



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.92 OF 2025

M/s. Indian Oil Corporation Limited **...Applicant**

V/s.

Mrs. Perviz Khushroo Patel and Ors. **...Respondents**

Mr. Chirag Mody with Mr. Sunil Gangan, Mr. Swapnil Shikhare and Mr. Manav Chetwani i/b. M/s. RMG Law Associates for the Applicant.

Mr. Arif Bookwala, Senior Advocate with Ms. Mahek Bookwala, Mr. Umang Mehta and Ms. Trisha George i/b. M/s. Avyaan Legal for the Respondents.

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 02 APRIL 2026.

Judgment pronounced on: 17 APRIL 2026.

JUDGMENT:

1) The Applicant- Indian Oil Corporation Limited (IOCL), a public sector company, has invoked revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908 (**the Code**) questioning the correctness of the judgment and order dated 4 January 2025 passed by the Appellate Bench of the Small Causes Court dismissing (P) Appeal No.67 of 2017 and confirming the judgment and order dated 4 January

2017 passed by the Small Causes Court in T.E. & R. Suit No.69/76 of 2003. The Trial Court has decreed the Suit filed by the Plaintiffs under Section 41 of the Presidency Small Cause Courts Act, 1882 and has directed the Applicant-IOCL to vacate and handover the peaceful possession of the suit premises to the Plaintiffs with further directions for conduct of enquiry into *mesne* profits. Since the eviction decree is concurrently upheld by the Appellate Court, the Applicant-IOCL has filed the present Revision Application.

2) A Plot of land bearing Survey No.305, Hissa No.1, C.S. No.307, Hissa No.1 admeasuring 2100 sq. yards situated on Mumbai-Agra Road, Kurla, Mumbai-400 070 are the '**suit premises**'. The suit premises were owned by Dr. Manek Billimoria, who executed Indenture of Lease dated 18 May 1968 with the Applicant-IOCL granting lease in respect of the suit premises for tenure of 20 years. According to the IOCL, it had the first option /right to purchase the suit premises under Clause III(e) of the Indenture. Dr. Manek Billimoria passed away on 19 June 1975. His wife, Smt. Sheroo Manek Billimoria executed Deed of Rectification with IOCL on 4 October 1977 extending the period of lease upto 30 years from 13 October 1967 to 12 October 1997. Plaintiffs claim that Smt. Sheroo Billimoria executed a Will on 18 November 1997. She passed away on 26 May 1999. According to IOCL, Plaintiffs claim ownership in the suit premises on the strength of the Will executed by Smt. Sheroo Billimoria. After enactment of Maharashtra Rent Control Act, 1999 (**the MRC Act**), which does not apply to open lands, Plaintiffs terminated the tenancy vide notice dated 27 November 2002. Plaintiffs filed T.E. & R. Suit No.69/76 of 2003 against IOCL in the Court of Small Causes at

Bombay seeking recovery of possession of the suit premises as well as for *mesne* profits from the date of termination of tenancy. The Plaint was verified by Mr. Mukesh Shashikant Parekh as constituted attorney of the three original Plaintiffs who is also the director of M/s. Papeyon Builmate Traders Pvt. Ltd. (**Papeyon**).

3) IOCL appeared in the Suit and filed written statement in September 2003 disputing the ownership of the Plaintiffs in respect of suit premises. Later, the written statement was amended contending *inter alia* that the original Plaintiffs had not secured probate in respect of the Will of Smt. Sheroo Billimoria. Based on the pleadings, the Trial Court framed issues. On behalf of the Plaintiffs Mr. Mukesh Parekh filed affidavit of evidence in capacity as constituted attorney of the three original Plaintiffs. The IOCL examined witness in support of its defence. The IOCL filed application in April-2006 seeking stay of the Suit on the ground of non-securing of probate in respect of the Will of Smt. Sheroo Billimoria as well as on the ground of Suit being filed by constituted attorney. IOCL's application was dismissed by the Small Causes Court on 23 January 2007. The Revision preferred by the IOCL before the Appellate Bench was dismissed on 11 August 2010. The IOCL filed Civil Revision Application No.1005 of 2010 in this Court challenging orders of Small Causes Court dated 23 January 2007 and of Appellate Bench dated 11 August 2010. Vide order dated 9 December 2010 this Court disposed of the Civil Revision Application granting liberty to the Applicant-IOCL to file appropriate proceedings questioning maintainability of the Suit.

4) On 29 July 2011, conveyance was executed by the three original Plaintiffs in favour of Papeyon assigning the suit premises. Accordingly, Papeyon filed application for its impleadment as the fourth Plaintiff, which was allowed by the Trial Court on 3 December 2012. This is how Papeyon was added as Plaintiff No.4 to the Suit. The IOCL filed additional written statement in July 2013. On 20 March 2014, the Trial Court framed additional issues relating to maintainability of the Suit for want of probate and about existence of landlord-tenant relationship. Plaintiff No.4 led evidence of its witnesses- Shashikant Vasant Jadhav (P.W.2) and Mandar S. Sakpal (P.W.3).

5) After considering the pleadings, documentary and oral evidence, the Small Causes Court proceeded to decree the Suit vide judgment and order dated 4 January 2017 holding that the IOCL lost protection of MRC Act. It held that tenancy of IOCL has been validly terminated. That the Suit was maintainable despite want of probate of Will of late Smt. Sheroo Billimoria and there existed landlord-tenant relationship between the parties. The Small Causes Court accordingly directed the Defendant-IOCL to vacate the possession of the suit premises and handover the same to the Plaintiffs within a period of three months with liberty to the Plaintiffs to file application for enquiry into *mesne* profits.

6) The Applicant-IOCL has filed (P) Appeal No.67 of 2017 before the Appellate Bench of the Small Causes Court challenging the decree dated 4 January 2017. By order dated 14 December 2021, the Appellate Bench stayed execution of the decree subject to the IOCL depositing

interim compensation @ Rs.1,00,000/- per month from the date of decree and during pendency of the Appeal. By judgment and order dated 4 January 2025, the Appellate Bench has proceeded to dismiss the Appeal preferred by the IOCL.

7) Aggrieved by the orders passed by the Trial and the Appellate Courts, the Applicant-IOCL has filed the present Revision Application. By order dated 3 March 2025, this Court continued the ad-interim stay granted by the Appellate Court and the said interim arrangement continues to operate during pendency of the Revision Application.

8) Mr. Mody, the learned counsel appearing for the Applicant-IOCL submits that the Trial and the Appellate Courts have grossly erred in decreeing Plaintiffs' Suit for eviction. Though the Suit was initially filed by the Plaintiff Nos.1 to 3, premised on their claim of title based on Sheroo Billimoria's Will dated 18 November 1997, they did not secure probate in respect of the Will. He relies on provisions of Section 213 of the Indian Succession Act, 1925 (**the Succession Act**) in support of his contention that Plaintiff Nos.1 to 3 did not have any authority in law to file a Suit in absence of securing a probate in respect of the Will. He submits that the provisions of Section 213 of the Succession Act clearly forbids the legatees and executors from exercising any rights in respect of the properties allegedly bequeathed by the Will in absence of a probate. He relies on judgment of the Apex Court in ***Mrs. Hema Nolini Judah V/s. Mrs. Isolyne Sarojbashini Bose***¹.

1 AIR 1962 SC 1471

9) Mr. Mody further submits that the Suit was also not maintainable on the count of absence of a valid notice of termination of tenancy. That original Plaintiff Nos.1 to 3 did not have any authority to issue notice of termination of tenancy in absence of a probate. That ultimately it got proved in the evidence that termination notice was never issued by Plaintiff Nos.1 to 3. Mr. Mody relies upon order passed by this Court on 9 December 2010 in Civil Revision Application No.1005 of 2010 in support of his contention that the issue of maintainability of the Suit was required to be answered by the Trial Court. He submits that the Trial Court has completely skirted the issue of maintainability of the Suit in absence of probate issued in favour of the Plaintiff Nos.1 to 3. He submits that even the Appellate Court has failed to decide the said issue. According to Mr. Mody, non-decision of the issue relating to maintainability of the Suit in the light of provisions of Section 213 of the Succession Act goes to the root of the matter and renders the decision of the Trial and the Appellate Courts patently perverse and illegal.

10) Mr. Mody submits that even if the Plaintiffs may institute Suit in absence of probate, the probate must be secured at least before the decree is passed. That in the present case till passing of decree, the probate was not secured. In support of his contention that the Suit cannot be decreed in absence of probate, Mr. Mody relies on following judgments:

- i) *Jamshedji Dubash V/s. Meharbai Rustomji Dubash and Ors.*²

- ii) ***Kumar Chandra Kishore Roy V/s. Prasanna Kumari Dasi and Sarat Kumari Dasi***³
- iii) ***S.M.K.R. Meyappa Chetty V/s. S.N. Supramanian Chetty***⁴
- iv) ***Raichand Dhanji V/s. Jivraj Bhavanji and Ors.***⁵
- v) ***Ramcharan V/s. Mt, Dharohar***⁶
- vi) ***Ajit Kumar Hazra & Ors. V/s. Rathindra Nath Roy***⁷
- vii) ***Clarence Pais & Ors. V/s. Union of India***⁸

11) Mr. Mody further submits that the Suit was also not maintainable on account of the same being instituted by power of attorney holder and not by original Plaintiff Nos.1 to 3. That Plaintiff No.4 claims to have executed Agreement for Sale in respect of the suit premises and in absence of any title to the property, instituted the Suit by verifying the plaint. That even the evidence was led by him and not by the original Plaintiffs. He submits that the power of attorney holder cannot lead evidence on behalf of a party to the Suit. In support of his contention, he relies upon judgments of the Apex Court in ***Janki Vashdeo Bhojwani and Another V/s. Indusind Bank Ltd. and Others***⁹ and ***A.C. Narayanan V/s. State of Maharashtra and Another***¹⁰. He submits that the entire Suit was thus driven by Plaintiff No.4, who acquired title in respect of the suit premises much later in the year 2011. That the Suit was thus clearly not maintainable and ought to have been dismissed by the Trial and the Appellate Courts. That the Trial and the Appellate Courts have erroneously answered the issue of existence of landlord-tenant relationship. That since tenancy is not validly terminated, the Suit

3 1910 SCC OnLine PC 23

4 AIR 1916 PC 202

5 AIR 1932 BOM 13

6 AIR 1954 PAT 175

7 1979 SCC OnLine Cal 154

8 (2001) 4 SCC 325

9 (2005) 2 SCC 217

10 (2014) 11 SCC 790

ought to have been dismissed. He accordingly prays for setting aside the impugned orders passed by the Trial and the Appellate Courts.

12) Mr. Bookwala the learned Senior Advocate appearing for the Respondents /Plaintiffs opposes the Revision Application. He submits that the Plaint is not based on the Will of late Shiroo Billimoria but is based on capacity of the original Plaintiffs as landlords. That the Plaint does not refer to late Shiroo Billimori's Will in any manner. On the contrary, it specifically made reference to offering of rent by the Defendant-IOCL to the Plaintiffs. That the act of offering rent creates landlord-tenant relationship. That even on 12 June 2017, the Applicant-IOCL accepted the Respondents as landlords/owners of the suit premises by filing Suit bearing No.487 of 2017 and in paragraph 2 of the Plaint, they averred that the Defendant Nos.2 to 4 therein are the original owners of the suit premises. That since Applicant-IOCL has paid rent to Plaintiff No.1 it has admitted the existence of landlord-tenant relationship. He relies on judgment of this Court in **Kashinath Ramchandra Kolwankar his legal heirs A. Hemant Kashinath Kolwankar and Others V/s. Sunanda and Others**¹¹ in support of his contention that payment of rent clearly establishes landlord-tenant relationship.

13) Without prejudice to the contention that the Suit was never based on Shiroo's Will, Mr. Bookwala submits that the legatee under the Will have every right to file a Suit in absence of a probate. He relies on judgment of the Apex Court in **FGP Limited V/s. Saleh Hooseini Doctor and Another**¹². That the Trial and the Appellate Courts have concurrently held the termination of tenancy/lease to be valid. That the

¹¹ 2024 SCC OnLine Bom 2962

¹² (2009) 10 SCC 223

provisions of the MRC Act do not apply to the tenanted property both on account of the same being open land and the IOCL being out of purview of the MRC Act. He relies on judgment of this Court in **Metal Box India Ltd. Mumbai V/s. S.F. Engineer, Mumbai**¹³ in support of his contention that the Applicant no longer enjoys protection from rent escalation and eviction. That therefore the IOCL has no right to remain in possession of the suit premises. He takes me through the written statement to demonstrate that the Defendant-IOCL questioned the title of the Plaintiffs in respect of the suit premises thereby incurring disqualification under Section 116 of the Indian Evidence Act, 1872. That the Applicant-IOCL is unnecessarily holding onto the possession of the suit premises despite non-availability of any protection of Rent Control Legislation. He therefore prays for dismissal of the Revision Application so as to ensure that the Plaintiffs enjoy the suit premises, which are in unauthorised occupation of the IOCL for the last 23 long years of pendency of litigation.

14) Rival contentions urged on behalf of the parties now fall for my consideration.

15) The Applicant-IOCL secured lease in respect of the suit premises vide Indenture of Lease dated 18 May 1968. It operates a retail fuel outlet /petrol pump at the suit premises, which are located in Kurla area at Mumbai. Though the tenure of lease was initially for 20 years, after death of original owner-Dr. Manek Billimoria, his wife executed Deed of Rectification with IOCL on 4 October 1977 extending the period of lease upto 30 years from 13 October 1967 to 12 October 1997. It is an

¹³ 2025(2) Mh.L.J. 66

admitted position that beyond 12 October 1997, tenure of lease has not been extended. However, it appears that the Suit was not filed by the IOCL for its ejection immediately after 12 October 1997 on account of applicability of provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (**the Bombay Rent Act**), which did not exclude IOCL from its purview and also applied to open piece of land. The Bombay Rent Act was replaced by the MRC Act w.e.f. 31 March 2000. The MRC Act brought about two important changes in the area of extension of rent control protection. The MRC Act no longer applies to various entities enumerated in Section 3 thereof. It does not apply to public sector undertakings as well as companies having paid up share capital of Rs.1 crore or more. Therefore, provisions of the MRC Act do not apply to the Applicant -IOCL. Further the provisions of the MRC Act also do not apply to tenancies created in respect of open lands. Since Indenture of Lease dated 18 May 1968 was in respect of the open piece of land, provisions of the MRC Act do not apply to the premises in question. Thus, in law IOCL does not have right to remain in possession of the suit premises after 12 October 1997.

16) After advent of the MRC Act from 31 March 2000, Notice dated 27 November 2002 was sent by three original Plaintiffs terminating the tenancy under the provisions of Section 106 of the Transfer of Property Act, 1882. Since the Applicant-IOCL failed to vacate possession of the premises, T.E. & R. Suit No.69/76 of 2003 was instituted by the three original Plaintiffs. The Applicant-IOCL questions maintainability of the Suit on three broad grounds viz., (i) that the Suit was actually filed by Plaintiff No.4, who had no title in respect of the premises (ii) that there

was no valid termination of tenancy since notice was not issued by the three original Plaintiffs, and (iii) that the original Plaintiffs did not have authority in law either to file Suit or issue termination notice on account of non-securing of probate under Section 213 of the Succession Act.

17) The Applicant-IOCL relies on order passed by this Court on 9 December 2010 in Civil Revision Application No.1005 of 2010 in support of its contention that its objection to maintainability of the Suit were required to be decided by the Trial Court. Accordingly, at the behest of the Applicant-IOCL, the Trial Court framed the issue of maintainability of the Suit as under:

3(a). Whether the suit as filed is maintainable for want of probate of the will of Late Sheroo Manek Billimoria?

18) It is Applicant-IOCL's case before me that the issue of maintainability of the Suit has not been decided by the Trial Court. However, it is seen that the Trial Court has answered the Issue No.3(a) by holding in paragraphs 14, 20, 22 and 23 as under:

14. Heard both the advocates. Advocate for the defendants has submitted that for want of probate of the Will suit is not maintainable. At the same time, there was no relationship of landlord and tenant in between plaintiffs and defendant, hence, this Court has no jurisdiction to try and entertain the suit. On the contrary, advocate for the plaintiffs has submitted that even the Will is not proved by the plaintiffs, but the same Will was referred in the cross examination of P.W.1 Mukesh. As per Section 211 of Indian Succession Act, in absence of probate suit is maintainable. At the same time, the defendants have issued the rent in favour of plaintiff No.1, hence this Court is having jurisdiction to try and decide the suit.

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20. Considering all the above guidelines, there is need of evaluation of oral and documentary evidence. Document Exh.G collectively indicates payment in the name of S.M. Billimoria and Mrs. Patel in between period 2002 to 2004. The payment was made by defendant company Indian Oil Corporation to plaintiff No.1 Mrs. Patel and deceased S.M.Billimoria. D.W.1 Krishanji has admitted the said fact in his cross examination. The document Exh.F is duly served on the defendant. The cheque dated 13/1/2003 was returned to the defendants along with letter Exh.J. The public documents which are filed on record indicate suit property was owned by the person Manek Billimoria. It is also crystal clear from record that Sheroo is the wife of Manek. The agreement dated 25/11/1996 was executed in between Sheroo Manek Billimoria and plaintiff No.4 M/s. Papeyon Builmate Traders Private Limited. Evidence of D.W.1 Krishanji indicates that the said fact was known to the defendants. Therefore, considering all the above circumstances, authorities about the Power of Attorney cited by the plaintiffs are well applicable.

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22. Section 211 and 213 of Indian Succession Act deals with vesting of property. Vesting takes place as a result of probate. On the executors accepting his office, the property vest on him and the executor derives his title from the Will and became representative of deceased even without obtaining the probate. In the case of A.C.Narayanan Vs. State of Maharashtra (cited above), it is held that functions under general Power of Attorney cannot be delegated to any other person without the specific clause permitting the same in the Power of Attorney. The general Power of Attorney itself can be cancelled and be given to another person. In the abovesaid judgment the guidelines given in the case of Janki Vashdeo Vs. Indusind Bank Ltd. (cited above) are also considered.

23. The Power of Attorney is mainly assailed by the defendants due to existence of earlier Power of Attorney and notary rules. But considering the abovesaid guidelines given in the case of A.C.Narayanan Vs. State of Maharashtra when one Power of Attorney can be cancelled and be given to another person. Only because suit filed by plaintiff is signed by earlier Power of Attorney and later on P.W.1 Mukesh has given the evidence is no ground to discard the oral and documentary evidence given by the plaintiff. Therefore, considering all the above circumstances and the evidence on record, I answer issue No.3 in the negative and issue No.3(a) in the affirmative.

19) It therefore, cannot be contended that the Trial Court has failed to decide the issue of maintainability of the Suit. The Appellate Court has also gone into the issue of maintainability of the Suit for want of probate in respect of the Will of late Shiroo Billimoria and has held the suit to be maintainable. Therefore, IOCL's criticism of Trial and Appellate Courts' orders in this regard does not appear to be justified.

20) In my view, all the three objections sought to be raised by the Applicant-IOCL about the maintainability of the Suit are completely baseless. The first objection is about failure to procure probate in respect of the Will of late Shiroo Billimoria and reliance is placed on provisions of Section 213 of the Succession Act. Section 213 has now been deleted w.e.f. 20 December 2025. However, at the time when the Suit was filed and decided, Section 213 existed in the statute and has provided thus:

Section 213. Right as executor or legatee when established

(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans or Indian Christians, and shall only apply--

(i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such Wills are made within the local limits of the ordinary original civil jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those

limits, insofar as they relate to immovable property situated within those limits.

21) In my view, there is nothing in Section 213, which prohibits a legal heir of a deceased owner of the property from instituting a Suit for recovery of possession thereof from the occupiers. Section 213 of the Succession Act prohibits a legatee or executor from establishing any right in relation to bequeathed property in any court of justice. Thus, it is impermissible to seek declaration of title in respect of the property /right unless probate in respect of the Will is obtained. Section 213 may not always come in the way of a legatee filing suit for possession from a tenant. All would depend on the frame of the suit. If the Plaintiff bases the Plaint on his/her capacity as the legatee or executor under the Will, securing of probate might have been necessary for securing the decree. However when the suit is not based on the Will nor the Plaintiff seeks to establish any right under the Will, provisions of Section 213 would have no application. By filing a Suit for recovery of possession from the tenant /lessee the landlord (who may be the legatee under the Will) may not always attempt to establish any right under the Will in the Court. In fact, it is not necessary for a landlord to prove title in respect of the property to a tenant. The landlord-tenant relationship does not depend on claim of ownership. Mere factum of payment of rent can also establish landlord-tenant relationship. Reliance by Mr. Bookwala on judgment of this Court in ***Kashinath Ramchandra Kolwankar*** (supra) in this regard is apposite. This Court has taken into consideration definition of the term 'landlord' appearing in Section 5(3) of the Bombay Rent Act and has held in paragraphs 21 to 23 as under:

21 The term landlord has been defined under the provisions of section

5(3) of the Bombay Rent Act as under:

“5. Definitions.

(3) "landlord" means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord; and further includes in respect of his sub-tenant, a tenant who has sub-let any premises, [and also includes in respect of a licensee deemed to be a tenant by section 15A, licensor who has given such license, and in respect of the State Government, or as the case may be, the Government allottee referred to in sub-clause (b) of clause (1A), deemed to be a tenant by section 15B, the person who was entitled to receive the rent if the premises were let to a tenant immediately before the coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996.”

22 Thus any person who receives or is entitled to receive rent in respect of premises either for himself or on behalf of any other person becomes a landlord. Therefore, to establish status as landlord it is not necessary for Respondents/Plaintiffs to set up a case of title or ownership. The learned Judge of the Small Causes Court has erred in not appreciating this established position of law and has unnecessarily conducted an enquiry into Respondents/Plaintiffs' title in respect of the suit premises.

23 In the present case there is no dispute to the position that the initial induction of Applicant/Defendant in the suit premises is in his capacity as tenant of Shri Ramakant B. Desai. This is not the case where Applicant/ Defendant was originally a member of the Society and that the Society issued any allotment letter to him. The possession of the suit premises was admittedly handed over to him by Shri Ramakant B. Desai. Thus, the Applicant/Defendant's entry in the suit premises is directly connected with relationship with Shri Ramakant B. Desai. There is no dispute to the position that right since 1995 Applicant/Defendant paid rent to Shri Ramakant B. Desai and this position continued till the year 1988. Thus, there was no dispute about existence of relationship between Shri Ramakant B. Desai and Applicant/Defendant as landlord and tenant. ...

(emphasis added)

22) Thus all that is required to be proved in a suit for recovery of possession of leased/tenanted premises is establishment of the landlord-tenant or lessor-lessee relationship. An inquiry into the ownership of the leased property is not really necessary in such a suit. The present suit is filed by the Plaintiffs for recovery of possession of the suit property from their lessee, the tenure of whose lease has expired. It was unnecessary for the original Plaintiffs to base their suit on the Will. It would be necessary to consider the frame of the suit to find out whether the Plaintiffs attempted to establish any right based on the Will. Perusal of the Plaint would indicate that the Suit is not filed on the basis of the Will. Plaintiffs pleaded in paragraph 1 of the Plaint as under:

1. The Plaintiffs state that they are the joint owners of a piece and parcel of plot of land bearing part of Survey No.305, Hissa No.1, C.S. No.307, Hissa No.1, admeasuring approximately 2100 square yards, situated at Kurla on Bombay Agra Road, Kurla, Mumbai 400 070 (hereinafter referred to as “ the suit premises”).

23) In the entire Plaint, there is no reference to the Will. It therefore cannot be contended by any stretch of imagination that the Suit is filed for establishment of any right based on the Will. On the other hand, the Suit is filed based on landlord-tenant relationship, which is clear from the following averments in paragraphs 3 and 6 of the Plaint, which read thus:

3. ...The Defendants, therefore, on expiry of the lease period became he monthly tenants of the Plaintiffs and or their predecessors-in-title in respect of the suit premises. The Plaintiffs crave leave to refer to and rely upon the said indenture of lease and Deed of rectification when produced.

6. The Plaintiffs state that due to efflux of time the period of lease agreement came to an end on 12th October 1997 and from 13th October, 1997 the Defendants became monthly tenant of the Plaintiff in respect of the suit premises.

24) The fact that the Suit was filed based on landlord-tenant relationship is further clear from repeated pleadings in the Plaint about the Defendant offering rent to the Plaintiffs. In paragraph 5 of the Plaint, it was pleaded thus:

5. The Plaintiffs further states that despite the said letter dated 27th November 2002 Exhibit A hereto, the Defendants continued to send to the Plaintiffs their cheques towards the rental amount contrary to the said letter dated 27th November 2002 which were returned to the Defendants by the Plaintiffs Advocate reiterated the contents of the earlier letter dated 27 November 2002 and further along with the above referred letters returned to the Defendants the cheques so sent by the Defendants. The Plaintiffs crave leave to refer to and rely upon the said letters when produced.

25) In addition to pleadings, there are several letters available on record, which indicates offering of rent by the Applicant-IOCL to the Plaintiffs. At pages 150 to 157 of the compilation filed by the Applicant, there are letters by the Applicant addressed to Mrs. S.M. Billimoria and Mrs. Patel offering rent from December 2002 to June 2024. Mrs. Patel is Perviz Khushroo Patel, Plaintiff No.1. Thus payment/offering to pay rent to one of the Plaintiffs is admitted by the Applicant-IOCL and it is now estopped from questioning the title of the Plaintiffs or their right to sue.

26) Additionally, Mr. Bookwala has also brought on record that the Applicant-IOCL has filed the Suit bearing No.487 of 2017 and in

paragraph 2 of the Plaintiff in that suit, the Applicant has accepted ownership of Plaintiff Nos.1 to 3 in respect of the suit premises.

27) Mr. Mody has relied on several judgments in support of his contention about maintainability of the suit and permissibility to pass final decree in absence of probate. In *Mrs. Hema Nolini Judah* (supra) the case before the Apex Court involved establishment of claim to the property on behalf of the legatee by a third person. The Apex Court held that provisions of Section 213 of the Succession Act would apply even when the claim is made by a person not claiming as a legatee. The Apex Court has held that whoever wishes to establish right under the Will, whether it is a legatee, executor or someone else, probate is a mandatory requirement. The Apex Court has held in paragraph 7 of the judgment as under:

7. ... As soon as the appellant wants to prove that, Section 213 will immediately stand in her way for no right as an executor or a legatee can be proved unless probate or letters of administration of the will under which such right is claimed have been obtained. The words of Section 213 are not restricted only to those cases where the claim is made by a person directly claiming as legatee. The section does not say that no person can claim as a legatee or as an executor unless he obtains probate or letters of administration of the will under which he claims. What it says is that no right as an executor or legatee can be established in any Court of Justice, unless probate or letters of administration have been obtained of the will under which the right is claimed, and therefore it is immaterial who wishes to establish the right as a legatee or an executor. Whosoever wishes to establish that right, whether it be a legatee or an executor himself or somebody else who might find it necessary in order to establish his right to establish the right of some legatee or executor from whom he might derived title, he cannot do so unless the will under which the right as a legatee or executor is claimed has resulted in the grant of a probate or letters of administration. Therefore, as soon as the appellant wanted to establish that Mrs. Mitter was the legatee of Dr. Miss Mitter and was therefore entitled to the whole house she could only do so if the will of Dr. Miss Mitter in favour of Mrs. Mitter had resulted in

the grant of probate or letters of administration. Admittedly that did not happen and therefore Section 213(1) would be a bar to the appellant showing that her mother was the full owner of the property by virtue of the will made in her favour by Dr. Miss Mitter. The difference between a right claimed as a legatee under a will and a right which might arise otherwise is clear in this very case. The right under the will which was claimed was that Mrs. Mitter became the owner of the entire house. Of course without the will Mrs. Mitter was an equal heir with her daughters of the property left by Dr. Mitter, as the latter would be taken to have died intestate, and would thus be entitled to one-fourth. It will be seen from the judgment of the High Court that it has held that the appellant is entitled to the one-fourth share to which Mrs. Mitter was entitled as an heir, to Dr. Miss Mitter and granted the plaintiff-respondent a declaration with respect to only half the house. Therefore, the High Court was right in holding that Section 213 would bar the appellant from establishing the right of her mother as a legatee from Dr. Miss Mitter as no probate or letters of administration had been obtained of the alleged will of Dr. Miss Mitter in favour of Mrs. Mitter. The contention of the appellant on this head must therefore fail.

28) The issue before the Apex Court in *Mrs. Hema Nolini Judah* was thus entirely different and the judgment cannot be read in support of a proposition that for maintaining a suit against third parties, in which establishment of right under the Will is not necessary, probate would still be mandatory.

29) Mr. Mody has relied upon judgment of Madhya Pradesh High Court in *Jamshedji Dubash* (supra) in support of his contention that though the Suit is not barred in absence of a probate, but probate must be produced before passing of the decree. The judgment is however distinguishable as the Suit was instituted in that case seeking declaration of title in land based on Will by the legatee against the legal heirs of the testator. The Suit was thus filed for the purpose of establishing right of the legatee based on the Will. In the present case, the Suit was not filed for the purpose of establishing right based on the

Will and the same was filed by landlord for eviction of tenant, who had lost protection from eviction and rent escalation.

30) Mr. Mody's reliance on judgment of Privy Council in ***Kumar Chandra Kishore Roy*** (supra) again does not assist the case of the Applicant. In case before the Privy Council, the Suit was filed by daughters of the testator against their adopted brother for recovery of arrears of maintenance allegedly due to them under their father's Will. Thus, the Plaintiffs sought to establish their right in the property based on the Will and provisions of Section 213 of the Succession Act got attracted. The judgment therefore is clearly distinguishable. The judgment of ***S.M.K.R. Meyappa Chetty*** (supra) of Privy Council involved issue of establishment of title in the property based on Will and in the context of that position, the Privy Council held that the words "capable of instituting a suit" used in the ordinance in question would mean capable of instituting a suit in which a decree might be obtained.

31) The judgment of this Court in ***Raichand Dhanji*** (supra) again holds that grant of probate of a Will is not a condition precedent to institute a Suit claiming right as an executor or legatee under a Will. However, Plaintiff is not entitled to decree unless a probate is granted to him before passing of the decree. The case again involved establishment of right to the property bequeathed under the Will and hence clearly distinguishable.

32) In ***Ramcharan*** (supra), the issue before the Patna High Court was about computation of period of limitation from the date of the Will or

from the date of grant of probate. The judgment therefore has no application to the facts of the case.

33) The judgment of Calcutta High Court in ***Ajit Kumar Hazra*** (supra) cannot be read in support of an absolute proposition that in every case, where suit is instituted by legal heir of landlord, obtaining of probate is a mandatory requirement before passing of a decree. The Calcutta High Court has decided only limited issue of permissibility of substitution of legal heirs of the Plaintiff without the need of procurement of probate and application of provisions of Section 213 of the Succession Act only for passing of decree.

34) Lastly, Mr. Mody relied upon judgment of the Apex Court in ***Clarence Pais*** (supra) wherein the Apex Court has held that the bar imposed under Section 213 of the Succession Act is only in respect of the establishment of right as executor or legatee and not in respect of establishment of right in any other capacity. The judgment, far from assisting the case of the Applicant-IOCL, actually militates against it. Therefore for establishment of right in capacity as landlord in a suit filed against the tenant, Section 213 of the Succession Act would have no application.

35) On the other hand, reliance of Mr. Bookwala on judgment of the Supreme Court in ***FGP Limited*** (supra) appears to be apposite, in which it is held in paragraph 37 as under:

37. It has been urged by the learned counsel for the appellant that in the Suit which has been filed by the respondents they have not asserted that they are filing it as co-owners but they have claimed

that they are filing it as executors/executrix. So they cannot now meet the challenge of maintainability of the Suit on the ground that it was filed by the respondents as co- owners. It is not possible to accept the aforesaid contention in the facts of this case. **This Court is of the opinion that if the status of the respondents as co-owners of the property transpires clearly from the admitted facts of the case, they cannot be denuded of the said status at the instance of some objections by the tenants.** Normally, a tenant's right to question the title of a landlord is very limited in view of rule of law which is codified in Section 116 of the Indian Evidence Act.

(emphasis added)

Thus, in *FGP Limited* the Apex Court has authoritatively ruled that once tenant admits co-ownership of property by the landlord, he cannot seek to raise objection to ownership based on provisions of Section 213 of the Succession Act. Therefore, the objections sought to be raised on behalf of the Applicant-IOCL to maintainability of the Suit as well as to the validity of the termination of notice is clearly misplaced and deserves to be outrightly rejected.

36) So far as objection about Suit being instituted by Power of Attorney is concerned, the same deserves outright rejection. Mere verification of the Suit by the constituted attorney does not mean that the Suit is filed by such attorney. Even though Plaintiff No.4 may have secured some right in the premises on the strength of Agreement for Sale, it still was not the owner till conveyance was ultimately executed on 29 July 2011. Therefore Plaintiff No.4 was a mere power of attorney holder of original Plaintiffs in the year 2003. It had authority to sign and verify the Plaint. It therefore, cannot be contended that the Suit was instituted by Plaintiff No.4 in its personal capacity.

37) So far as the issue of termination notice is concerned, Mr. Mody has strenuously relied on answer to question 54 in the cross-examination of Mr. Mukesh Parekh, in which he deposed that he had given instructions for issuance of termination notice dated 27 November 2003. In my view, mere issuance of instruction of power of attorney holder would not mean that notice was issued on its own behalf. Perusal of the notice would indicate that the same was issued on behalf of three original Plaintiffs. The notice nowhere stated that the same was issued on behalf of the power of attorney holder. Therefore, contention of the Applicant-IOCL that notice was issued and the Suit was filed by power of attorney holder is completely baseless.

38) It is also sought to be contended on behalf of the Applicant that the power of attorney holder did not have authority to lead evidence and reliance in this regard is placed on judgments of the Apex Court in *Janki Vashdeo Bhojwani* and *A.C. Narayanan* (supra). The principles governing permissibility by constituted attorney to lead evidence on behalf of his principal is well settled. In *Janki Vashdeo Bhojwani* the Apex Court has held as under:

17. On the question of power of attorney, the High Courts have divergent views. In the case of Shambhu Dutt Shastri Vs. State of Rajasthan, 1986 2WLL 713 it was held that a general power of attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power of attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff.

18. The aforesaid judgment was quoted with the approval in the case of Ram Prasad Vs. Hari Narain & Ors. AIR 1998 Raj. 185. It was held that the word "acts" used in Rule 2 of Order III of the CPC does

not include the act of power of attorney holder to appear as a witness on behalf of a party. **Power of attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but he cannot appear as a witness on behalf of the party in the capacity of that party.** If the plaintiff is unable to appear in the court, a commission for recording his evidence may be issued under the relevant provisions of the CPC.

(emphasis added)

39) Thus, a constituted attorney is not totally prohibited from being examined as witness. To the extent of his personal knowledge, he can depose before the Court. In the present case, the Plaintiff No. 4 was involved in issuance of termination notice and has accordingly deposed to the extent of his own personal knowledge. The Courts have relied on judgment in *A.C. Narayanan* (supra) in which the Apex Court has held in paragraph 26 as under:-

26) As noticed hereinabove, though Janki Vashdeo Bhojwani (supra), relates to powers of Power of Attorney holder under CPC but it was concluded therein that a plaint by a Power of Attorney holder on behalf of the original plaintiff is maintainable provided he has personal knowledge of the transaction in question. **In a way, it is an exception to a well settled position that criminal law can be put in motion by anyone [vide Vishwa Mitter (supra)] and under the Statute, one stranger to transaction in question, namely, legal heir etc.,** can also carry forward the pending criminal complaint or initiate the criminal action if the original complainant dies [Vide Ashwin Nanubhai Vyas vs. State of Maharashtra (1967) 1 SCR 807]. Keeping in mind various situations like inability as a result of sickness, old age or death or staying abroad of the payee or holder in due course to appear and depose before the Court in order to prove the complaint, it is permissible for the Power of Attorney holder or for the legal representative(s) to file a complaint and/or continue with the pending criminal complaint for and on behalf of payee or holder in due course. However, it is expected that such power of attorney holder or legal representative(s) should have knowledge about the transaction in question so as to be able to bring on record the truth of the grievance/offence, otherwise, no criminal justice could be achieved in case payee or holder in due course, is unable to sign, appear or depose as complainant due to above quoted reasons. Keeping these aspects in mind, in *MMTC* (supra), this Court had

taken the view that if complaint is filed for and on behalf of payee or holder in due course, that is good enough compliance with Section 142 of N.I. Act.

40) Mr. Mody sought to distinguish the above judgment by contending that the same is rendered in the context of criminal complaint. However, the fact remains that filing of Suit by a power of attorney holder even under civil law is not prohibited so long as the attorney has the necessary power. In the present case, constituted attorney had personal knowledge of issuance of notice of termination of the tenancy. The Applicant-IOCL has not disputed the factum of receipt of termination notice. In that sense nothing was required to be proved by the Plaintiffs. Nonetheless, their constituted attorney, who had personal knowledge of issuance of notice, led evidence in that regard. It therefore, cannot be contended that evidence led by power of attorney holder was required to be ignored altogether. In my view therefore, objections to maintainability of the Suit have rightly been repelled by the Trial and the Appellate Courts.

41) In the present case, it is not really necessary to go into the issue of permissibility to institute Suit or pass a decree in absence of probate in the light of the provisions of Section 213 of the Succession Act. The Suit is not filed for establishment of any right under the Will. The Plaint does not even make reference to the Will. The Suit is filed by landlords by describing the Applicant-IOCL as monthly tenant, who had lost protection from eviction and rent escalation after coming into effect of the MRC Act. The Applicant-IOCL itself has offered rent to one of the Plaintiffs thereby establishing landlord-tenant relationship. It therefore, cannot be concluded that the Suit is filed for establishment of

any right under the Will. In the light of the peculiar facts of the present case, provisions of Section 213 of the Succession Act would have no application to the facts of the present case.

42) So far as the merits of the case are concerned, no submissions are canvassed before me to point out an element of perversity or jurisdictional error on the issue of validity of termination notice. As observed above, the IOCL's right to occupy the suit premises has expired on 12 October 1997. It no longer enjoys protection from rent escalation and eviction under the MRC Act. The tenancy has been validly terminated. In *Metal Box India Ltd.* (supra) this Court has held in paragraph 24 as under:

24) The conspectus of the above discussion is that the Defendant-Company is that an entity covered by the provisions of Section 3(1)(b) of the M.R.C. Act no longer enjoys protection from rent escalation and eviction. Maharashtra Rent Control Act is a special legislation enacted with the objective of offering protection from rent escalation and eviction only to selected person and entities. There is conscious legislative exclusion of entities like Defendant-Company from applicability of protection from rent escalation and eviction. Since Defendant-Company did not enjoy protection under the M.R.C. Act, its monthly tenancy became terminable by issuance of notice under Section 106 of the Transfer of Property Act. The tenancy of Defendant has rightly been terminated by the Plaintiff. Upon termination of its tenancy, the Defendant had no right to remain in possession of the suit premises. The Small Causes Court has rightly ordered eviction of the Defendant and there is no error on the part of the Appellate Bench in upholding the eviction decree. Infact, the Trial and Appellate Courts have rightly recorded findings about impermissibility to regain lost rent control protection on account of subsequent reduction of paid-up share capital below Rs.1 crore, which law is subsequently expounded by this Court in Depe Global Shipping Agencies Pvt. Ltd. Versus. Mather and Platt (India) Ltd.(2024 SCC OnLine Bom 3189). The findings recorded by the Trial and the Appellate Courts are in consonance with the law enunciated by this Court in Depe Global Shipping.

43) In that view of the matter, no error can be traced in the concurrent findings recorded by the Trial and the Appellate Courts while directing eviction of the Applicant. In my view, therefore, no case is made out for interference in the impugned orders passed by the Trial and the Appellate Courts.

44) Civil Revision Application is devoid of merits and it is accordingly **dismissed** with no orders as to costs.

[SANDEEP V. MARNE, J.]

45) After the judgment is pronounced, Mr. Mody, the learned counsel appearing for the Applicant prays for continuation of stay for a period of 8 weeks. The request is opposed by Ms. Bookwala, the learned counsel appearing for the Respondents. Considering the nature of findings recorded in the judgment, I am not inclined to continue the stay any further. The request for continuation of stay is rejected.

[SANDEEP V. MARNE, J.]