy rights. Similar are the provisions under the Maharashtra Rent Control Act, 1999. Thus the rent control legislations do not permit assignment or transmission of tenancy rights in the name of desired person. If these prohibitions are borne in mind, the legislative intent behind incorporation of Proviso under Section 15(1) as well as the objective behind issuance of Notification dated 21 September 1948 becomes apparent. Objective is not to promote or encourage a commercial tenant to assign the tenanted premises to outsiders and profiteer therefrom.

24) As observed above, the object is only to ensure that genuine transfer of business by transferor entity to transferee entity does not result in loss of tenancy by attracting ground of subletting. In the present case however, Defendant No.1 –tenant, who was possibly on the verge of shutting his business, has ensured smooth transmission of tenancy in favour of a rank outsider by assigning his tenancy rights under the garb of assignment of business and has profited therefrom. Thus, what is done in the present case is that the tenancy rights in respect of the premises owned by landlady are assigned in favour of outsider by the tenant behind the back of landlady and

without paying her any amount of consideration. Thus, at the expense of property owned by the landlady, the tenant has profited. The tenant has not only continued occupying the suit premises by paying paltry amount of rent and has enjoyed the benefits of rent control legislation, but when it came to return of the premises to landlady at the time of closure of business, the tenant has conveniently transferred and assigned his tenancy rights in favour of outsider for valuable consideration.

25) Before going into the issue of satisfaction of all ingredients of Notification dated 21 September 1948, it would be necessary to first consider the nature of assignment executed between the parties. The assignors to the conveyance deed executed in May 1981 are Defendant No.1 and his son. Since it became difficult for Defendants to deal with a situation as to why son of Defendant No. 1 is party to the assignment, an apparent false story appears to have been woven to paint a picture as if son of Defendant No.1 was the real tenant. This is apparent from following pleadings raised in the additional written statement filed by Defendant No.1:

1...This defendant's father first took the suit premises for starting the laundry business in March 1950, which he sold to this defendant's wife in the subsequent year. The rent receipt however was made out in this defendant's name. After the death of this defendant's wife the business was owned and managed by this defendant and his son, till it was sold to the defendant No.2 as a running concern.

26) The same stand is repeated by Defendant No.2 in paragraphs 4 and 5 of his written statement as under:-

4. It is not true that defendant No.2 alone for the monthly tenant for the suit premises. The concern Snow White Cleaners and Dyers was previously owned by the wife of defendant No.1 and on her death the said concern was inherited by defendant No.1 and her son Shri Kishan Gulab Adwani. The tenancy rights also in the suit

premises were inherited by defendant No.1 and the said Shri Kisan Gulab Adwani as the legal heirs.

5. It is not true that the suit premises were let out to defendant No.1 for the purpose of laundry business only. The suit premises had been let out for business purposes in general and not for any particular business.

27) However, no evidence is produced on record to indicate that tenancy was created in favour of father of Defendant No.1 and the same was inherited by his wife and later by his son after his wife's death. In my view therefore, the defence adopted by both the Defendants about son of Defendant No.1 being tenant of the suit premises is clearly fallacious. It has come in evidence that son of Defendant No.1 was living at Hyderabad 7 to 8 years prior to September-1984 when deposition of Defendant No.1 was recorded. Defendant No.1 further admitted that before proceeding to Hyderabad, his son was serving at Pune in a private factory. Thus, as on the date of execution of the assignment in May-1981 as well as much prior to the said date, son of Defendant No.1 was not at Pune and while being in Pune, he was serving in a private factory. It is thus, conclusively proved that son of Defendant No.1 has no semblance of relationship either with the business or with the tenanted premises. Despite this, son of Defendant No.1 is party to the assignment deed, which aspect has not been properly explained by the Defendants.

28) It would now be necessary to examine what exactly was intended to be purchased and is ultimately purchased, whether it is purchase of 'business' or purchase of 'tenancy rights'? Before doing so, it is necessary to deal with Ms. Kanade's contention about absence of pleading about the assignment being bogus. She has submitted that Plaintiff did not plead that the assignment was bogus because

Defendant No. 2 did not intend to carry on business of laundry after assignment and that the laundry business was closed after assignment. However there is specific pleading in para 3 of the Plaint that *'The Plaintiff further says that the alleged Deed of Assignment is a bogus document and brought about with the sole intention of circumventing the provisions of the Bombay Rent Act'*. Thus there is specific pleading about assignment being bogus. The assignment is effected in May 1981 and the suit is filed on 7 August 1981. Thus the time gap between the assignment and filing of suit is not too wide when Defendant No. 2 could have continued operation of laundry for few months to avoid allegation of subletting. The submission about absence of pleading, apart from being fallacious, is actually irresponsible. Therefore reliance of Ms. Kanade on judgment of this Court in **C. C. YI (Dr)** (supra) about impermissibility to lead evidence in absence of pleadings is irrelevant.

29) The Appellate Court has held in paragraph 38 of its judgment as under:

38. It is true that in a generic term the word 'business may not mean any specific particular business. But in the context of assignment incidental to sale of business, the term 'business' may not have that broad meaning of any business. What is contemplated is a sale of business is a particular business. Further such sale has to be accompanied by the stock-in-trade and good will thereof. Good will of a grocer may not be useful for a draper and so on. Likewise the stock- in-trade of a launder, namely laundry equipment, may be utterly useless for a person doing another business. Therefore, when the transfer with goodwill and stock- in-trade is contemplated, continuity of same business is implicit. Therefore, though for the purpose of section 13(1)(k) of the Bombay Rent Act, "business" have a different meaning, in the sense that it is user for any business, in the context of assignment of business, protected by the notification under section 15 of the Bombay Rent Act, the word 'business' would have a specific meaning. Thus, while a change contemplated under section 13(1)(k) of the Bombay Bent Act "would still permit a businessman to continue with a different line of business activity which does not materially deviate from the user of the premises,

such would not be the case with the person seeking protection under the notification issued under section 15 of the Bombay Rent Act. **Here in order to avail of this protection, he would have to intend to continue with the same business which he seeks to acquire from the tenant.**

(emphasis added)

30) Thus, by drawing a distinction between provisions under Section 13(1)(k) of the Bombay Rent Act and ingredients of Notification dated 21 September 1948, the Appellate Court has held that for availing the protection under the Notification, the assignee must have an intention to continue with same business which he seeks to acquire from the tenant. Thus, according to Appellate Court itself, it was mandatory for Defendant No.2 to prove before the Court that he always intended to conduct same business after acquisition from the tenant. In the present case, Plaintiff is slightly unsuccessful in proving that the business was shut by Defendant No.1 in 1977. She has given admission about the conduct of business by Defendant No.1 in the year 1981 as well as restarting of the business after closure by Defendant No.1. Furthermore, the Appellate Court has also appreciated the evidence on record in the form of laundry receipts, clothes register, employment of same employee after transfer of business, counterfoil of cheque book, Shop Act license, Registration certificate, trade license, insurance policies for the purpose of holding that Defendant no.1 was running business in the suit premises in the year 1981. Though Mr. Dani has sought to contend that said evidence is created only after receipt of notice from Plaintiff and that creation of the evidence is aimed at facilitating transfer /assignment of tenancy, in my view, it is difficult to accept Mr. Dani's contention in the light of overwhelming evidence appearing on the record suggesting that Defendant No.1 was indeed conducting laundry business till the year 1981. However, what needs to be determined is the intention of the parties as well as the real nature of transaction.

To paraphrase, what needs to be decided is whether Defendant No.2 has purchased the 'business' or 'tenancy rights' in the premises? It has come in evidence that Defendant No.2 was working in Indian Oil Corporation Ltd. on the post of Sales Officer, and was handling sales of petroleum products till December -1980. The assignment has taken place five months later in May-1981. Defendant No.2 has further admitted that neither he nor any member of his family had ever conducted laundry business and that they had no experience of conducting laundry business. Defendant No.2 further admitted that he formed Jain Agarwal Trust in the beginning of 1981 and the fact that the assignment was executed in the name of the Trust immediately after its formation, gives rise to the inference that the Trust was formed only for the purpose of purchasing of tenancy rights in the suit premises. Defendant No.2 further admitted that Jain Agarwal Trust is a specific family Trust, which was formed without any particular reason. That none of the Trustees of the Trust had any experience of conducting any laundry business. It is also difficult to fathom how a Trust could have otherwise run a laundry business?

31) Defendant No.2 has further admitted in his evidence that after commencing business in the suit premises, he removed the words 'Dyers and Dry Cleaners' from the main signboard put up at the shop. He further admitted that he was selling carpets, cut pieces and stoves in the shop. He further admitted that tailoring business was also carried out in the suit premises. There is absolutely no connection between laundry business and business of selling carpets, cut pieces, stoves, or stitching garments. Removal of the words 'Dyers and Dry Cleaners' from the signboard shows that Defendant No.2 did not intend to advertise laundry business to the customers. He never wanted to advertise the alleged laundry business for attracting

customers. He merely retained the trade name 'Snow White' (to obviate the allegation of subletting) but removed the words 'Dyers and Dry Cleaners' from the main signboard (possibly not to attract laundry customers). All these activities carried out by Defendant No.2, who had zero experience of conducting any laundry business, would leave no manner of doubt that purchase of business by Defendant No.2 is a mere subterfuge employed by the Defendants and the real nature of transaction is purchase of tenancy rights in the suit premises. Though Ms. Kanade has submitted that the photographs showing removal of words 'Dyers and Drycleaners' are taken in the year 1984, it does not mean that the removal occurred in the year 1984. The Photographs were required to be produced and the photographer was required to be examined on account of assertion by Defendant No. 2 that he was running laundry in the suit premises. Otherwise, Defendant No. 2 on his own did not state as to when the said words were removed from the main sign board and what was the reason for removal of those words. Therefore merely because the photographs are taken in the year 1984, it cannot be presumed that the words 'Dyers and Drycleaners' were continued till 1984. In any case, it is inconceivable that a businessman, who purchases the laundry business and intends to continue the same would remove the words 'Dyers and Drycleaners' from main signboard within couple of years of purchase of business.

32) The objective behind prescription of condition of transfer of 'goodwill' must be appreciated. Thus the transferee of business must evaluate worth of the goodwill of the business of the transferor and accordingly proceed to purchase the business. The goodwill must be so worthy that payment of consideration for purchase of such goodwill should be beneficial to the purchaser, who then puts that goodwill for

his profits. Therefore continuation of same business by use of purchased goodwill is a *sine qua non* for attracting the exemption under the Notification issued under Section 15(1) of the Bombay Rent Act. Seen from this angle, the conduct of Defendant No. 2 in removing the words '*Dyers and Drycleaners*' from the signboard leads to necessary inference that he had no interest in purchase of goodwill of Defendant no. 1 and never intended to continue the business of laundry from the suit premises.

33) It otherwise becomes difficult to believe that a Sales Officer working in Mumbai in Indian Oil Corporation can think of commencing business in laundry by taking over the business of another entity. Defendant No.2 admitted that he was shown the suit premises through a broker. Engagement of broker for introduction of Defendant Nos. 1 and 2 to each other again gives rise to a presumption that the real nature of transaction is assignment of tenancy rights and not assignment of business in laundry. Defendant No.2 has not led any evidence as to why he was looking for a business of laundry. There is no evidence on record to indicate that he met any other laundries or negotiated with them for taking over the business. Thus, the intention of Defendant No.2, right from inception, was not to take over the laundry business, but to invest in property. Furthermore, it has come in evidence that Defendant No.1 had two other laundries at other locations. This is not a case where the entire laundry business of Defendant No.1, operated at various outlets, is taken over by Defendant No.2. He has chosen to selectively purchase tenancy rights only in respect of the suit premises. With a view to ensure that ground of subletting is not attracted, the laundry equipment was maintained for some time in the premises. It is possible that even activities relating to laundry business could have

been conducted by Defendant No.2 by continuing services of one of the employees of defendant No.1 for some time to dispel any allegation of subletting. However, if the entire nature of arrangement is taken into consideration, the inescapable conclusion that emerges is that the real transaction between the parties is assignment of tenancy rights and not the assignment of laundry business. The Appellate Court has erred in assuming that use of suit premises for sale of various other articles amounts to mere addition in business. The Appellate Court ought to have lifted the veil and found out the real nature of transaction.

34) As observed above, the objective behind issuance of Notification dated 21 September 1948 under Proviso to Section 15(1) of the Bombay Rent Act is not to encourage or permit assignment of tenancy rights in respect of commercial premises behind the back of landlord. What done in the present case is that property belonging to the landlady is conveniently assigned for valuable consideration by the tenant in favour of a rank outsider. The entire scene is choreographed by the tenant and purchaser behind the back of the landlady. This Court cannot turn a blind eye to such unlawful transaction by branding the same as transfer of a going concern and not assignment of tenancy rights.

35) It would be apposite to make a reference to recent decision of the Apex Court in *Yuvraj alias Munna Pralhad Jagdale V/s. Janardan Subajirao Wide*,⁶ in which tenant was running a business of restaurant in the tenanted premises and initially executed partnership deed for letting a third party to run the business and later assignment agreement was executed under which that third party agreed to purchase the business of restaurant from tenant and

⁶ 2023 SCCOnline SC 308

paid Rs.50,000/- towards earnest money out of agreed amount of consideration of Rs. 2,00,000/-. Though the transaction did not ultimately fructify and suit for specific performance filed by the third part was dismissed, the Apex Court held that the arrangement amounted to unlawful subletting. The Apex Court held as under:-

23. Given the clear proscription in the lease deed, duly endorsed by the explicit language of Sections 13(1)(e) and 15(1) of the Act of 1947, the very execution of the assignment agreement dated 15.01.1985 (Exh.49), whereby the tenant admittedly assigned his business in the leasehold premises in favour of Krishna B Shetty for Rs. 2,00,000/- and accepted a sum of Rs. 50,000/- as earnest money, was sufficient in itself to establish transgression of the lease condition and the statutory mandate. No doubt, the earlier decisions of this Court, referred to hereinabove, laid down the principle that the mere execution of a genuine partnership deed by a tenant, whereby he/she converted a sole proprietary concern into a partnership business, while continuing to actively participate in the business and retaining control over the tenanted premises wherein the business is being run, would not amount to sub-letting. **However, that principle has no role to play in the case on hand as the tenant did not stop short at executing the partnership agreement dated 01.01.1985 (Exh.48) but went on to execute the assignment agreement dated 15.01.1985 (Exh.49), whereby he assigned his hotel business in the leased premises to Krishna B Shetty and received earnest money also. The very act of execution of this document was sufficient in itself to complete the breach of the lease condition and the statutory mandate and did not require anything further.** Therefore, the subsequent failure of Krishna B Shetty in his specific performance suit in Civil Suit No. 623 of 1986, be it for whatever reason, is of absolutely no relevance or consequence. All the more so, as the landlord and landlady were admittedly not parties thereto and the judgment rendered in the said suit was not even placed on record as per due procedure and at the relevant time. Irrespective of the result in the said suit, the ineluctable fact remains that **the tenant admitted execution of the assignment agreement (Exh.49) and that singular fact settled the issue as to whether there was an act of assignment on his part.** The High Court seems to have lost sight of this crucial aspect.

24. We, therefore, find on facts that the tenant admitted committing a breach of the lease condition with regard to assignment of his leasehold interest in favour of a third party, when he signed the assignment agreement dated 15.01.1985 (Exh.49) for a consideration of Rs. 2,00,000/- and received Rs. 50,000/- as earnest money. The breach being complete on his part upon such execution itself, the failure of the assignee, Krishna B Shetty, in his suit for specific performance against the tenant is of no import.

36) After considering the overall conspectus of the case, I am of the view that though Defendants were successful in proving that the business of Defendant No.1 was ongoing at the time of execution of deed of assignment, what is actually purchased by Defendant No.2 is not the business, but tenancy rights in respect of the suit premises. Defendant No.2 neither had any expertise or experience nor intended to carry on laundry business in the suit premises. He formed Trust for the sole purpose of purchase of tenancy rights, took false defence of son of Defendant No.1 being the real tenant and latter conveniently started using the suit premises for conducting various other businesses than the business of laundry shown to have been purchased from Defendant No.1. I am therefore of the view that Appellate Court has committed palpable error in not ascertaining the exact nature of transaction, where the property belonging to landlady is clandestinely transferred by the tenant in favour of an outsider for a valuable consideration without landlady's consent. Though the Appellate Court has held in paragraph 44 of the judgment that subsequent addition of other lines of business in the suit premises by Defendant No.2 casted doubt on his initial intentions, it failed to take the doubt expressed by it to logical conclusion of unlawful subletting. It ought to have appreciated that there was never any intention on the part of the Defendant No.2 to conduct laundry business in the suit premises.

37) Petitioner has produced photograph of suit premises alongwith Interim Application No.10801 of 2024, which shows that an altogether different business of selling optical products is apparently being conducted in the suit premises, that too by another entity viz. G.K.B. Opticals and not by Defendant No. 2. This Court would take judicial notice of the fact that GKB Opticals is one of the leading

retailers in eye wear in the country and Defendant No.2 appears to have handed over the suit premises to GKB Optical. This is yet another factor indicating that Defendant No.2 never intended to use suit premises for laundry business and the transaction of purchase of business is mere facade behind the real intention of purchasing tenancy rights. The owner of the property cannot be deprived of her own property by misusing the provisions of rent control legislation.

38) Ms Kanade has relied upon the judgment in ***Ranjeet Singh Patel Valmik Himatlal*** and ***Helper Girdharbhai*** (supra) in support of her contention that this Court would avoid interference in the findings recorded by the Appellate Court, when the view taken by them is a possible view. However, in the present case the view taken by the Appellate Court is a palpably wrong requiring interference by this Court in exercise of writ jurisdiction under Article 227 of the Constitution of India.

39) In my view, therefore, the judgment and order passed by the Appellate Court is indefensible and liable to be set aside. Writ Petition accordingly succeeds and I proceed to pass the following order:

- i. Judgment and order dated 1 April 2003 passed by the learned District Judge, Pune in Civil Appeal No.790 of 1985 is set aside and the Decree dated 28 September 1994 passed by the Additional Small Causes Judge, Pune, in Civil Suit No.1662 of 1981 is confirmed.
- ii. Civil Suit No.1662 of 1981 is decreed on the ground of unlawful subletting by Defendant No.1 in favour of Defendant No. 2.

- iii. Defendants and all persons claiming through them shall handover possession of the suit premises to Plaintiff within a period of two three from today.
- iv. Plaintiff shall be entitled for enquiry into mesne profits under Order XX Rule 12(c) of the Code of Civil Procedure, 1908 from the date of decree i.e. 28 September 1994.
- v. The Defendants shall pay costs of the entire litigation to the Plaintiff.

40) With the above directions, Writ Petition is allowed. Rule is made absolute.

41) In view of disposal of the Writ Petition, Interim Application does not survive and hence stands disposed of.

[SANDEEP V. MARNE, J.]