IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.193 OF 2011

Hussainali Sharif Punjwani .... Applicant.

V/s

The Board of Trustees of Port of Bombay .... Respondents.

WITH
WRIT PETITION NO.8451 OF 2008

Abdul Sattar Dawood Mohamed Pipewala .... Petitioner.

V/s

The Board of Trustees of the Port of
Bombay and Others. ..... Respondents.

WITH
WRIT PETITION NO.9124 OF 2010

Saukat Ali Basir Ahmed Khan & Others ....Petitioners.

V/s.

The Board of Trustees of the Port of
Bombay and Others ..... Respondents.

WITH
CIVIL REVISION APPLICATION NO.217 OF 2011

Ashok Laxmidas Gesota ….Applicant.

V/s

The Board of Trustees of the Port
of Bombay …. Respondents.

WITH
CIVIL REVISION APPLICATION NO.694 OF 2011

Smt. Khatizabai Habib Gafoor Ramzan ….. Applicant

V/s

The Board of Trustees of the Port of
Mumbai ….. Respondents.

WITH
FIRST APPEAL NO.790 OF 2011
WITH
CIVIL APPLICATIN NO.1028 OF 2011
IN
FIRST APPEAL NO.790 OF 2011

Zuzharbhai Master Or Metro Enterprises
and Others ….Appellants.

V/s

The Board of Trustees of Port of Mumbai
and Others ….. Respondents.

WITH
CIVIL REVISION APPLICATION NO.30 OF 2012

Dr. Lakhamsey U. Shah,
Deceased through
Sharad Lakhamsey Shah & Others ….Applicants.

V/s

The Board of Trustees of the Port of Bombay ….. Respondents.

WITH
WRIT PETITION NO.6536 OF 2012

Mr. Uttamkumar Kamalashankar Vyas ….Petitioner.

V/s

The Board of Trustees of Port of Bombay
and Others ….. Respondents.

Mr. Ashutosh A. Kumbhakoni, Senior Counsel a/w Mr. Akshay Shinde i/b B.H. Prasad Sharma for the Applicant in CRA No.193/2011.

Mr. Viren Asar a/w Mr. Arvind Fedge, Mr. Anuramazda Postvala i/b Wadia Ghandy & Co. for the Petitioner in CRA/30/2012.

Ms. Rekha Shukla for the Applicant in CRA/217/2011.

Mr. B.K. Raje for the Applicant in CRA/694/2011.

Mr. Shreehari Aaney, Senior Counsel a/w Mrs. Dipti Srinivatsan, Mr. Deepak Motiwalla Solicitor and Mr. Rooshesh Motiwalla i/b Motiwalla & Co. for the Respondents.

[**As per Rule 1(i) of Chapter XI of the Appellate Side Rules, 1960, signed judgment is pronounced by Shri Justice V.M. Kanade at Bombay as Shri C.V. Bhadang, J. is sitting at the Bench at Goa]**

CORAM: V. M. KANADE &
C. V. BHADANG, JJ.
Judgment reserved on : 02/05/2017
Judgment pronounced on: 13/06/2017

JUDGMENT (Per V.M. Kanade, J.)

1] Heard Mr. A.A. Kumbhakoni, the learned Senior Counsel appearing on behalf of the Applicant in CRA/193/2011 and Mr. Shreehari Aaney, the learned Senior Counsel appearing on behalf of the Respondents/BPT. The other three learned Counsel appearing in CRA/30/2012, CRA/217/2011 and CRA/694/2011 have adopted the submissions made by the learned Senior Counsel Mr. Kumbhakoni.

2] A short but interesting question has been referred to us by the Hon'ble Chief Justice in view of the reference made by the learned Single Judge Mr Justice G.S. Godbole (as he then was) in his judgment dated 18/01/2012. The question which was framed for reference by the learned Single Judge is as under:-

> "Whether the word "entertain" used in Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 can be equated with the word "lodging/filing" of the Suit or will have to be interpreted to mean

"consideration of merits of the Suit" or "the date of framing of issues in the Suit".

By the said judgment and order, the learned Single Judge was pleased to differ with the view taken by learned Single Judge Mr. Justice V.C. Daga (as he then was) in *Shalan w/o Narayan Dappal & Ors. Vs. Board of Trustees of the Port of Bombay*[1]. The controversy in question arose on account of amendment of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (Act No.40/1971) [hereinafter referred to as "the said Act") and more particularly Section 15 of the said Act. By virtue of the said amendment, jurisdiction to try cases for eviction of tenants was taken away from the Rent Court and the Small Causes Court and was conferred on the Estate Officer. The said Act was amended by the Public Premises (Eviction of Unauthorized Occupants) Amendment Act, 1980, (Act No.61 of 1980) and it received the assent of the President of India on 20/12/1980 and it was published in the Gazette of India on 22/12/1980. It is an admitted position that though the said Act was amended on 22/12/1980, machinery to deal with these cases became available in 1989. As a result, eviction suits were filed in the Small Causes Court despite the said amendment.

3] In a group of cases which came up before the learned Single Judge Mr. Justice V.C. Daga, it was held that all cases

1 2009 (3) MH.L.J. 923

which were pending in the Small Causes Court relating to eviction of tenants would be decided by the Small Causes Court and only those cases which were lodged/filed after the Estate Officer was appointed in the year 1989 would be decided by the Estate Officer.

4] Another group of cases in which decree of eviction was passed by the Small Causes Court and confirmed by the Lower Appellate Court were heard by another learned Single Judge Mr. Justice G.S. Godbole (as he then was) and the learned Single Judge after relying on 2/3 judgments of the Apex Court, came to the conclusion that only those cases in which issues were framed would remain with the Small Causes Court and fresh cases would be filed and decided by the Estate Officer. The learned Single Judge (G.S. Godbole, J.) came to the said conclusion by interpreting the word "entertain" and held that the said word if interpreted in a proper manner after taking into consideration the dictionary meaning and the interpretation of the word by the Apex Court in other similarly situated cases, meant that only those cases where issues were framed could be entertained by the Small Causes Court.

5] The Hon'ble Chief Justice was pleased to refer the matter to Division Bench to decide the said reference. We have accordingly heard the matter at length on different dates. We have heard Mr. Kumbhakoni, the learned Senior Counsel appearing on behalf of the Applicants and also Mr. Aaney, the learned Senior Counsel appearing

on behalf of the Respondents viz the Board of Trustees of the Port of Bombay.

6] Very brief facts which are relevant for the purpose of deciding these applications need to be mentioned. Respondents – the Board of Trustees of the Port of Bombay (hereinafter referred to as "the Port Trust") owned several pieces of land in the Eastern part of Mumbai since its establishment. The Port Trust, in turn, had given these several pieces of lands on lease and several persons had occupied these lands and constructed buildings on the said lands. The lease was renewed from time to time and the Lease Deed itself contemplated that lessees could construct buildings thereon.

7] Prior to the said amendment of Section 15, under the said Act, the word "public premises" was defined in Section 2(e). In the said definition, the lands belonging to the Board of Trustees constituted under the Major Port Trusts Act, 1963 were not included and, as a result, in respect of leases created on the Port Trust Land if any eviction proceedings had to be commenced, the Port Trust had to file suit in the Small Causes Court.

8] The Parliament thereafter enacted the Public Premises (Eviction) of Unauthorized Occupants) Amendment Act, 1980 (Act No.61 o 980) which received the assent of the President on 20/12/1980 and was

published in the Gazette of India on 22/12/1980. In the said enactment, definition of the word "public premises" in Section 2(e) of the said Act was amended by substituting the entire definition and in the said definition in clause (v) of Section 2(e) sub-clause (2), the following amendment was made:-

> "2(e) "public premises means …..
> (1)..... …….
> (2) any premises belonging to or taken on lease by, or on behalf of -
> (i) ……. ……
> (ii) ……. ……
> (iii) ……. ……
> (iv) ……. …….
> (v) any Board of Trustees constituted under the Major Port Trusts Act, 1963.".

By virtue of inclusion of land of the Port Trust in the definition of "public premises", eviction proceedings had to be filed by the Port Trust under the Public Premises Act. In the said Act, original Section 15 was also entirely amended and it was substituted by a new Section 15. We will refer to the said Section at the relevant stage. However, suffice it to state that Section 15 provided for bar of jurisdiction and it mentions that no Court would have jurisdiction to entertain any suit or proceedings in respect of categories mentioned in the said Section.

9] After the Public Premises (Eviction) of Unauthorized Occupants) Amendment Act, 1980 (Act No.61 o 980) came into force on

22/12/1980, the Central Government did not appoint Estate Officer for Bombay Port Trust till 21/09/1989 and therefore these cases came up before the learned Single Judge Mr. Justice V.C. Daga (as he then was) and the learned Single Judge (V.C. Daga, J.) in *Shalan* (supra) held that only those cases which were lodged or filed before 21/09/1989 would continue in the Court of Small Causes and all fresh cases which were filed after 21/09/1989 would be heard by the Estate Officer and those cases which were lodged or filed after that date before the Small Causes Court would be transferred to the Estate Officer of the Bombay Port Trust.

10] After taking into consideration the factual matrix of the case and the controversy in question, it would be necessary to briefly summarize the submissions made by either side.

11] Mr. Kumbhakoni, the learned Senior Counsel appearing on behalf the Applicants and the other three Counsel who have adopted the arguments of Mr. Kumbhakoni, submitted that the judgment of the learned Single Judge (V.C. Daga,J.) in *Shalan* (supra) does not lay down the correct proposition of law and therefore it requires reconsideration. He submitted that the word "entertain" used in Section 15 cannot be equated with the word "to file the Suit". He submitted that on and from 20/12/1980, Court of Small Causes ceased to have any jurisdiction to try and entertain the Suits in question. He submitted that therefore even though decrees of eviction were passed

by the Small Causes Court and were confirmed by the Appellate Bench of the Small Causes Court, those decrees were null and void. In support of the said submission, he relied on the judgment of the Allahabad High Court in *Kundan Lal vs. Jagan Nath Sharma*[1]. He also relied on the judgment of the Gujarat High Court in *Jadeja Shivubha Dolubha vs. Gujarat State Raod Transport Corporation, Ahmedabad*[2]. He submitted that the word "entertain" had been used in Gujarat Act and it was held that it would not only mean "to receive and determine" but it would mean "adjudicate upon" or "proceed to consider on merits". He also relied upon the judgment of the Apex Court in *M/s Lakshmiratan Engineering Works Ltd. vs. Assit. Commissioner (Judicial) I, Sales Tax, Kanpur Range, Kanpur and Another*[3]. He submitted that in paras 7 to 10 of the said judgment, the Apex Court had held that the word "entertain" means to proceed to consider on merits or adjudicate upon and not merely to accept the filing of the case. He also relied upon the judgment of the Apex Court in *Hindusthan Commercial Bank Ltd. vs. Punnu Sahu (dead) through Lrs*[4] He submitted that the Apex Court in the said case had held that the word "entertain" does not mean mere initiation of proceedings but the actual stage when the Court takes up the Suits for consideration. He submitted that the Apex Court had relied upon and approved two judgments of the Allahabad High Court; one in Kundan Lal (supra) and the other in *Haji Rahim Bux and Sons & Ors vs. Firm Samiullah &*

1 AIR 1962 Allahabad 547
2 1977 Vol.XVIII Gujarat Law Reporter pg 656.
3 AIR 1968 Supreme Court 488
4 AIR 1970 Supreme Court 1384

Sons[1]. He then invited our attention to the Judgment of the Apex Court in *Martin and Harris Ltd. vs. VIth Additional District Judge & Ors.*[2]. Relying on para 8 of the said judgment, he submitted that the word "entertain" used in U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 clearly lays down that the stage at which the Court has to consider the merits of the controversy is the stage where the Court entertained a dispute. He therefore submitted that as a corollary the words "institution" and "entertain" are different and have different connotations. He further relied upon the Division Bench Judgment of the Orissa High Court in *Sankar Kumar Bhattar & Ors. vs. Tehsildar-cum-Revenue Officer*[3]. He submitted that in the said judgment, Section 15 of the Orissa Land Reforms Act, 1971 was interpreted and the Division Bench, while construing the word "entertain", had held that to decide the controversy and to make distinction between the words "entertain" and "institution" the entire scheme of the Statute has to be taken into consideration as also the legislative purpose underlying that scheme and the meaning of the expression "to entertain any suit". He then relied upon the Judgment of the Apex Court in *United Bank of India vs. Abhijit Tea Co. Pvt. Ltd.*[4] He relied on paras 14 to 16 and 20 to 23 of the said Judgment and submitted that Civil Court lost its jurisdiction once the Act had come into force. He further submitted by relying upon the judgment in

1 AIR 1963 ALL 320.
2 AIR 1998 Supreme Court 492
3 AIR 1976 ORISSA 103
4 AIR 2000 Supreme Court 2957

Fazlehussein Haiderbhoy Buxamusa vs. Yusufally Adamji & Ors.[1] that even by subsequent events which have taken place during the pendency of the suit, jurisdiction of the court can be ousted.

12] Mr. Kumbhakoni, the learned Senior Counsel appearing on behalf of the Applicants then pointed out as to how the learned Single Judge (V.C. Daga, J.) erred in relying on the judgment of the Apex Court in *Dewaji vs. Ganpatlal*[2] and more particularly para 21 of the judgment of the Apex Court in *United Bank of India* (supra). He submitted that the learned Single Judge had overlooked the observations in para 20 of the Judgment of the Supreme Court in *United Bank of India* (supra).

13] He then submitted that the Estate Officer was appointed in 1989 and merely because the Estate officer was appointed in 1989, it would not confer jurisdiction on Civil Court or Small Causes Court and the executive inaction could not stop the operation of law and would not confer jurisdiction on the Civil Court. He, therefore, submitted that all those judgments were null and void.

14] Reliance was also placed on the judgment of the Apex Court in *Mst. Rafiquenessa vs. Lal Bahadur Chertri*[3]. He submitted that in the said case it was held by the Apex court that the legislature is

1 AIR 1955 Bombay 55 (Vol.42)
2 AIR 1969 Supreme Court 560
3 AIR 1964 Supreme Court 1511

competent to take away vested rights by means of retrospective legislation and is also competent to make laws which override and materially affect the terms of contract between the parties. Finally, reliance was placed on the judgment of the Apex Court in *Shah Bhojraj Kuverji Oil Mills & Ginning Factory vs. Subhash Chandra Yograj Sinha*[1]. He submitted that in the said judgment, the Apex Court had kept the question of applicability of the Maharashtra Rent Control Act, 1999 to the premises owned by Bombay Port Trust open.

15] Mr. Raje, one of the Counsel appearing on behalf of the Applicants in CRA/694/2011 submitted that the issue of inherent lack of jurisdiction had been specifically raised in all these cases. He relied on the Judgment of the Full Bench in *Raje Vyankatrao Jagjiwanrao Deshmukh vs. Sitalprasad Sivnath*[2]

16] On the other hand, Mr. Aaney the learned Senior Counsel appearing on behalf of the Port Trust made the following broad propositions.

> **(I)** Firstly, he submitted that the submission made by the the learned Senior Counsel appearing on behalf of the Applicants in respect of word "entertain" was incorrect. He submitted that the word "entertain" had to be read with the word "jurisdiction" and therefore the word "jurisdiction

1 AIR 1961 Supreme Court 1596
2 1965 Bom. L.R. 868

to entertain" had to be accordingly interpreted. He relied on the judgment of the learned Single Judge Mr. Justice V.C. Daga (as he then was) in *Shalan* (supra). He also relied on the judgment in *Manibai and Anr. Vs. Raj Kumar Harpal Deo*[1]. He also relied on the judgment in *Videocon International Ltd. vs. Securities and Exchange Board of India*[2]. He then referred to the Judgment of the learned Single Judge in *Jadeja Shivubha Dolubha vs. Gujarat Road Transport Corporation, Ahemedabad*[3]. He submitted that the said judgment was overruled by Division Bench of the Gujarat High Court in *Mulsing vs. M.C. Ahmedabad*[4]

(II) Secondly, he submitted that merely because special Tribunal was not constituted, that would not ousted the jurisdiction of the Civil Court. He submitted that it was a settled position in law that if jurisdiction of the Court is ousted and no fresh forum is created then jurisdiction of the Civil Court would not be ousted till new Forum is constituted. He relied on the following five judgments:-

(1) Raje Vyankatrao Jagjiwanrao Deshmukh vs. Sital Prasad Sivnath[5]

1 AIR 1967 Bombay 92
2 2015 AIR SCW 729
3 656 Gujarat Law Reporter Volume XVIII
4 1977 Gujarat Law Reporter 266
5 Vol.7 (1965) Bom.L.R. 868

(2) Bhim Sen vs. State of Uttar Pradesh[1]

(3) Attiq – Ur – Rehman Vs. Municipal Corporation of Delhi and Anr.[2]

(4) Sat Narain Gurwala vs. Hanuman Prasad & Anr.[3]

(5) Shalan w/o Narayan and Others vs. Board of Trustees of Port of Bombay[4]

He submitted that once the Civil Court is seized of the matter and subsequently its jurisdiction is taken away by statute by constituting a special Tribunal, it does not cease to have jurisdiction in respect of such cases since they stand crystallized on the date of institution of the suit. In support of this submission, he relied upon the following judgments:-

(1) Commissioner of Income-tax, Orissa vs. Dhadi Sahu[5]

(2) Videocon Internatinoal Ltd. vs. Securities and Exhchange Board of India[6] *(supra)*

(3) Ambalal Sarabhai Enterprises Ltd. vs. Amrit Lal & Co.[7] *(paras 25, 26, 27 and 36)*

1 AIR 1955 SC 435 Vol. 42.
2 1996(3) SCC 407
3 AIR (33) 1946 Lahore 85
4 2009 (3) M.H.L.J.923
5 1994 Supp (1) SCC 257
6 2015 AIR SCW 729
7 (2001) 8 SCC 397

(4) Venugopala Reddiar vs. Krishnaswami Reddiar[1]

(III) Thirdly, he submitted that if the legislature intended to oust the jurisdiction of the Civil Court, it must expressly do so. He relied on some of the earlier cited judgments and also the Judgment of the Apex Court in *United Bank*[2](supra).

(IV) Fourthly, he submitted that pending of appeals was unaffected by change in Forum and right of appeal was a vested right.

(V) Fifthly, he submitted that all pending suits were unaffected by change in Forum. He had relied upon some of the earlier judgments which he had referred to and also on the judgment of the Apex Court in *Rajender Bansal & Ors vs. Bhuru (D) Thr. LRs. & Ors.*[3]

(VI) Sixthly, he submitted that validly instituted proceedings would continue unless the Amending Act stipulates for their return. He relied on the judgment of the Apex Court in *Commissioner of Income-tax, Orissa*[4] (supra).

1 AIR 1943 FC 24
2 AIR 2000 SC 2957
3 AIR 2016 SC 4919
4 1994 Supp (1) SCC 257

(VII) Seventhly, he submitted that the Statute should not be construed retrospectively, unless made so expressly or by necessary implication. He relied on the judgment in *Manibai and Anr vs. Raj Kumar Harpal Deo*[1].

(VIII) Eighthly, he submitted that exclusion of the jurisdiction of the Civil Court is not to be readily inferred. He submitted that proceedings which were commenced in a particular Court created substantive vested right and it could not be regarded as mere matter of procedure. He then submitted that the language used "no court shall have jurisdiction to entertain" does not prohibit even by necessary implication of continuance of proceedings pending in civil courts. He then relied on Section 6 of the General Clauses Act, 1897 and also relied on some judgments cited earlier. He submitted that meaning of the word changes its colour and meaning of the word gets substantially narrowed having regard to the Maxim of *Noscitur a Sociis.* He then submitted that when two or more words are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. He then submitted that dictionary meaning need not be used in every case and reliance

1 AIR 1967 Bombay 92

should be placed on the ratio of the judgment declared by the Supreme Court and the High Courts. He submitted that the Apex Court had held that the word should not be detached from the context and that regard must also be had to the legislative history, scheme and purpose of the Act.

(IX) Ninethly, he submitted that absurd result should be avoided while interpreting a provision where it would lead to unacceptable consequences. He relied on the Judgment of the Apex Court in *Manganese Ore India ltd vs. State of M.P. & Ors*[1]. He submitted that so far as interpretation of Statute is concerned, primary rule of construction is that the words must be given meaning that the legislature intended and where two meanings are possible, in such case it may become necessary to consider the mischief or defect that the Act intended to remedy. He then submitted that the Rule of *Casus Omissus* requires a court to interpret words as they are used, and not imaginatively supply omissions. He relied on the Judgment of the Apex Court in *Padmasundara Rao (Dead) & Ors vs. State of T.N. & Ors.*[2] He then submitted that the rule of purposive interpretation had to be taken into consideration while interpreting the words.

1 AIR 2017 SC 87
2 AIR 2002 SC 1334

17] It is not necessary to enumerate the facts in the present case. However, in most of the matters, the suits filed by the BPT for eviction were allowed and decrees were passed which were confirmed in appeal and against these orders Revision Application or Writ Petitions were filed, challenging the said orders. In a few cases, obstructionist notice was issued and which was thereafter dismissed and against the said order passed by the Single Judge and Appellate Bench of the Small Causes Court, Civil Revision Application or Writ Petition is filed. Before we take into consideration the rival submissions, it will be necessary to consider the relevant statutory provisions.

18] The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (Act No.40/1971) is an Act, enacted to provide for eviction of unauthorized occupants from the public premises. Prior to the amendment of the said Act on 22/12/1980, "public premises" was defined as under:-

> "2(e) "*public premises*" means any premises belonging to or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes--
>
> (1) any premises belonging to, or taken on lease by, or on behalf of--

(i) any company as defined in section 3 of the Companies Act, 1956 in which not less than fifty-one per cent of the paid-up share capital is held by the Central government; and

(ii) any Corporation (not being a company as defined in section 3 of the Companies Act, 1956 or a local authority) established by or under a Central Act and owned or controlled by the Central Government; and……."

Similarly, Section 15 of the said Act as it originally stood reads as under:-

"15. No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorized occupation of any public premises or the recovery of the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the Central Government or the corporate authority under sub-section (5) of section 9 or any portion of such rent, damages or costs."

The Public Premises (Eviction of Unauthorized Occupants) Act,

1971 (Act No.40/1971) is a Central Act. It was amended by the Parliament and assent of the President was obtained on 20/12/1980 and it was published in the Gazette of India on 22/12/1980. It will be relevant to take into consideration the amendment made in Section 2(e) of the said Act. The relevant portion of amended Section 2(e) reads as under:-

> "2(e) "public premises means …..
>
> (1)..... .....
>
> (2) any premises belonging to or taken on lease by, or on behalf of -
>
> (i) ....
>
> (ii) ....
>
> (iii) ....
>
> (iv) ....
>
> (v) any Board of Trustees constituted under the Major Port Trusts Act, 1963.".

Simultaneously, apart from amending Section 2(e), Section 15 of the said Act was also amended and the old Section 15 was substituted by new Section 15 which reads as under:-

> "15. **Bar of jurisdiction.**- No court shall have jurisdiction to entertain any suit or proceeding in respect of-
>
> (a) the eviction of any person who is in unauthorised occupation of any public premises, or

(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under Section 5A, or

(c) the demolition of any building or other structure made, or ordered to be made, under section 5B, or

(d) the arrears of rent payable under subsection (1) of Section 7 or damages payable under sub-section (2), or interest payable under subsection (2A), of that section, or

(e) the recovery of-

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under Section 5A, or

(ii) expenses of demolition under Section 5B, or

(iii) costs awarded to the Central Government or statutory authority under subsection (5) of Section 9, or

(iv) Any portion of such rent, damages costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority."

19] In all, 40 such cases were filed in this Court. A group of matters

came up for hearing before the learned Single Judge Mr. Justice V.C. Daga and the learned Single Judge in *Shalan* (supra) after taking into consideration the judgments on which reliance was placed by either side, in para 47 and 50 of his judgment made the following observations:-

> "47. In view of the above settled legal position, the right of the petitioners to proceed with the Appeal was unaffected and the lower Appellate Court had jurisdiction to entertain and decide the Appeal filed by the petitioners. It was thus rightly decided by the Lower Appellate Court."

> "50. In conclusion, it follows that the argument that vested right of the plaintiff is taken away does not hold good, nor is there any foundation for the contention that the later Act is retrospective in its application. All that I have held is that section 15(a) of the Act has prospective operation and not retrospective. The Court of Small Causes did not incur any disability to entertain, try and decide the suit for eviction filed against the plaintiff/respondent (BPT). No other contentions other than dealt herein were raised at this stage, it is also appropriate for this Court to observe that the Public Premises Eviction Act

provides for summary eviction of unauthroised occupant as against this the petitioner got much better opportunity before the Court of Small Cause to contest subject suit and that the petitioner did not suffer any prejudice warranting exercise of writ jurisdiction. The Plaintiff is entitled to seek the fruits of long drawn litigation at least after expiry of 29 years."

20] Another group of Petitions and CRAs came up before the learned Single Judge Mr. Justice G.S. Godbole (as he then was), who did not agree with the view taken by Mr. Justice V.C. Daga and came to the conclusion that only cases in which issues were framed by the Small Causes Court would remain for the purpose of determination of the Small Causes Court and the learned Single Judge (G.S. Godbole, J.) requested the Hon'ble Chief Justice to refer the matter to a larger Bench in view of difference of opinion.

21] The first point which falls for consideration before this Court and about which there is no dispute is that the Estate Officer after amendment of the said Act on 22/12/1980 was appointed in 1989 and for a period of almost 9 years there was no Forum available to any party for redressal of their grievances and they therefore approached the Small Causes Court. Decrees were passed. Orders were also passed either confirming the decrees passed by the Single Judge of the

Small Causes Court or decrees were set aside. In our view, it is quite well settled that if any new Forum is created by virtue of amendment to the main Act and if the new Forum is not made available then existing Forum is entitled to hear and dispose of such matters and its jurisdiction to entertain such suits is not taken away. This position is quite well settled by catena of judgment of the Apex Court which are referred to hereinafter.

22] The crucial question therefore which remains to be considered is meaning which is to be attributed to the word "entertain" and, secondly, whether emphasis has to be laid on the word "entertain" or on the words "jurisdiction to entertain" and these words have to be interpreted on the sound principles of interpretation of Statute as to what was the intention of the legislature when the said amendment was made and what is the date from which the Small Causes Court would cease to entertain the matters filed for eviction of lessees/tenants of the Bombay Port Trust and, lastly, what would happen to the cases (i) which were filed before the Amendment Act and which were pending and (ii) which were filed after Amendment Act and before the Estate Officer was appointed in the year 1989 and (iii) where those cases which were filed in the Small Causes Court and the Small Causes Court had applied its mind in a similar way as the Magistrate takes cognizance of a complaint, whether such cases should be heard by the Small Causes Court.

23] It has to be noted here that it is not in dispute that there is no provision of transfer of cases from Small Causes Court to the Estate Officer appointed under the Public Premises Act. Neither there is provision of transfer nor a provision is made for return of the Plaint for presentation before the new Forum.

24] In these peculiar facts and circumstances therefore jurisdiction of the Court to entertain the old matters and new matters will have to be examined. It is a well settled principle of interpretation of Statute that while interpreting any provision, intention of the legislature has to be taken into consideration and also it has to be kept in mind what was the mischief which was sought to be remedied by the legislature in making that enactment or provision.

25] It is a matter of common knowledge that suits for eviction which were filed in the Small Causes Court remain pending for decades and there was no quick disposal of cases. It is obvious that the legislature felt that in cases where land or flat fall under the definition of the said Act, mechanism was sought to be created for quick disposal of such cases of eviction etc as enumerated in the new amended Section 15 of the said Act. It is equally well settled that though a particular word has been interpreted by the High Court or Supreme Court, it has to be seen in what context the word was used and the context in which it was interpreted. Further, it is also equally well settled that the Courts cannot rely merely on dictionary meaning of the word for

the purpose of interpreting it and what has to be kept in mind is the ratio of the judgment in which the said word has been statutorily interpreted by the Court. Needless to add that therefore it is not advisable to rely on stray sentence in the judgment and the judgment has to be read as a whole.

26] Before we take into consideration various judgments of the High Courts and Supreme Court and of the Full Bench, law of precedent has to be kept in mind. It is quite well settled that the judgment cannot be read as a Statute and the context and the facts and circumstances of the case have to be equally borne in mind before applying ratio of such judgments to any case. Further, facts of the case in which the said ratio has to be applied have to be seen. If facts, differ or they are different from the facts of the judgment on which reliance is placed then ratio of such judgment will not be of any assistance.

27] The law of precedent can be more succinctly stated as under:-

The Apex Court in *Bank of India and Anr. v. K. Mohandas* (2009) 5 SCC 313 observed as follows: (SCC pp. 335-36 paras 54-59)

> "54. A word about precedents, before we deal with the aforesaid observations. The classic statement of Earl of Halsbury, L.C. in *Quinn* v. *Leathem [1901 AC 495 (HL)]*, is worth recapitulating first: (AC p. 506)
>
> '...before discussing ... *Allen* v. *Flood* [1898 AC 1 :

> (1895-99) ALL ER Rep 52 (HL)and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, *but are governed and qualified by the particular facts of the case* in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.'

This Court has in long line of cases followed the aforesaid statement of law.

55. In *State of Orissa* v. *Sudhansu Sekhar Misra* [AIR 1968 SC 647] it was observed: (AIR p. 651, para 13)

> *"13.* ...A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it."

56. In the words of Lord Denning:

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said

> by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

57. It was highlighted by this Court in *Ambica Quarry Works* v. *State of Gujarat*: [(1987) 1 SCC 213] (SCC p. 221, para 18)

> *"18.* ...The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

58. In *Bhavnagar University* v. *Palitana Sugar Mill (P) Ltd.* [(2003) 2 SCC 111] this Court held that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

59. This Court in *Bharat Petroleum Corporation Ltd.* v. *N.R. Vairamani [(2004) 8 SCC 579]* emphasised that the courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. It was further observed that the judgments of courts are not to be construed as statutes and the observations must be read in the context in which they appear to have been stated. The Court went on to say that circumstantial applicability, one additional or different fact may make a world of difference between conclusions in two cases." (emphasis in original)

The Apex Court in *Arasmeta Captive Power Company Pvt. Ltd. vs. Lafarge India Pvt. Ltd and another*[1], has observed on the question of

1 AIR 2014 SC 525

law of precedent in paras 28, 31, 32, 33 35 and 36 as under:-

> "28. At this juncture, we think it condign to refer to certain authorities which lay down the principle for understanding the ratio decidendi of a judgment. Such a deliberation, we are disposed to think, is necessary as we notice that contentions are raised that certain observations in some paragraphs in SPB & Company (supra) have been relied upon to build the edifice that latter judgments have not referred to them."

> "31. In Krishena Kumar v. Union of India and Ors. (1990) 4 SCC 207, the Constitution Bench, while dealing with the concept of ratio decidendi, has referred to ***Caledonian Railway Co.* v. *Walker's Trustees*** [(1882) 7 App Cas 259: 46 LT 826 (HL)] and Quinn (supra) and the observations made by Sir Frederick Pollock and thereafter proceeded to state as follows:
>
> > "The *ratio decidendi* is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The *ratio decidendi* has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out

with difficulty in order to be bound by it. In the words of Halsbury (4th edn., Vol. 26, para 573)"

> "The concrete decision alone is binding between the parties to it but it is the abstract *ratio decidendi*, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a *ratio decidendi* in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the *ratio decidendi* of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the *ratio decidendi.*" (Emphasis added)

"32. In State of Orissa v. Mohd. Illiyas (2006) 1 SCC 275, it has been stated thus:

> *"12*...According to the well-settled theory of precedents, every decision contains three basic postulates: (*i*) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and (*iii*) judgment based on the combined effect of the above. A decision is an authority for what it actually decides.

What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment."

"33. In Islamic Academy of Education v. State of Karnataka (2003) 6 SCC 697, the Court has made the following observations:

> "2... The ratio decidendi of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire *ratio decidendi* of the judgment."
>
> (Underlining is by us)

"35. At this stage, we may also profitably refer to another principle which is of assistance to understand and appreciate the *ratio decidendi* of a judgment. The judgments rendered by a court are not to be read as statutes. In Union of India v. Amrit Lal Manchanda and Anr. (2004) 3 SCC 75, it has been stated that observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. The observations must be red in the context in which they appear to have been stated. To interpret words, phrases and provisions of a statute, it may become necessary

> for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."
>
> "36. In Som Mittal v. Government of Karnataka (2008) 3 SCC 574, it has been observed that judgments are not to be construed as statutes. Nor words or phrases in judgments to be interpreted like provisions of a statute. Some words used in a judgment should be read and understood contextually and are not intended to be taken literally. Many a time a judge uses a phrase or expression with the intention of emphasizing a point or accentuating a principle or even by way of a flourish of writing style. *Ratio decidendi* of a judgment is not to be discerned from a stray word or phrase read in isolation."

The Apex Court in *Zee Telefilms Ltd. and another vs. Union of India and others*[1] has observed in paras 254, 255 & 256 as under:-

> "***Precedent***
>
> **254.** Are we bound hands and feet by Pradeep Kumar Biswas (2002) 5 SCC 111? The answer to the question must be found in the law of precedent. A decision, it is trite, should not be read as a statute. A decision is an authority for the questions of law determined by it. Such a question is determined having

1 (2005) 4 SCC 649

regard to the fact situation obtaining therein. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as is well known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it. (See *Punjab National Bank* v. *R.L. Vaid* (2004) 7 SCC 698).

255. Although decisions are galore on this point, we may refer to a recent one in *State of Gujarat* v. *Akhil Gujarat Pravasi V.S. Mahamandal* (2004) 5 SCC 155 wherein this Court held : (SCC p. 172, para 19)

"It is trite that any observation made during the course of reasoning in a judgment should not be read divorced from the context in which it was used."

256. It is further well settled that a decision is not an authority for a proposition which did not fall for its consideration. It is also a trite law that a point not raised before a court would not be an authority on the said question. In *A-One Granites* v. *State of U.P.* (2001) 3 SCC 537 it is stated as follows : (SCC p. 543, para 11)

"11. This question was considered by the Court of Appeal in *Lancaster Motor Co. (London) Ltd.* v. *Bremith Ltd.* (1941) 1 KB 675 and it was laid down that when non consideration was given to the question, the decision cannot be said to be binding and

> precedents sub silentio and without arguments are of no moment"
>
> [See also *State of U.P.* v. *Synthetics and Chemicals Ltd.* (1991) 4 SCC 139, *Arnit Das* v. *State of Bihar* (2000) 5 SCC 488 (SCC para 20), *Bhavnagar University* v. *Palitana Sugar Mills (P) Ltd.* (2003) 2 SCC 111, *Cement Corpn. of India Ltd.* v. Purya (2004) 8 SCC 270, *Bharat Forge Co. Ltd.* v. *Uttam Manohar Nakate* (2005) 2 SCC 489 and *Kalyan Chandra Sarkar* v. *Rajesh Ranjan* (2005) 2 SCC 42, See para 42.]"

The view of the Apex Court on the law of precedents has to be kept in mind while dealing with the judgments relied upon by all the parties.

28] Keeping in view the aforesaid law laid down by the Supreme Court, we will have to consider whether judgments on which reliance is placed by the learned Single Judge (G.S. Godbole, J.) can be accepted in the facts and circumstances of the present case or whether view taken by the learned Single Judge (V.C. Daga, J.) has to be followed.

29] It is also quite well settled that the Court to which the reference is made by the Hon'ble Chief Justice has to consider the issue which has been referred to it and no other issues can be considered.

30] Mr. Aaney, the learned Senior Counsel appearing on behalf of

the Respondents urged before us that considerable time will be wasted if only the question which is referred to us is decided and the matter is remanded to the learned Single Judge. He submitted that all other issues also be decided. We did not accept the said submission and by our detailed order dated 10/04/2017 we have clearly given our opinion that only the issue which is referred to us has to be decided.

31] It has to be noted that that the learned Single Judge Mr. Justice G.S. Godbole (as he then was) has framed the question of reference as follows:-

> "Whether the word "entertain" used in Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 can be equated with the word "lodging/filing" of the Suit or will have to be interpreted to mean "consideration of merits of the Suit" or "the date of framing of issues in the Suit".

Though the question of reference is framed in the above manner, in fact, what has been referred is the question as to whether jurisdiction of the Small Causes Court ceases after Amendment Act was passed and all matters including the matters which are filed and pending before the Amendment Act can be decided by the Small Causes Court or not. In other words, what is the exact point of time when the Small Causes Court ceases to have jurisdiction.

32] Mr. G.S. Ghodbole, J. the learned Single Judge has placed emphasis on the word "entertain" whereas Mr. Aaney, the learned Senior Counsel appearing on behalf of the Respondents has placed emphasis on the word "jurisdiction to entertain".

33] Keeping in mind the aforesaid background of the case, it will be necessary to see law on this point.

34] It is a matter of common knowledge that jurisdiction of the Courts has been ousted subsequently after new Acts have been passed. During 50's 60's 70's, 80's onwards and even now Tribunals have been constituted and they have been vested with jurisdiction to try and decide certain issues and the jurisdiction of the Civil court is barred. There are several instances where such jurisdiction is conferred on a new Forum. To give a few examples, after Agricultural Land Tribunal was constituted by introduction of the Bombay Tenancy and Agricultural Lands Act, 1948 jurisdiction of the Civil Court was expressly barred and the Civil Court could not decide any issue of tenancy. Similarly, after Industrial Disputes Act was passed and or related Labour Enactments were made, jurisdiction of the Civil Court was ousted and recently after the Company Tribunal is established, jurisdiction of the High Court to entertain the matters which have been transferred to Company Tribunal is expressly excluded. In all such cases, time from which exclusion of jurisdiction is to be

interpreted has been considered right up to the Supreme Court in number of judgments. In most of these cases, where there is ouster of jurisdiction, various words have been used. In some cases word "entertain" is used and in some cases the words "jurisdiction to entertain"are used and in some other cases the words "to entertain and try any suit" are used. The High Courts and the Supreme Court, depending on the intention of the legislature, have accordingly interpreted the said words. It is evident therefore that merely because in a particular case the word "entertain" has been interpreted in a particular manner that interpretation cannot be literally applied to the facts of each case, nor it is possible to rely on dictionary meaning of the word. One of the methods of interpreting any provision or amendment made to the Statute is to apply purposive method of interpretation. In other words, it has to be seen what was the purpose for which the amendment was made. If a literal interpretation is made in a particular case, it would lead to absurd consequences, resulting in injustice to both the parties.

35] In any litigation, there is always a party which is interested in delaying the litigation to protect its interest. In a suit for eviction therefore, inevitably, all tenants against whom decree of eviction is passed would be interested in getting the decree set aside on technical ground. In the present case, there are almost 43 suits where decrees have been passed and all these tenants against whom decrees are passed have put up a case that these decrees are nullity since the

Small Causes Court did not have jurisdiction to entertain or try the suit for eviction after jurisdiction was transferred to the Estate Officer. If it is held that all these decrees are null and void, the Bombay Port Trust then will have to file fresh applications before the Estate Officer.

36] We are not really concerned about the intention of the parties but we are more concerned about the intention of the legislature and the circumstances under which the Enactment was made. Though dictionary meaning alone is not important, yet it can be used as a guide to find out what is the exact connotation of the term "entertain" or "jurisdiction to entertain". The words "entertain" and "jurisdiction to entertain" have been defined and the said dictionary definition is accordingly reproduced in catena of judgments referred to by V.C. Daga J. and G.S. Godbole, J. in their judgments.

37] Firstly, it will have to be seen whether judgment of the Supreme Court on which reliance is placed by the learned Single Judge (G.S. Godbole, J.) and also judgment of the Allahabad High Court which has been relied upon by the Supreme Court apply to the facts of the present case.

38] The learned Single Judge (G.S. Godbole, J.) in paras 48, 49 and 50 of his judgment has observed that the Judgments and Decrees passed by the Small Causes Court till 21/09/1989 and the suits filed by BPT for eviction were perfectly legal. It is therefore not necessary

to deal with the said issue. In paras 49 and 50 of the Judgment, the learned Single Judge (G.S. Godbole, J.) has observed as under:-

> "49 There is nothing in the P.P. Act, 1971 which provides for taking away appellate jurisdiction of the Court of Small Causes Court in respect of the suits which were decreed on or before 21.09.1989. There is no provision for transfer of pending Appeals or for ousting the jurisdiction of the Appellate Bench or any other Court hearing Appeals arising out of the Decrees passed by the Small Court / Civil Court."

> "50. Applying the aforesaid principle, it will have to be held that the judgments and Decrees passed by the Small Causes Court till 21.09.1989 and the suit filed by the BPT for eviction of the unauthorised occupants were perfectly legal and do not suffer from the defect of inherent lack of jurisdiction."

Difference of opinion between the two Judges can be noticed in para 52 of the judgment of the learned Single Judge (G.S. Godbole, J.) in which it has been observed as under:-

> "52..... If this be the correct principle of law, then in my opinion, it is difficult to agree with the reasoning of the learned Single Judge in so far as interpretation of the word "entertain" used in Section 15 of the PP Act, 1971 is concerned. In my opinion, though the jurisdiction of the Civil Court was not taken away automatically on 20th December, 1980 after the amendment of the P.P. Act, 1971 since there was no Special Tribunal constituted for hearing Applications for eviction to be filed by the BPT; on the establishment of the Special Tribunal on 22nd September, 1989, the jurisdiction of the Small Causes Court to entertain the Suits filed by the BPT which were pending was taken away. From that date at least the Small Causes Court lost jurisdiction to entertain the suits."

The learned Single Judge (G.S. Godbole, J.) therefore was of the view that in respect of decrees and appeals which were decided before 22/09/1989 were perfectly legal. However, after that date all such decrees and decisions on appeals against the said decrees became a nullity. The learned Single Judge then has proceeded to consider the ratio of the judgment of the Division Bench of the Allahabad High

Court in Kundan Lal (supra).

39] We propose to examine the effect of change of Forum by virtue of amendment of the Act at a subsequent stage. This proposition can be examined in the light of the settled position in law from the following three angles.

40] The first angle is what is the effect of there being change in the Forum and Forum is not constituted by appointment of the Tribunal or Officer who is supposed to hear those cases. So far as this aspect is concerned, both the learned Single Judges have concurred on the settled position of law that mere change of Forum does out oust the jurisdiction of the earlier Forum. This proposition has been laid down by the Supreme Court and High Courts in the following Judgments:

(1) Raje Vyankatrao Jagjiwanrao Deshmukh vs. Sitalprasad Sivnath[1] (paras 17 to 26)

(2) Bhim Sen vs. State of Uttar Pradesh[2] (para 5)

(3) Attiq – Ur – Rehman Vs. Municipal Corporation of Delhi and Anr.[3] (paras 22 & 23)

(4) Sat Narain Gurwala vs. Hanuman Prasad & Anr.[4]

(5) Judgment of Mr. Justice V.C. Daga in Shalan[5] (supra)

1 1965 Bom. L.R. 868
2 AIR 1955 SC 435 Vol. 42.
3 1996(3) SCC 407
4 AIR (33) 1946 Lahore 85
5 2009 (3) m.h.l.

It is therefore not necessary to deal with this issue or reproduce ratio of these judgments.

41] The second angle which needs to be scrutinized is that once the Civil Court is seized of the matter and subsequently its jurisdiction is taken away by constituting a special tribunal, it does not cease to have jurisdiction on the matters/right of parties which stand crystallized on the date of institution of the lis. In other words, if the lis has been decided either in the Trial Court or in the Appellate Court then the said determination of the lis on the date on which its jurisdiction ceases does not make the order nullity. In *Sat Narain Gurwala*[1] (supra), the Lahore High Court has in terms examined the said issue as to whether the constitution of special tribunal would oust the jurisdiction of the Civil Court and on page 91 of the said Judgment has observed as under:-

> "..... It must be assumed that as soon as the right was created, the civil Court became the proper tribunal to deal with any questions that may arise concerning that right, and that if a special tribunal was created to adjudicate upon those rights and that tribunal did function then in that event the jurisdiction of the civil Court would stand

1 AIR (33) 1946 Lahore 85

> ousted. On the other hand, if that special tribunal never came into being or having come into being refused or neglected to function, in that event the jurisdiction of the civil Court cannot be said to be ousted."

Similarly in *Commissioner of Income Tax, Orissa vs. Dhadi Sahu*[1], the Supreme Court observed in para 21 as under:-

> "21. It is also true that no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The right becomes vested when the proceedings are initiated in the tribunal or the court of first instance and unless the legislature has by express words or by necessary implication clearly so indicated, that vested right will continue in spite of the change of jurisdiction of the different tribunals or forums."

1 1994 Supp (1) SCC 257

Then in *Videocon Internatinal Ltd vs. Securities and Exchange Board of India*[1], the Supreme Court has observed in paras 30 and 31 as under:-

> "30. Having recorded our conclusion, as has been noticed in the foregoing paragraph, it is apparent, that insofar as the vesting of the second appellate remedy is concerned, neither the date of filing of the second appeal, nor the date of hearing thereof, is of any relevance. Legal pursuit of a remedy, suit, appeal and second appeal, are steps in a singular proceeding. All these steps are deemingly connected by an intrinsic unity, which are treated as one singular proceeding. Therefore, the relevant date when the appellate remedy (including the second appellate remedy) becomes vested in the parties to the lis, is the date when the dispute/lis is initiated. Insofar as the present controversy is concerned, it is not a matter of dispute, that the Securities Appellate Tribunal had passed the impugned order (which was assailed by the Board), well

1 2015 AIR SCW 729

before 29.10.2002. This singular fact itself, would lead to the conclusion, that the lis between the parties, out of which the second appellate remedy was availed of by the Board before the High Court, came to be initiated well before the amendment to Section 15Z by the Securities and Exchange Board of India (Amendment) Act, 2002. Undisputedly, the unamended Section 15Z of the SEBI Act, constituted the appellate package and the forum of appeal, for the parties herein. It is, therefore, not possible for us to accept, the contention advanced at the hands of the learned counsel for the appellant, premised on the date of filing or hearing of the appeal, preferred by the Board, before the High court.

We accordingly reiterate the position expressed above, that all the appeals preferred by the Board, before the High Court, were maintainable in law."

"31. It was also the contention of the learned counsel for the appellant, that in the absence of a saving clause, the pending proceedings (and the jurisdiction of the High Court), cannot be

deemed to have been saved. It is not possible for us to accept the instant contention. In the Judgment rendered by this Court in Ambalal Sarabhal Enterprises Limited case, (AIR 2001 SC 3580) (supra), it was held, that the general principle was, that a law which brought about a change in the forum, would not affect pending actions, unless the intention to the contrary was clearly shown. Since the amending provision herein, does not so envisage, it has to be concluded, that the pending appeals (before the amendment of Section 15Z) would not be affected in any manner. Accordingly, for the same reasons as have been expressed in the above judgment (relevant extracts whereof have been reproduced above), we are of the view, that the instant contention advanced at the hands of the learned counsel for the appellant is wholly misconceived. Furthermore, the instant contention is wholly unacceptable in view of the mandate contained in Section 6(c) and (e) of the General Clauses Act, 1897. While interpreting the aforesaid provisions this Court has held, that the amendment of a statute, which is not

> retrospective in operation, does not affect pending proceedings, except where the amending provision expressly or by necessary intendment provides otherwise. Pending proceedings are to continue as if the unamended provision is still in force. This Court has clearly concluded, that when a lis commences, all rights and obligations of the parties get crystallized on that date, and the mandate of Section 6 of the General Clauses Act, simply ensures, that pending proceedings under the unamended provision remain unaffected. Herein also, therefore, our conclusion is the same as had already been rendered by us, in the foregoing paragraphs.

Similar view has been taken by the Apex Court in *Raminder Singh Sethi vs. D. Vijayrangam*[1]

Again a similar view has been taken by the Apex Court in *Ambalal Sarabhai Enterprises Ltd. vs. Amritlal & Co. and Another*[2] and paras 25 and 26 of the said judgment read as under:-

> "25. The opening words of Section 6 specify the

1 AIR 2002 SC 2087
2 (2001) 8 SCC 397

field over which it is operative. It is operative over all the enactments under the General Clauses Act, Central Act or regulations made after the commencement of the General Clauses Act. It also clarifies in case of repeal of any provision under the aforesaid Act or regulation, unless a different intention appears from such repeal, it would have no effect over the matters covered in its clauses viz (a) to (e). It clearly specifies that the repeal shall not revive anything not in force or in existence or affect the previous operation of any enactment so repealed or anything duly done or suffered or affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed statute, affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed statute and also does not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid. Thus the central theme which spells out is that any investigation or legal proceeding pending may be continued and enforced as if the repealing Act or regulation had not come into force."

> "26. As a general rule, in view of Section 6, the repeal of a statute, which is not retrospective in operation, does not prima facie affect the pending proceedings which may be continued as if the repealed enactment were still in force. In other words, such repeal does not affect the pending cases which would continue to be concluded as if the enactment has not been repealed. In fact when a lis commences, all rights and obligations of the parties get crystallised on that date. The mandate of Section 6 of the General Clauses Act is simply to leave the pending proceedings unaffected which commenced under the unrepealed provisions unless contrary intention is expressed. We find clause (c) of Section 6, refers the words "any right, privilege, obligation … *acquired or accrued*" under the repealed statute would not be affected by the repealing statute. We may hasten to clarify here, mere existence of a right not being "acquired" or "accrued" on the date of the repeal would not get protection of Section 6 of the General Clauses Act."

The Supreme Court has also reiterated the same view in *Rajender*

Bansal and others vs. Bhuru (D) Thr. Lrs and others[1] and has observed in the said Judgment in paras 10 and 16 as under:-

> "10. After referring to the aforesaid two judgments, the Court gave the following reasons in support of its conclusion:
>
> > "It is well-settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim "actus curiae neminem gravabit"- an act of court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the ten years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within ten years and even then within that time it may not be disposed of. That will make the ten years holiday from the Rent Act illusory and provide no incentive to the landlords to

1 AIR 2016 SC 4919

build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else."

"16. From the aforesaid discussion in Atma Ram Mittal (AIR 1988 SC 2031), Vineet Kumar (AIR 1985 SC 817), Ram Saroop Rai (AIR 1982 SC 945), Ramesh Chandra (AIR 1992 SC 1106) and Shri Kishan alias Krishna Kumar (AIR 1998 SC 999) cases, the apparent principles which can be culled out forming the ratio decidendi of those cases are as under:

i) Rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the law applicable on the date of filing of the suit will continue to apply until suit is disposed of or adjudicated.

ii) If during the pendency of the suit, Rent Act becomes applicable to the premises in question, that would be of no

consequence and it would not take away the jurisdiction of civil court to dispose of a suit validly instituted.

iii) In order to oust the jurisdiction of civil court, there must be a specific provision in the Act taking away the jurisdiction of the civil court in respect of those cases also which were validly instituted before the date when protection of Rent Act became available in respect of the said area/premises/tenancy.

iv) In case aforesaid position is not accepted and the protection of the Rent Act is extended even in respect of suit validly instituted prior in point of time when there was no such protection under the Act, it will have the consequence of making the decree, that is obtained prior to the Rent Act becoming applicable to the said area/premises, inexecutable after the application of these Rent Act in respect of such premises. This would not be in consonance with the legislative intent."

Federal Court in *Venugopala Reddiar and another vs. Krishnaswami*

Reddiar alias Raja Chidambara Reddiar and another[1] has observed at rule 'h' right hand corner as under:-

> ".....The view has some times been taken that what is saved is a substantive right acquired under the repealed enactment and that the paragraph cannot be invoked in cases where the substantive right is not taken away by the repealing Act, but the forum for or the method of enforcing it is changed. It has, on the other hand, been maintained that a right to obtain relief in a suit pending at the time when the repealing enactment comes into operation is itslef in the nature of a substantive right. As we consider that the third ground of decision adopted by the High Court, namely, the principle of the ruling in 1905 A.C. 369 [(1905) 1905 A.C. 369] is sufficient to support the decision of the High Court, we prefer to rest our decision on that ground. 1905 A.C. 369 was sought to be distinguished on behalf of the appellant on the ground that a right of appeal against a decree stands on a different footing from a

1 AIR (30) 1943 Federal Court 24

> right to continue a suit to its normal termination. This may be a difference in the facts, but we are unable to see any distinction in principle between the two cases. Their Lordship's pronouncement emphasises the limitation to be placed upon the rule, sometimes broadly stated, that all alterations in procedure are retrospective, unless there is some good reason to the contrary. In one sense, a right of appeal may be spoken of as a matter of procedure and it is usually provided for in Codes relating to procedure. But the decision recognizes that that is not sufficient to make a legislative provision governing the right of appeal retrospective."

The same view has been taken by Mr. Justice V.C. Daga in *Shalan*[1] (supra) in para 43.

Another perspective through which the change of Forum can be considered is to take into consideration the intention of the legislature. It is equally well settled that if legislature intends to oust the jurisdiction of the Civil Court, it must do so expressly. Similarly, pending appeals also remain unaffected by change in the Forum since

1 2009 (3) M.H.L.J. 923

right of appeal is vested right and that the pending suits are also unaffected by the change in Forum and lastly validly instituted proceedings would continue unless the Amending Act stipulates their return. The view taken in the Judgments in *Videocon International Ltd.*[1] (supra), *Commissioner of Income Tax, Orissa*[2] (supra), *Rajender Bansal*[3] (supra) *Dewaji*[4] (supra), *United Bank of India*[5] *[para14]*(supra) and in *Shah Bhujraj Kuverji Oils Mills & Ginning Factory*[6] has been accepted by the learned Single Judge Mr. Justice V.C. Daga in *Shalan*[7] (supra).

From the conspectus of the judgments mentioned hereinabove, it does appear that the learned Single Judge Mr. Justice G.S. Godbole, who did not concur with the view taken by the learned Single Judge Mr. Justice V.C. Daga, did not examine the question from the angle of this settled position in law and concentrated only on interpretation of the word “entertain” and in support relied upon the Judgments of the Apex Court and Allahabad High Court wherein this word “entertain” has been examined. The learned Single Judge (G.S. Godbole, J.) did not take into consideration the provisions of section 6 of the General Clauses Act and well settled position in law laid down by the Supreme Court as to the effect of change of Forum pending appeals and

1 2015 AIR SCW 729
2 1994 Supp (1) SCC 257
3 AIR 2016 SC 4919
4 AIR 1969 Supreme Court 560
5 AIR 2000 Supreme Court 2957
6 AIR 1961 SC 1596
7 2009 (3) M.H.L.J. 923

pending suits.

42] The third angle is whenever any new Forum is created, it has to be examined whether it applies retrospectively to pending proceedings. Unfortunately, the learned Single Judge (G.S. Godbole) has not examined the entire issue from the angle of retrospective application. It is well settled that the Statute could not be construed retrospectively, unless it is said so expressly or by necessary implication and, at the same time, exclusion of civil jurisdiction is not to be readily inferred. Further, when proceedings have commenced, it creates a substantive vested right which cannot be regarded as mere matter of procedure. The same view is found in the language of Section 6 of the General Clauses Act, 1897. It is also a settled principle of interpretation of Statute that the Statute has to be interpreted in such a manner that it does not take away the action which has already commenced.

43] From the perusal of the amended Section 15 of the said Act, it cannot be inferred that all cases which were pending or decided and pending before the Appellate Court or decided by the Appellate Court would become nullity on the ground that from the date on which Section 15 was amended, jurisdiction of the Small Causes Court was ousted. If such interpretation is given, it would lead to absurd results and it would be contrary to the well settled principle of purposive interpretation.

44] The learned Single Judge G.S. Godbole J. has relied on three judgments of the Apex Court and two Judgments of Allahabad High Court and one Judgment of the Gujarat High Court. We will consider whether ratio of these judgments will apply to the facts of the present case.

45] Firstly, we will deal with judgments of the Apex Court on which reliance is placed by the learned Single Judge (G.S. Godbole, J.) The first judgment on which reliance is placed is in *Martin and Harris Ltd.*[1] (supra). In the said judgment, brief facts were that in the appeal before the Apex Court, question of maintainability of the application for possession moved by Respondent No.3 landlord against the appellant/tenant under section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 fell for consideration. Respondent No.3 had purchased the suit property being Bungalow No.21-C, Ashok Marg, Lucknow, wherein the appellant-company was occupying area of 9000 sq.ft. as tenant since 28/12/1966. Respondent No.3 was serving in the Indian Army as Major General. He retired on 01/04/1985. He purchased the property on 30/06/1985 from his father-in-law. He thereafter gave notice that he required the property for his residential purpose. He therefore raised the ground of *bona fide* requirement. An application was filed by the landlord under Section 21(1)(a) read with Section

1 AIR 1998 Supreme Court 492

21(1-A) of the Act. The tenant filed his reply and contended that the suit was not maintainable since it was filed prematurely and, secondly, that the suit was not filed after expiry of six months and consequently the application was not maintainable as per the first proviso to Section 21(1) of the Act. Trial Court, however, decreed the suit of the landlord. Appellant preferred an appeal but the appeal was also dismissed. Thereafter, Writ Petition was filed before the High Court of Allahabad and the question of maintainability was pressed by the tenant. The High Court, however, took the view that application filed by the Respondent/landlord was maintainable. The matter thereafter travelled to the Supreme Court. It was contended on behalf of the tenant that the term "entertain" as employed by the first proviso to section 21(1)(a) was synonymous with the word "institute" and that, at the relevant time, the Court had taken cognizance of the suit for possession by issuing notice to the appellant and therefore the Court had entertained the proceedings and such entertaining of the proceedings was clearly barred by the said proviso. The Apex Court in the facts of the said case examined meaning of the word "entertain". The Apex Court in paras 8, 9 and 10 of the said judgment held on taking into consideration the facts of the said case that no fault could be found with the decision in entertaining the consideration of grounds under Section 21(1)(a). The learned Single Judge, however, relied on some of the observations made by the Apex Court in that judgment.

46] In para 43 of his Judgment, the learned Single Judge (G.S. Godbole, J.), after reproducing paras 8, 9, 10 of the judgment In Martin and Harris Ltd. (supra) observed that the Court can be said to have entertained the suit not only on mere filing of the suit but the relevant date for deciding as to when the suit is entertained would be the point of time when the Court applies its mind to the merits of the controversy involved in a suit. It must be noted here that the learned Single Judge Mr. Justice G.S. Godbole has merely reproduced paragraphs from various judgments and without discussing as to how these judgments are applicable to the facts of the present case has come to the conclusion that the Court entertains the suit for adjudication only when it considers merits of the case and mere filing of the suit would not amount to entertaining the suit or application.

The learned Single Judge (G.S. Godbole, J.) has further reproduced para 6 of the Judgment in *Aysha Mohamed and other vs. Board of Trustees of the Port of Bombay* in Writ Petition No.4216 of 2005 and also extracted some observations made by the Full Bench in *Raje Vynkatrao Jagjiwanrao Deshmukh*[1] (supra). Thereafter the learned Single Judge has reproduced para 5 of the judgment of the Apex Court in *Bhim Sen*[2] (supra) and then paras 20 to 24 of the judgment of the Apex Court in Attiq-Ur-Rehman[3] (supra). Thereafter, in para 33, the learned Single Judge has relied on the judgment of the

1 Vol.LXVII (1965) Bom.L.R. 868
2 AIR 1955 SC 435 (Vol.42)
3 1996(3) SCC 37

Division Bench of Lahore High Court in *Sat Narain Gurwala*[1] (supra) and reproduced paras 89, 91 and 92 of the said judgment. He has then relied on the judgment of the Full Bench of the Patna High Court in *Lachmi Chand Suchanti vs. Ram Pratap Choudhary*[2] and reproduced some of the observations made in the said judgment of the Full Bench. Reliance was also placed on the judgment of the learned Single Judge of the Gujarat High Court in *Jadeja Shivubha Dolubha*[3] (supra) who had relied on the Judgment of the Apex Court in *M/s. Lakshmiratan Engineering Works Ltd. vs. Asstt. Commissioner (Judicial) I, Sales Tax, Kanpur Range, Kanpur & Anr*[4] and the judgment in *Hindusthan Commercial Bank Ltd. vs. Punnu Sahu*[5]. The learned Single Judge (G.S. Godbole, J.) then considered judgment of the Supreme Court in *M/s. Lakshmiratan Engineering Works Ltd.* (supra) and reproduced paras 7 to 10 of the said judgment. He then relied on the Judgment of *Kundan Lal*[6] (supra) which was approved by the Supreme Court and relied on paras 4 to 7 of the said judgment. The learned Single Judge then relied on the Judgment of Division Bench of the Allahabad High Court in *Haji Rahim Bux and Sons*[7] (supra) and relied on paras 35 to 38 of the said judgment. The learned Single Judge then noted the judgment of the Apex Court in *Hindusthan Commercial Bank Ltd.*[8] (supra) and reproduced para 4 of the said judgment. In

1 AIR (33) 1946 Lahore pg. 85
2 (I.L.R. Vol. XIV page 24
3 1977 Vol.XVIII Gujarat Law Reporter pg 656.
4 AIR 1968 SC 488
5 AIR 1970 SC 1384
6 AIR 1962 Allahabad 547
7 AIR 1963 ALL 320.
8 AIR 1970 SC 1384

para 44, the learned Single Judge relied on the judgment of Division Bench of Orissa High Court in *Sankar Kumar Bhattar*[1] (supra) and reproduced paras 12 to 14 of the said judgment and, finally, the learned Single Judge relied on the judgment of the Apex Court in *United Bank of India*[2] (supra) and reproduced paras 20 to 24 of the said judgment.

Thereafter, in para 52 the learned Single Judge (G.S. Godbole, J.) has made following observations in respect of judgment of the learned Single Judge (V.C. Daga, J.)

> "52. The learned Single Judge (V.C. Daga, J.) has observed in paragraph 28 of the Judgment that the Court of limited jurisdiction must have the jurisdiction to decide the lis and not only when the lis is instituted but also when the lis is finally decided. If this be the correct principle of law, then in my opinion, it is difficult to agree with the reasoning of the learned Single Judge in so far as interpretation of the word "entertain" used in Section 15 of the PP Act, 1971 is concerned. In my opinion, though the jurisdiction of the Civil Court was not taken away automatically on 20th December, 1980 after the amendment of the P.P. Act, 1971 since there was no Special Tribunal

1 AIR 1976 ORISSA 103
2 AIR 2000 Supreme Court 2957

> constituted for hearing Applications for eviction to be filed by the BPT; on the establishment of the Special Tribunal on 22nd September, 1989, the jurisdiction of the Small Causes Court to entertain the suits filed by the BPT which were pending was taken away. From that date at least the Small Causes Court lost jurisdiction to entertain the suits."

47] The learned Single Judge therefore has not considered or has not given any finding as to why reasons given by the learned Single Judge Mr. Justice V.C. Daga could not be accepted. The learned Single Judge (G.S Godbole, J.) also has merely reproduced various paragraphs of the Judgments of Supreme Court, Allahabad High Court, Gujarat High Court and Orissa High Court and has not considered what was the ratio laid down by the Supreme Court and other High Courts. Further, the learned Single Judge (G.S Godbole) J.) also has not taken into consideration whether the observation made by the Apex Court and the other High Courts would be applicable to the facts of the present case. It is obvious that the learned Single Judge (G.S. Godbole, J.) has merely examined the meaning of the word “entertain” and has considered the judgments which has also considered the term “entertain” and by relying on certain observations made in those judgments has held that the word “entertain” does not mean mere filing. Though the reliance was placed by the learned Single Judge on the judgment of the learned

Single Judge of the Gujarat High Court in *Jadeja Shivubha Dolubha*[1] (supra), as rightly pointed out by Mr. Aaney, the learned Senior Counsel appearing on behalf of the Respondents/BPT, the ratio of the said judgment has been overruled by the Division Bench of the Gujarat High Court in *Mulsing vs. M.C. Ahmedabad*[2] and therefore, in our view, ratio of the judgment of the learned Single Judge of the Gujarat High Court in the said case would not be of any assistance to the tenants/lessees. In our view, the learned Single Judge (G.S. Godbole, J.) ought to have considered the question of "jurisdiction to entertain" instead of concentrating on the definition of the term "entertain".

48] On the other hand, the learned Single Judge V.C. Daga, J. has considered various Judgments and also considered the provisions of Section 6 of the General Clauses Act and has taken into consideration principles of interpretation of Statute, prospective and retrospective application of any amendment, providing of ouster of jurisdiction and whether consequence of amendment affects suits which are already pending before the Small Causes Court. We are therefore unable to accept the view taken by the learned Single Judge Mr. Justice G.S. Godbole and we concur with the view taken by the learned Single Judge Mr. Justice V.C. Daga.

49] In our view, the real question which fell for consideration was:

1 1977 Vol.XVIII Gujarat Law Reporter pg 656.
2 1977 Gujarat Law Reporter 266

whether jurisdiction of the Small Causes Court to hear and decide the suits filed by BPT which were pending was taken away and whether from that date the Small Causes Court lost jurisdiction to entertain the suit? Instead of referring the said issue to larger Bench, the learned Single Judge has framed the following issue:-

> "Whether the word "entertain" used in Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 can be equated with the word "lodging/filing" of the Suit or will have to be interpreted to mean "consideration of merits of the Suit" or "the date of framing of issues in the Suit".

50] In the result, accepting the submissions of the learned Senior Counsel Mr. Aaney appearing for the Respondents/BPT and rejecting the submissions of the learned Senior Counsel Mr. Kumbhakoni appearing for the Applicant, we hold that the word "entertain" used in Section 15 of the said Act would mean that the Small Cause Court would have jurisdiction to hear all such suits for eviction which were lodged/filed before 21/09/1989 and on the other hand the Small Causes Court would continue to have jurisdiction to decide those suits which were pending as on 21/09/1989. The Reference is answered accordingly. All these matters are remanded to the learned Single Judge for deciding the other issues.

(C.V. BHADANG, J.) **(V.M. KANADE, J.)**