



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE SIDE

WRIT PETITION NO.148 OF 2004

1. Prabhudas Damodar Kotecha,  
2. Taruna Prabhudas Kotecha  
Both residing at 16 Ram Mahal,  
5th Floor, 8, Dinshaw Vachha Rd,  
Mumbai-400 020. .. **Petitioners.**

Versus

1. Smt. Manharbala Jeram Damodar,  
2. Arvind Jeram Damodar,  
Karta and Manager of Hindu  
Undivided family all residing  
at Ram Mahal, 6th floor, 8,  
Dinshaw Vachha Road,  
Mumbai-400 020.  
3. Bhavana Prabhudas Kotech,  
4. Madhavi Prabhudas Kotecha,  
5. Rupin Prabhudas Kotecha  
Nos 3 to 5 having their  
address in India at 16,  
Ram Mahal, 5th Floor, 8,  
Dinshaw Vachha Road,  
Mumbai-400 020. **Respondents.**

Mr J.J.Thakkar, Senior Advocate with Mr Jaydeep Thakkar,  
Advocate for the petitioners-defendant nos.1 and 2.

Ms Ranjana Parikh, Advocate, for respondent nos 1 and  
2-plaintiffs.

Ms Gauri Godse, Advocate for respondent nos 3 to  
5-defendants.

WRIT PETITION NO.561 OF 2005

1. Smt. Manharbala Jeram Damodar,  
85 years,  
2. Arvind Jeram Damodar,  
Aged 63 years.  
Karta and Manager of Hindu

Undivided family, bot residing  
at 20, Ram Mahal, 6th floor, 8,  
Dinshaw Vachha Road,  
Mumbai-400 020.

**Petitioners.**

**Vs.**

1. Prabhudas Damodar Kotecha,  
aged 77 yrs, retired Businessman,
2. Taruna Prabhudas Kotecha,  
Age - 70 years, Housewife,
3. Bhavana Prabhudas Kotech,  
Age-48 years, Housewife,
4. Madhavi Prabhudas Kotecha,  
Age 45 years,
5. Rupin Prabhudas Kotecha  
Age-40 years  
All residing at 16,  
Ram Mahal, 5th Floor, 8,  
Dinshaw Vachha Road,  
Mumbai-400 020.

**Respondents.**

Ms Ranjana Parikh, Advocate for the petitioners.

Mr J.J.Thakkar, Senior Advocate with Mr Jaydeep Thakkar,  
for Respondent nos 1 and 2.

Ms Gauri Godse, Advocate for respondent nos 3 to  
5-defendants.

**CORAM : DR.S.RADHAKRISHNAN, D.B.BHOSALE  
AND SMT.V.K.TAHILRAMANI, JJJ.**

**DATED : 10TH JULY, 2007.**

**JUDGMENT: (PER D.B.BHOSALE,J.)**

1. The order of reference dated 16.1.2006, which  
has occasioned the constitution of this Full Bench, has

been passed by the learned Single Judge in view of a divergence of the views of the Division Benches of this court, the first being in **Ramesh Dwarkadas Mehra Vs. Indravati Dwarkadas Mehra**, 2001(3) ALL MR 668 and the second in **Letters Patent Appeal No.129 of 1993 (Bhagirathi Lingawade and ors Vs. Laxmi Silk Mills)**, decided on 3.9.1993. The provisions of Section 41(1) of The Presidency Small Cause Courts Act, 1882 (for short, "PSCC Act") and section 5(4A) of The Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short, "the Rent Act") crop up for consideration in these petitions. In view of a conflict in the interpretation made by the Division Benches, in the aforesaid cases, on the language of these provisions the learned Single Judge has made a reference to the Larger Bench. The Hon'ble the Chief Justice has accordingly constituted this Full Bench to decide the same.

2. The Division Bench in **Ramesh Dwarkadas Mehra's** case was dealing with the question, "Whether a suit by a licensor against a gratuitous licensee is tenable before the Presidency Small Cause Court under section 41 of the Presidency Small Cause Courts Act, 1882 or should such a suit be filed before the Civil Court?" This question was answered by the Division Bench holding that a suit by a

licensor against a gratuitous licensee is not tenable before the Presidency Small Causes Court under section 41(1) of PSCC Act and it should be filed before the City Civil Court or the High Court depending upon the valuation. The Division Bench has observed that the expression "licensee" used in section 41(1) of PSCC Act has the same meaning as in section 5(4A) of the Rent Act. In other words, the expression "licensee", not having been defined in PSCC Act, must derive its meaning from the expression "licensee" as used in section 5(4A) of the Rent Act. The expression "licensee" as used in section 5(4A) does not cover a "gratuitous licensee". Consequently, the ejectment application in that case filed in the Court of Small Causes at Bombay was dismissed as without jurisdiction, holding that the suit was within the jurisdiction of this Court on the Original Side.

3. In **Bhagirathi Lingawade's** case, decided on 3.9.1993, the Division Bench has expressed a view that the provisions of Section 5(4A) and section 13(1) of the Rent Act are not at all relevant for interpreting the scope and ambit of section 41 of PSCC Act. The Division Bench, after considering the submissions advanced by the learned counsel for the parties, in paragraph 5 of the

order held thus:

"Our attention was invited to the definition of the expression "licensee" given under section 5(4A) and so also section 13(1) of the Bombay Rent Act. The provisions of that Act are not at all relevant for interpreting the scope and ambit of Section 41 of the Presidency Small Causes Court Act under which the suit was filed."

The aforesaid view expressed by the Division Bench, as observed in the reference order by the learned Single Judge, runs counter to the view expressed by the Division Bench in **Ramesh Dwarkadas Mehra**'s case. The learned Single Judge in paragraph 15 of the reference order has observed that there is a direct conflict in the ratio laid down by both the Division Benches on important legal aspect of the matter, namely, the scope and enquiry under Chapter VII of PSCC Act prior to its amendment and after amendment as also the definition of "licensee" under section 5(4A) of the Rent Act, and it is necessary to resolve the conflict.

4. We propose to consider and deal only with the questions that fall for our consideration in these petitions without touching upon the merits of the case. However, to understand the background against which the

questions are raised, we make a brief reference to the factual matrix in these Writ Petitions. Writ Petition No.148 of 2004 and cross Writ Petition No.561 of 2005, both arise out of Suit L.E.&C Suit No. 430/582 of 1978 filed in the Court of Small Cause under section 41 of PSCC Act. The petitioners in Writ Petition No.148 of 2004 are defendant nos 1 and 2 in the suit whereas the respondents are the original plaintiffs and defendant nos 3 to 5. The petitioners in Writ Petition No.561 of 2005 are the original plaintiffs and the respondents therein are the original defendants. Hereinafter they are being referred to in their original capacity. According to the plaintiffs, the defendants were in use and occupation of one bed room in flat no.16, Ram Mahal, Churchgate, Mumbai (for short, "the suit flat") as their guest. So far as the hall and kitchen are concerned, family members of the plaintiffs and the defendants were using it as common amenities. The plaintiffs claim that they are in occupation of another bedroom in the suit flat. According to the plaintiffs, no monetary consideration was charged by them from the defendants for exclusive use and occupation of one bedroom and joint use of the hall and kitchen as common amenities. It appears that defendant no.1 is the younger brother of plaintiff no.1. The plaintiffs claim that since 1955

plaintiff no.1 in his individual name and since October, 1967, the HUF of the plaintiff no.1 was the tenant of flat no.11 in the very same building. The members of HUF were in need of additional premises and hence they acquired the suit flat on 1.11.1964. Since then the said HUF of plaintiff no.1 has been and continues to be a tenant of flat no.16 and they are paying the rent of the suit flat to the landlord. The plaintiffs further claim that they allowed and/or permitted the defendants to use the bed room in the suit flat as guest of the said HUF of plaintiff no.1. The plaintiffs claim that they revoked the said permission granted to the defendants to use the said premises and since they did not vacate the suit flat and continued to hold possession wrongfully and illegally they filed the suit for eviction.

5. The defendants challenged the jurisdiction of the Court of Small Cause to entertain and try the suit relying upon the judgment of the Division Bench in **Ramesh Dwarkadas Mehra's** case contending that the licence created by the plaintiffs in favour of the defendants was admittedly gratuitous, that is, without consideration and hence the suit is not tenable in that court. The issue of jurisdiction was, however, answered

in the affirmative. It is against this backdrop and in view of a divergence of the views in two judgments of the Division Benches in the aforesaid cases on the question of jurisdiction of the Court of Small Cause to entertain a suit against a gratuitous licensee, the reference has been made.

6. At the outset, we once again make it clear that we do not propose to deal with the petitions on merits and we would like to address only the questions raised and fall for our consideration. The learned Single Judge while making reference, though clearly indicated in the order the conflict, did not formulate the question/s. We, therefore, formulate the following questions:-

(i) Whether the expression "Licensee" used in section 41(1) in Chapter VII of PSCC Act, not having been defined therein, would derive its meaning from the expression "licensee" as used in sub-section (4A) of section 5 of the Rent Act and/or whether the expression "licensee" used in section 41(1) of PSCC Act is a term of wider import so as to mean and include a "gratuitous licensee" also?

(ii) Whether a suit by a "licensor" against a "gratuitous licensee" is tenable before the Presidency Small Cause Court under section 41 of PSCC Act?

7. We have heard the learned counsel for the parties at great length. We have also gone through the order of reference as also the judgments of the Division Benches in **Ramesh Dwarkadas Mehra** and in **Bhagirathi Lingwade's cases**. We have also considered several other judgments relied upon by the learned counsel for the parties to which we propose to make reference while dealing with the questions at appropriate stages in the judgment. However, we also make it clear that the authorities cited by the learned counsel in the course of hearing and which we do not think to be of any assistance in deciding the controversy have not been referred to by us.

8. Ms Parikh, learned counsel for the plaintiffs chose to address us first. At the outset, she took us through the legislative history of the amendments to PSCC Act as also the Rent Act and more particularly the amendments by which Chapter VII of PSCC Act was

substituted for original Chapter VII consisting of sections 41 to 49 by Maharashtra XIX of 1976 (for short, "the 1976 Amendment") and the amendments to bring licensee within the purview of the Rent Act by Maharashtra XVII of 1973 (for short, "the 1973 Amendment"). She submitted that the definition of "licensee" under section 5(4A) is totally irrelevant for attributing the same meaning to the expression "licensee" occurring in section 41(1) of PSCC Act. She submitted that the Division Bench in **Ramesh Dwarkadas Mehra's** case was in error in restricting the ambit of the word "licensee" occurring in section 41(1) only to licence for material consideration and thereby holding that the Court of Small Cause has no jurisdiction to entertain and try a suit against a gratuitous licensee. She submitted that the expression "licensee" in section 41(1) will have to be read in general sense. The meaning of the expression "license" as defined under section 52 of the Indian Easements Act, 1882 (for short, "the Easement Act") will have to be given to the expressions "licensor" and "licensee" in section 41(1) of PSCC Act so as to include all licences, whether with or without consideration. In short, she submitted that since the expressions "licence", "licensor" and "licensee" have not been defined in PSCC Act, they

should be given the same meaning as defined under section 52 of the Easement Act. She then submitted that by no stretch of imagination the Rent Act and PSCC Act could be treated as cognate Acts and, therefore, the definition of "licensee" under section 5(4A) of the Rent Act cannot be imported to give the same meaning to the expression "licensee" used in PSCC Act. After taking us through the Statement of Objects and Reasons of the 1976 Amendment she vehemently submitted that the mischief rule and the principles of purposive consideration will have to be applied in the present case so as to give widest possible meaning to the expression "licensee" occurring in section 41 of PSCC Act so as to include a gratuitous licensee also. If a restricted meaning is given to the expression "licensee" occurring in section 41 the very object with which Chapter VII was introduced by the 1976 Amendment would be frustrated. She also took us through sections 50 and 51 of the Rent Act and submitted that the Division bench in Ramesh Dwarkadas Mehra's case has committed a grave error in holding that the Rent Act and the PSCC Act are pari materia statutes. Ms Parikh made reference to several judgments in support of her submission to which we propose to make reference while dealing with her submissions.

9. Per contra, Mr Thakkar, learned counsel for the defendant nos.1 and 2 vehemently submitted that the Division bench in **Ramesh Dwarkadas Mehra's** case has rightly held that since the expression "license" or "licensee" has not been defined in the statute the meaning of the expressions can be derived from a cognate pari materia statute, whether earlier or later. He further submitted that the well settled rules and principles of interpretation have rightly been applied by the Division Bench in Ramesh Dwarkadas Mehra's case for interpreting the expression "licensee" used in section 41 of PSCC Act and has rightly held that it derives its meaning from the expression "licensee" as used in section 5(4A) of the Rent Act. He submitted that the Rent Act and PSCC Act are cognate pari materia statutes and, therefore, the expression "licensee" has the same meaning as in section 5(4A) of the Rent Act. Mr Thakkar after taking us through the Statement of objects and reasons and the situations contemplated therein submitted that the factual situation contemplated when bringing forward the amendment to Section 41 in 1976, did not include a gratuitous licensee. Mr Thakkar then took us through every single paragraph in the judgment of the Division Bench in Ramesh Dwarkadas Mehra's case as also the relevant

provisions in both the statutes and submitted that under any circumstances the expression "licensee" occurring in section 41 of PSCC Act cannot be read in general sense or as defined under section 52 of the Easement Act and it will have to be given the same meaning as reflected in the definition of the expression "licensee" occurring in section 5(4A) of the Rent Act. The submissions advanced by Mr Thakkar were based on the reasoning recorded by the Division Bench in Ramesh Dwarkadas Mehra's case. Mr Thakkar submitted an assumption that there are only two forums, that is, under section 28 of the Rent Act and section 41 of PSCC Act, for evicting licensee itself is misconceived. The word "licence" or "licensee" does not have one and plain meaning. These words have different meanings and not only the meanings as reflected under section 5(4A) of the Rent Act or under section 52 of the Easement Act or a dictionary meaning. He submitted neither the definition of licensee under section 5(4A) of the Rent Act nor the definition of "licence" under section 52 of the Easement Act would apply fully. In the facts and circumstances of each case, both or only one may apply fully or partly. The Courts should apply different tests to find out the exact meaning and then embark upon an inquiry as to which Court has jurisdiction whether to the Small

Cause Court under section 28 of the Rent Act or to the Small Cause Court under section 41 of PSCC Act or to the City Civil/District Court or to this Court when such an issue is raised. He further submitted that the Division Bench in **Bhagirathi Lingawade's** case has not recorded reasons while making the observations as reflected in paragraph 5 and, therefore, external aid, such as, statement of objects and reasons, different tests and rules of interpretation including the principle of noscitur a sociis will have to be taken into consideration to find out the exact meaning of the expression "licensee" in the present case. In Ramesh Dwarkadas Mehra's case, he submitted, the Division Bench has applied all these tests and has rightly held that the suit by a licensor against a gratuitous licensee is not tenable before the Small Cause Court under section 41 of PSCC Act and such a suit should be filed before the Civil Court, City Civil Court or the High Court depending upon the valuation. We propose to make reference to the judgments relied upon by Mr Thakkar at appropriate stages in the course of this judgment.

10. The submissions advanced by Ms.Godse, learned counsel for defendant nos. 3 to 5 were more or less similar to the submissions advanced by Mr Thakkar.

Besides the submissions on merits, Ms Godse, after taking us through the order of reference and the order of the Division Bench in **Bhagirathi Lingawade's** case submitted that there is no conflict in the views expressed by the two Division Benches. The question that fell for consideration of the Division Bench in that case was not the one which is addressed by the Division Bench in **Ramesh Dwarkadas Mehra's** case. The observations of the Division Bench in Bhagirathi Lingawade's case and more particularly paragraph 5 thereof that the provisions of the Rent Act, that is, section 5(4A) as also section 13(1) are not at all relevant for interpreting the scope and ambit of section 41 of PSCC Act, according to Ms.Godse, were made in the facts of that case and in the context of the issue that was raised before it. In Bhagirathi Lingawade's case, she submitted, the Division Bench was considering the question whether the defendant was a trespasser or a service tenant at the initial entry in the premises and after the termination of licence. She, therefore, submitted that the observations in Bhagirathi Lingawade's case should not be read as ratio. She further submitted that the view expressed in Bhagirathi Lingawade's case is not accompanied by the reasons and does not proceed on conscious consideration of the issue

and, therefore, cannot be deemed to be a law declared to have a binding effect on the lower courts. In support of this proposition and this ground of objection she placed reliance upon the following judgments: (1) **M.P.Gopalkrishnan Nair Vs. state of Kerala - 2005 (11) SCC 45**, (2) **Arnit Das Vs State of Bihar - 2005 SCC 488**, (3) **Ramesh Singh Vs. State of AP -2004 (11) SCC 305** and (4) **Rameshwar Prasad Vs. State of U.P.-1983 (2) SCC 195**. On merits, Ms Godse also took us through several passages from the judgment of the Division Bench in **Ramesh Dwarkadas Mehra's** case and after placing heavy reliance upon the judgment of the Supreme Court in **Mansukhlal Dhanraj Jain and ors Vs. Ekanath Vithal Ogale - 1995 (3) Bombay Cases Reporter 240**, submitted that the provisions of section 41 (1) of PSCC Act should be read in juxtaposition with section 28 of the Rent Act. She submitted that looking to the scheme of both these statutes and more particularly the provisions of section 41(1) and section 28 it is clear that they are cognate pari materia statutes and, therefore, taking recourse to the definition of section 5(4A) of the Rent Act cannot be held to be wrong. She submitted that in **Ramesh Dwarkadas Mehra's** case the Division Bench has exhaustively discussed the concept of licence under the Easement Act; the legislative history of PSCC; section

42A as added by the 1963 Amendment; the legislative history of Rent Act since 1925; 1976 and 1982 amendments to PSCC Act; and the provisions of section 41 prior to Amendment of 1976 and the legislative intent of amending section 41 for introducing the word "licensee" in place of permission in right perspective and has answered the questions that fell for its consideration.

11. At the outset, before we deal with the questions that are raised for our consideration, we would like to address the contention urged by Ms Godse, learned counsel for defendant nos 3 to 5, that there is no conflict in the views expressed in **Ramesh Dwarkadas Mehra and Bhagirathi Lingawade** cases. In Bhagirathi Lingawade's case, it cannot be overlooked that the Division Bench was dealing with the Letters Patent Appeal against the concurrent findings of fact and a decree for possession and perhaps that is the reason why detailed and lengthy reasons were not recorded. The contention of the appellant urged therein was that at the very initial entry in the premises one Dhondoo was either a "trespasser" or a "service tenant" as contemplated under the Rent Act and hence the Small Cause Court would have no jurisdiction to try the suit.

It is clear from mere perusal of the order that this argument was based on the definition of "licensee" under section 5(4A) of the Rent Act. It is clear that, according to the appellant therein, Dhondoo did not fall within the definition of licensee under section 5(4A) of the Rent Act and hence the Small Cause Court under section 41 of PSCC Act has no jurisdiction to entertain the suit. In other words, Dhondoo being a trespasser or a service tenant, was not a "licensee" as defined under section 5(4A), the suit against him under section 41(1) of PSCC Act would not be tenable inasmuch as the expression "licensee", as used in section 41(1) derives its meaning from the expression licensee under section 5(4A) of the Rent Act. As against this, the case of the appellant-company was that Dhondoo was their employee and was permitted to occupy the premises in that capacity. In other words, Dhondoo was not a "licensee" within the meaning of section 5(4A) and, therefore, their suit for possession under section 41 of PSCC Act in the Court of Small Cause was tenable.

12. It is against the backdrop of these facts, it appears to us, the definition of licensee under section 5(4A) of the Rent Act was relied upon to contend that the Small Cause Court has no jurisdiction to try a suit

instituted under section 41(1) of PSCC Act inasmuch as Dhondoo falls in the exclusive part of the definition of "licensee" under section 5(4A). Considering these set of facts and the contentions urged by the learned counsel for the parties, the Division Bench in paragraph five of the order in Bhagirathi Lingawade's case, appears to have held that the provisions of the Rent Act and more particularly section 5(4A) are not at all relevant for interpreting the scope and ambit of section 41 of PSCC Act under which the suit was filed.

13. Looking at the overall facts and circumstances of Bhagirathi Lingawade's case, in our opinion, it cannot be said that the view expressed by the Division Bench in paragraph five of the order, was not necessary for the decision of the case. The opinion such as one expressed by the Division Bench in Bhagirathi Lingawade's case, in our opinion, is binding on the subordinate courts within the jurisdiction of the High Court. It is now well settled that with a view to achieve consistency in judicial pronouncements, the Courts have evolved the rule of precedents, the principle of stare decisis etc. These rules and principles are based on public policy and if they are not followed by the courts then there will be chaos in

the administration of justice. This is well expressed by the Supreme Court in **Government of Andhra Pradesh and ors Vs. A.P.Jaiswal and ors -AIR 2001 Supreme Court 499.**

14. The doctrine of "stare decisis" envisages that the judicial decisions hold a binding force for the future. A judgment is authoritative only as to that part of it which is considered to have been necessary for the decision of the actual issues between the litigants. It is true that in some cases, it may be difficult to extract a ratio, and the difficulty is enhanced when no long reasons are recorded, expressing an opinion/view as to the issues raised, considered and decided. The doctrine of stare decisis further envisages that the lower courts are bound by such decisions of the higher Courts and, thus, every court in the State of Maharashtra and Goa is bound by the decision of this Court. Our judicial system is characterised by a scheme of hierarchy of courts, the Supreme Court being the Apex Court and High Courts being the highest courts in different States and, therefore, the doctrine of stare decisis or the doctrine of binding precedents is the cardinal feature of the Indian judiciary. When High Court decides a principle or

expresses opinion on the question of law, which was necessary for the decision of the case, such judicial decisions have a binding force for the future and it is the duty of subordinate courts to follow such decisions. In the present case, merely because no long reasons are recorded it cannot be said that the opinion/view expressed in paragraph 5 was not necessary or the issue was not raised, considered and decided. An expression of opinion by the Division Bench in Bhagirathi Lingawade's case in paragraph 5, in our opinion, is the expression of opinion on the question of law which has a binding force and that it is in conflict with the view/opinion expressed by the coordinate Bench in Ramesh Dwarkadas Mehra's case. The learned Single Judge has, therefore, rightly observed that the views of the two Division Benches on the provisions of section 41(1) of PSCC Act and section 5(4A) of the Rent Act run counter to each other.

15. In **M.P.Gopalkrishnan Nair's** case (supra) the Supreme Court has expressed that "the observations in a judgment should not be, it is trite, read as ratio. A decision, as is well known, is an authority of what it decides and not what can logically be deduced therefrom." Insofar as Bhagirathi Lingawade's case is

concerned, it cannot be said that the views expressed by the Division Bench was not necessary for the decision of the case. As a matter of fact, to meet the argument advanced by the appellant therein, the Division Bench had to express its view as reflected in paragraph 5 of the order in that case. In **Arnit Das's** case (*supra*), the Supreme Court held that a decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. At the outset, this judgment of the Supreme Court has no application. Similarly, the judgments of the Supreme Court in **Ramesh Singh's** case (*supra*) and **Rameshwar Prasad's** case (*Supra*) are also of no avail in view of the peculiar facts and circumstances of this case and in view of the observations made by us in the foregoing paragraphs. In the circumstances, this submission of Ms Godse must be rejected.

16. The legislative history of PSCC Act, to the extent as may be necessary for our purpose, will have to be noted. The PSCC Act was enacted and came into force on 1st July, 1882. Under this Act, the Courts of Small Cause were established in Calcutta, Madras, Ahemadabad

and Bombay. Section 18 of this Act, subject to exceptions in section 19, confers jurisdiction on Small Cause Court to try all suits of a civil nature where value of the subject matter does not exceed Rs.10,000/-. Section 19(d) specifically states that Small Cause Court shall have no jurisdiction in suits for the recovery of immovable property. This clearly indicates that the Presidency Small Cause Court is Civil Court in hierarchy of the Courts. However Chapter VII of PSCC Act, as it stood before its substitution in 1976, containing sections 41 to 46, conferred limited jurisdiction of recovery of possession of any immovable property on Presidency Small Cause Court giving summary remedy for recovery of possession of immovable property of the prescribed value. The proceedings initiated, therefore, were in the nature of an application and not a suit and as a consequence thereof they resulted in the order of bailiff and not in a decree. Before the advent of the Rent Act the proceedings for recovery of possession of the premises between a landlord and a tenant were filed under summary procedure by making an application under section 41 of the PSCC Act as it then stood depending upon the prescribed annual rack rent. Even under Bombay Rent Act, 1939 and Bombay Rent Act, 1944 exclusive jurisdiction was not given to any court. In respect of

the premises having the annual rack rent upto Rs.2,000/-, the proceedings for recovery of possession between landlord and tenant were to be filed in Presidency Small Cause Courts under Chapter VII of PSCC Act and in case where the annual rack rent exceeds Rs.2,000/- the regular suits were to be filed on the Original Side of the High Court.

17. This situation under went a dramatic change with coming into force of the Rent Act on 13.2.1948. Under section 28 thereof, exclusive jurisdiction was conferred on the Small Cause Court in respect of all the suits between landlord and tenant relating to recovery of rent or possession irrespective of value of the subject matter. Even suits between landlord and tenant governed under Rent Act of 1939 or 1944 and pending on the Original Side of the High Court were transferred to the Presidency Small Cause Courts, Mumbai and were to be tried under the provisions of the Rent Act. That Act gave considerable right and protection to the tenants. The landlords were prohibited from recovering any amount in excess of standard rent which was pegged down at the level of rent in September, 1940 or on the date of first letting. Similarly, the landlord's right of evicting tenant was severely curtailed. The landlords could

recover possession only on proof of grounds enumerated under the Rent Act. Several restrictions were placed on the landlord's right by the Rent Act. As a result thereof the landlord started giving their premises under an agreement of leave and licence. The proceedings for recovery of possession against the licensee were filed under section 41 of the Small Cause Courts Act. The defendants in such suits would take a defence that he was not a licensee but a tenant and that agreement of leave and license was a sham, bogus or not binding. Besides, the findings given by the Small Cause Courts in exercising jurisdiction under section 41 on the question of tenancy, was not final as the proceedings were summary proceedings and aggrieved party had a right to file a regular suit for declaration of the title. That resulted in multiplicity of the proceedings. It is against this backdrop Chapter VII was amended in the year 1963 by introduction of section 42A. Under this provision if the question of tenancy was allowed to be tried as a preliminary issue and appeal was provided for finding on a preliminary issue. The underlying purpose behind introduction of section 42A was that the question of tenancy should be finally decided under section 41 itself and no separate proceedings could thereafter be permitted.

18. The question of filing suits against the licensee even after introduction of section 42-A depended on the value of the subject matter as there were three civil courts available in the City of Bombay, namely, the Hon'ble High Court on its Original Side, Bombay City Civil Court and Presidency Small Cause Court. Thus, depending on the value of the subject the suit had to be filed in any one of these three different courts. Whereas in case of proceedings filed against the licensee under Chapter VII of PSCC Act, the question of tenancy could be finally decided under section 42A. That was not the case if the suits were filed either on the Original Side of the Bombay High Court or in the Bombay City Civil Court. In respect of such suits, it was open to an unsuccessful defendant to agitate the question of tenancy by filing the proceedings under section 28 of the Rent Act. Thus, multiplicity of the proceedings was sought to be remedied by introduction of section 42A continued in respect of the suits filed on the Original Side of the Bombay High Court or in the City Civil Court. It appears that to overcome this mischief of multiplicity of the proceedings, that large scale amendments were carried out in 1976 and the Chapter VII was substituted for the original chapter VII

(Sections 41 to 49) by the 1976 Amendment. It may be noticed that under Chapter VII of the 1976 Amendment, the proceedings for recovery of possession under section 41 no more remained summary and they were given status of regular suits. The underlying purpose of the amendment was to cure the mischief of multiplicity of proceedings by investing one court with exclusive jurisdiction irrespective of the value of the matter in all the suits between the landlord and tenant or the licensor and licensee.

19. Similarly, legislative history of the Rent Act, to the extent as may be relevant for our purpose, will have to be seen. The Bombay Rent Act, 1925 and Bombay Rent Act, 1939 did not have any special or separate definition of "licence" nor did they deal with "licensees". On 13th February, 1947 the Rent Act was brought into force. Even this Act as enacted originally did not deal with "licence" or "licensee" and their rights. As stated earlier the landlords in order to evade the rigour of the Bombay Rent Act, 1947 started entering into an agreement called "leave and licence". Such agreements specifically declared that they were mere "licensees" for consideration and did not create any right of tenancy or any other right in the immovable

property. It is against this backdrop the amendment was moved to make the rent control provisions applicable to leave and licence agreement. Accordingly, the Bombay Rent Act was amended in 1973 to bring "licensees" within the purview of the Rent Act, 1947 by the 1973 Amendment. Section 15-A was introduced in the said Act. Under this provision where a person was on 1st February, 1973 in occupation of any premises or any part of which is not less than a room as licensee under a subsisting agreement of leave and licence, he shall on that day deemed to have become tenant of the landlord, for the purpose of Bombay Rent Act, 1947 in respect of the premises or part thereof in his occupation. The definition of the expression "tenant" in section 5(11) was also amended to include such licensee as shall be deemed to be the tenant by virtue of section 15A. The expression "licensee" was also inserted by sub-section (4A) in section 5. This definition of licensee provides that a person in occupation of the premises or of such part thereof which is not less than a room, as the case may be, in a subsisting agreement for licence given only for a licence fee or charge. This definition clearly excludes from its sweep a gratuitous licensee with which we are concerned in these petitions.

20. In the present case, we are concerned with the provisions of section 41 (1) of PSCC Act and we may have to find out the exact intent of the legislature in inserting the expressions "licensor" and "licensee" therein by the 1976 Amendment. Before we embark upon an enquiry as to what would be the correct interpretation of the expression "licensee" occurring in section 41(1) of PSCC Act, we think it appropriate to bear in mind certain basic principles of interpretation of a statute. The rule stated by **Tindal, C.J. in Sussex Peerage Case - 8 (1844) 11 CI & Fin 85 : 8 ER 1034**, still holds the field. A specific reference to the said rule is made by the Supreme Court in **Union of India Vs. Hansolidevi, (2002) 7 SCC 273** while interpreting section 28-A of Land Acquisition Act. The rule is to the effect that "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of law giver".

21. The observations made by the Supreme Court in **Gurudevdata VKSSS Maryadi & ors Vs. State of Maharashtra - AIR 2001 SC 1980** may be borne in mind which read thus ;

"It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law giver. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute."

(emphasis supplied)

22. In a leading case of **Chief Justice of A.P. vs. L.V.A. Dixitulu** (1979 (2) SCC 34 the Supreme Court has observed thus;

"The primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made it (Coke). Normally, such intent is gathered from the language of the provision. If the language or the

phraseology employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the court to go beyond the arid literal confines of the provision and to call in aid other well recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light, on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation."

23. In **District Mining Officer vs Tata Iron and Steel Co.**(JT 2001 (6) SC 183, the Supreme Court stated:

"... The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of thing, it is impossible to anticipate fully in the varied situations arising in future in which the application of the legislation in hand may be called for the words chosen to communicate such indefinite referents are bound to be in many cases, lacking in charity and precision and thus giving rise to controversial questions of

construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention, i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed".

(emphasis supplied)

24. **In Kehar Singh v. State (Delhi Admn), AIR 1988 SC 1883**, the Supreme court has observed that "But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress." Similarly in **District Mining Officer v. Tata Iron & Steel Co. (JT 2001 (7) SCC 358**, the Supreme Court has observed that "the legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by the use of general words to cover similar problems arising in future." It is then observed that "the legislative intention, i.e. the true or legal meaning of an

enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed." The Supreme Court then observed that "a statute is an edict of the legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of them that they make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature".

25. We can also make reference to the observations made by Lord Denning in **Seaford Court Estates Ltd v Asher (1949) 2 ALL ER 155 (CA)**. In this case, the learned Judge advised a purposive approach to the interpretation of a word used in a statute and observed thus:

"The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge,

believing himself to be fettered by the supposed rule that he must look to the language and nothing less, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defence appears, a Judge cannot simply fold his hands and blame the draftsman, he must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature . . . . A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in this texture of it, they would have straightened it out? He must then do so as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

(emphasis supplied)

26. Bearing in mind the aforesaid principles, let us now examine the provisions of section 41 of PSCC Act and all the relevant provisions of both the statutes, to answer the questions referred to by the learned Single Judge.

27. In the present case, we may have to consider whether the absence of definition of "licensee", either to specially include or exclude a "gratuitous licensee"

within the meaning of the expression "licensee" used in section 41(1) of PSCC Act, was intentional. We are aware about the verdict of the Privy Council in **Pakala Narayanasami Vs. Emperor (AIR 1939 PC 47)** where Lord Atkin had declared that "when the meaning of the words is plain, it is not the duty of the courts to busy themselves with supposed intentions". In the present case, however, we may have to refer to the Statement of Objects and Reasons of the 1976 Amendment as also the basic rules and principles of interpretation of a statute for interpreting the expression "licensee" in view of the fact that the Division Bench in **Ramesh Dwarkadas Mehra's** case has applied all those principles for attributing the meaning as reflected in the definition of "licensee" in section 5(4A) of the Rent Act to the expression "licensee" in section 41 (1) of PSCC Act.

28. In order to address the questions posed for our consideration it would be appropriate to note the relevant statutory provisions of section 41 of the Presidency Small Cause Courts Act, 1882 (for short "PSCC Act") having bearing on these questions. Section 41 of PSCC Act reads thus:

"S.41(1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, but subject to the provisions of sub-section (2), the Court of the Small Cause shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of any licence fee or charges or rent therefore, irrespective of the value of the subject-matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property, or of licence fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act the Maharashtra Housing and Area Development Act, 1976 or any other law for the time being in force, apply]."

29. This provision begins with non obstante clause conferring over-riding jurisdiction to the Court of Small Cause to entertain and try a suit which falls within the sweep of section 41(1). A mere look at this provision, as observed by the Supreme Court in **Mansukhlal Dhanraj Jain Vs. Eknath Vithal Ogale, 1995**

(3) Bom.C.R. 240, would show that section 41(1) applies only when the following conditions stand satisfied: (a) It must be a suit or proceeding between the licensee and

licensor; or (b) between a landlord and a tenant; (c) such suit or proceedings must relate to the recovery of possession of any property situated in Greater Bombay; or (d) relating to the recovery of licence fee or charges or rent thereof. Keeping in view the questions that fall for our consideration, in the present case, we are principally concerned with the conditions (a) and (c) though there could be a suit relating to recovery of licence fee also as stated in condition (d). If both these conditions stand satisfied, the court of Small Cause will have a jurisdiction to entertain the present suit provided we also hold that the expression "licensee" means and includes "gratuitous licensee" also. Therefore, the question whether the term "licensee" in this section also covers "gratuitous licensee" and/or the expression "licensee" in section 41(1) of PSCC Act could only be interpreted to mean the "licensee" within the meaning of sub-section (4A) of section 5 of PSCC Act will have to be addressed. It may also be noted that under section 41(1) the Court of Small Cause shall have jurisdiction to entertain and try "all suits and proceeding" between licensor and licensee. The expressions "all suits and proceedings" means and includes "all suits" against "Licensee" either relating to recovery of possession of any immovable

property or relating to the recovery of any licence fee or both. Apparently, this provision does not make any distinction between the "licensee" with and without material consideration.

30. Sub-section (2) of section 41 of PSCC Act states that nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property, or of licence fee or charges or rent thereof, to which the provisions of Bombay Rent Act apply. We are not concerned with other two statutes referred to in sub-section (2). A plain reading of this sub-section makes it clear that the provisions of sub-section (1) shall not apply to the suits or proceedings for recovery of possession of any immovable property or licence fee to which the provisions of Rent Act apply which may also mean if the provisions of sub-section (4-A) and sub-section (11) of section 5 read with section 15A of the Rent Act are attracted the provisions of subsection (1) of section 41 of PSCC Act cannot be taken recourse to institute a suit and proceeding between the "licensor and licensee" relating to recovery of possession of any immovable property or relating to the recovery of licence fee. Apparently, this provision makes a distinction between the

expression "licensee" in subsection (1) of section 41 of PSCC Act and the expression "licensee" occurring in section 5(4A), of the Rent Act. For instance, if the "licensee" is covered by section 15A read with section 5(4A) of the Rent Act the suit under section 41(1) would not be maintainable.

31. The marginal note of section 41 to which a specific reference is made and relied upon by the Division Bench in **Ramesh Dwarkadas Mehra's** case, reads thus: "suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except to those to which other Acts apply to lie in Small Cause Court". It may be noticed that a conjunctive "and" used between the expressions "tenants for recovery of possession of immovable property situate in Greater Bombay" and "relating to the recovery of any licence fee" does not find place in sub-section (1) of section 41 of PSCC Act. In sub-section (1) a disjunctive "or" is used between these two expressions thereby indicating that there could be a suit against licensee for possession irrespective of the fact whether it relates to recovery of licence fee or charge. It is not necessary, as indicated in the marginal note, that

there should be a suit for recovery of possession "and" for licence fee.

32. It is now well settled that marginal notes to the section of an Act cannot be referred to for the purpose of construing the meaning of section particularly when a language of the section is plain and simple. (see in this connection **I.T.Commissioner Vs Ahmadabhai Umarbhai & Co, AIR 1950 SC 131; Kalavatibai Vs Soiryabai, AIR 1991 SC 1581, Utamadas Chela Sundardas Vs Shiromani Gurudwara Prabhandhak Committee AIR 1996 SC 2133**). Similarly, marginal note cannot certainly control the meaning of the body of the section if the language employed therein is clear. In this connection, we can usefully refer to the judgment of the Supreme Court in **Nalinakhya Bysack Vs. Shamsunder Halder and ors AIR 1953 SC 148**. The Supreme Court in this case has observed that marginal note cannot control the meaning of the body of the section if the language employed therein is clear and unambiguous. If the language of the section is clear then it may be there is an accidental slip in the marginal notes rather than it is correct and accidental slip in the body of the section itself. (See **Nandini Satpathy Vs P.L.Dani and others, AIR 1978 SC 1025**). The Supreme Court in **S.P.Gupta and**

**others Vs President of India and others, AIR 1982**

Supreme Court 149, after considering the law on the use of marginal notes while interpreting the provisions of a statute in paragraph 1096, held thus:-

"1096. A reading of the passages and decisions referred to above leads to the view that the Court while construing a statute has to read both the marginal notes and the body of its provisions. Whether the marginal notes would be useful to interpret the provisions and if so to what extent depends upon the circumstances of each case. No settled principles applicable to all cases can be laid down in this fluctuating state of the law as to the degree of importance to be attached to a marginal note in a statute. If the relevant provisions in the body of the statute firmly point towards a construction which would conflict with the marginal note the marginal note has to yield. If there is any ambiguity in the meaning of the provisions in the body of the statute, the marginal note may be looked into as an aid to construction."

33. It is thus clear that the function of a marginal note is as a brief indication of the contents of the section. It cannot be referred to for the purpose of construing the meaning of section particularly when the language is plain and simple. In other words, it cannot construe the meaning of the body of the section if the language employed therein is clear. If the relevant provisions in the body of the statute firmly point

towards a construction which would conflict with the marginal note the marginal note has to yield. In short, the marginal note is a poor guide to the scope of a section. In any case, the marginal note cannot be legitimately used to restrict the wide words/expressions in the section or plain term of an enactment and it cannot be said to be enacted in the same sense.

34. In the present case, in our opinion, sub-section (1) of section 41 of PSCC Act is clear and unambiguous. The use of conjunctive, as aforesaid, in the marginal note appears to be an accidental slip. The disjunctive "or" in sub-section (1) cannot be overlooked while interpreting the provisions of section 41. The disjunctive "or" clearly indicates that the court of Small Cause shall have a jurisdiction to entertain and try all suits and proceedings between the licensor and licensee relating to the recovery of possession of any immovable property situated in Greater Bombay and it is not necessary that such suit should also be for recovery of any licence fee. There could be a suit against licensee relating only to recovery of possession of any immovable property. The Legislature has not used the conjunctive "and" in sub-section (1) of section 41 purposely thereby, in our opinion, making its intention

clear that there could be a suit only relating to the recovery of possession of immovable property against the licensee.

35. The provisions of section 41(1) do not specifically exclude the "gratuitous licensee" or makes any distinction between the licensee with material consideration and the licensee without material consideration. If that would have been the intention of the legislature nothing would have prevented it from saying so specifically. If "or" in sub-section (1) is read as "and" perhaps we also would have had said that a suit under section 41(1) would be maintainable against a licensee only if licence was created with material consideration.

36. It appears that even in the Statement of Objects and Reasons conjunctive "and" is used. The Division Bench in **Ramesh Dwarkadas Mehra's** case has made reference to the Statement of Objects and Reasons of the 1976 Amendment by which Chapter VII of PSCC Act was substituted. In paragraph 43 of the judgment, the Division Bench has made the analysis of the Statement of Objects and Reasons. We find it difficult to accept the analysis made therein. It would be advantageous to

reproduce the relevant paragraph no.43 which reads thus:-

"43. A careful analysis of the Statement of Objects and Reasons shows that the Bill proceeds on the footing that under the existing law "the licensor has to go to different Courts for recovery of possession of premises and licence fees and if the plea of tenancy is raised by the Defendants and succeeds, the matter is again to go to the Small Causes Court." (Emphasis added). This obviously contemplates a situation of licence for consideration for otherwise the plea of tenancy could not be raised. The other situation contemplated under the Statement of Objects and Reasons is where proceedings on the basis of tenancy has started in the Small Causes Court "and subsequently the defence of licence is taken and succeeds". (Emphasis added). Here again, the suit could not have been filed on the basis of a tenancy, if the licence was gratuitous. Thus, it appears to us that the factual situation which was in the contemplation of the Legislature when bringing forward the amendment to Section 41 by Act XXI of 1975, did not include a gratuitous licensee. Thus, we are fortified in our thinking that the amendment to Section 41, despite its somewhat wide language, was not intended to apply to gratuitous licensee."

It is apparent, from bare perusal of the aforesaid paragraph that in view of the conjunctive "and" used between the expressions "the licensor has to go to different courts for recovery of the possession of the premises" and "Licence fee", even in the statement of objects and reasons, the Division Bench has observed

that "this obviously contemplates the situation of licence for consideration for otherwise the plea of tenancy could not be raised." We have already observed and also recorded that the conjunctive "and" does not find place in subsection (1) of Section 41 of PSCC Act. If disjunctive "or" as used in section 41(1) is taken into consideration it would not be possible for us to hold that the licence should be for consideration so as to maintain a suit under section 41(1) of PSCC Act in the court of Small Causes. The Division bench has further proceeded to observe that the suit could not have been filed on the basis of a tenancy, if the licensee was gratuitous. This observation is made on the basis of a situation contemplated in the statement of objects and reasons where the proceedings on the basis of tenancy has started in the Small Causes Court and subsequently the defence of licence is taken and succeed. We find it difficult to assume that the suit against gratuitous licence is not maintainable in the court of Small Causes. In the circumstances, it is not possible to agree with the view expressed by the Division Bench in Ramesh Dwarkadas Mehra's case.

37. At this stage we deem it appropriate to make reference to section 28(1) of the Rent Act, 1947. This

section deals with jurisdiction of the Courts. The relevant part of section 28(1) reads thus:

"28(1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction, --

(a) in Greater Bombay, the Court of Small Causes, Bombay,

(aa) in any area for which, a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court and]

(b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge the Court of the Civil Judge (Senior Division) having ordinary jurisdiction.

shall have jurisdiction to entertain and try suit or proceedings between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply [or between a licensor and licensee relating to the recovery of the licence fee or charge] and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and [subject to the provisions of sub-section (2)] no other Court shall have jurisdiction to entertain any such suit, proceedings, or application or to deal with such claim or question".

38. A glance at this section read with section 5(4A) would show that a defendant who claims to be a "gratuitous licensee" is not entitled to any protection

under the Rent Act. In other words, having regard to the sections 5(4A) and section 28, their application clearly exclude a "gratuitous licensee" from the protection of the Rent Act. Consequently, section 28 of the Rent Act cannot confer a jurisdiction on the Small Cause Court to entertain a suit against a gratuitous licensee and a suit would lie before the ordinary civil court or the High Court for recovery of the possession of the premises from the gratuitous licensee if we hold that a suit against such licensee even under section 41(1) of PSCC Act would not be maintainable.

39. A mere look at Section 28 of the Bombay Rent Act and section 41(1) of PSCC Act would clearly show that pari materia words are used about nature of suits in both these provisions for conferring exclusive jurisdiction on Small Cause Court, namely, it alone can entertain the suits or proceedings relating to recovery of possession of the premises. Section 41 of PSCC Act deals with such suits between the licensee and licensor also, while section 28 of the Bombay Rent Act, 1947 deals with the suit only between the landlord and tenant and between licensor and licensee relating only to the recovery of the licence fee or charge. Where the premises are governed by the provisions of the Rent Act,

the provisions of Section 28 would be attracted and where the premises are not governed by the Rent Act, the provisions of section 41 of PSCC Act would apply. But the nature of such suits as envisaged by both these sections is same.

40. The Supreme Court in **Mansukhlal Dhanraj Jain's** case (supra) has dealt with the question "whether the suit filed by the plaintiff claiming the right to possess the suit premises as a licensee, against defendant alleged licensor, who is said to be threatening to disturb the possession of the plaintiff-licensee, without following due process of law, is cognizable by the Court of Small Causes, Bombay as per section 41(1) of PSCC Act or whether it is cognizable by the City Civil Court Bombay?" The Supreme Court, while dealing with this question and holding that the Court of Small Cause shall have a jurisdiction has observed that in section 41(1) of PSCC Act and section 28 of the Bombay Rent Act, 1947 pari materia words are used about nature of the suits in both these provisions for conferring exclusive jurisdiction on Small Cause Courts. This judgment, (in **Mansukhlal Dhanraj Jain's** case), does not state that the PSCC Act and the Rent Act are cognate pari materia statutes. It is clear from the

observations made by the Supreme Court in paragraphs 17 and 18 of the judgment that some expressions in section 28 of the Rent Act only are pari materia with the expressions employed in section 41(1) of the Small Cause Court Act. We are unable to agree with the observations made by the Division Bench in **Ramesh Dwarkadas Mehra's** case in respect of this judgment. It is apparent from the observations made in this case that the Supreme Court considered the similar words used in jurisdictional provision in two different Acts, namely the Rent Act and PSCC Act. The Supreme Court was concerned with the interpretation of the words "relating to recovery of possession". That phrase occurs both, in section 41 of PSCC Act and section 28 of the Rent Act. In view thereof, the Supreme Court observed that pari materia words are used in both the Acts and interpretation on that phrase in one Act would also be useful in interpreting identical phrase in another Act. It is clear that the Supreme Court was not concerned with the provision dealing with substantive rights in one Act as contrasted to a procedural provision in another Act. Neither section 28 of the Rent Act nor section 41 of PSCC Act confer any substantive rights on the parties. The Supreme Court has no where stated that PSCC Act and the Rent Act are cognate pari materia

statutes.

41. The Division Bench in **Ramesh Dwarkadas Mehra's** case in paragraph 38 has observed that "the Rent Act and the Chapter VII of PSCC Act are pari materia, is incontrovertible in view of the specific provision made in Section 51 of the Rent Act". We are unable to agree with this observation. A glance at section 51 of the Rent Act would show that it provides for the removal of doubt as regards proceedings under Chapter VII of PSCC Act. It states that for removal of doubt, it is declared that, unless there is anything repugnant in the subject or context references to suits or proceedings in this Act, shall include references to proceedings under Chapter VII of PSCC Act and references to decrees in this Act shall include references to final orders in such proceedings. The Division Bench in Ramesh Dwarkadas Mehra's case finds support from this provision in coming to the conclusion that it should be guided by the provisions of the Rent Act while interpreting the word "licensee" in Chapter VII of PSCC Act. In our opinion, section 51 of the Rent Act will have to be read with section 50. On the date when the Rent Act came into force, there were two different kinds of proceedings for recovery of possession pending in two

different courts in the city of Mumbai. There were proceedings under Chapter VII pending in the Small Causes Court while there were suits pending on the original side of this Court. Section 50 provides that suits pending in any court, which also includes the High Court, shall be transferred to and continued before the courts which would have jurisdiction to try such suits or proceedings under the Rent Act and shall be continued in such courts as the case may be and all provisions of the Rent Act and the Rules made thereunder shall apply to all such suits and proceedings. In short, this means the suits pending in the High Court will be transferred to the Small Cause Court and will be heard and tried there and all the provisions of the Rent Act and the Rules made thereunder shall apply to such suits. It further provides that all proceedings pending in the Court of Small Cause under Chapter VII shall be continued in that court and all provisions of the Rent Act and the Rules made thereunder shall apply to such proceedings. Thus, pending proceedings under Chapter VII were to be continued as proceedings under the Rent Act and all provisions and the Rules under the Rent Act were to apply to such proceedings. It was in this context that section 51 states that references to suits or proceedings under the Rent Act shall include

references to proceedings under Chapter VII of PSCC Act and references to decrees in the Rent Act shall include references to final order in such proceedings. It will have to be noticed that against the decree for eviction an appeal is provided under the Rent Act. Since the proceedings under Chapter VII were to continue even after coming into force of the Rent Act and since there were no decrees to be based in such proceedings, but only final orders, as unsuccessful litigants could be deprived of a right of an appeal as the appeals were provided only against decrees. Hence, section 51 was added by Bombay 3 of 1949. This purpose of section 51 of the Rent Act cannot be overlooked.

42. The PSCC Act does not define expression "licensor" and "licensee". Both these expressions find a place in section 41(1) of PSCC Act. Under this provision the Court of Small Cause is conferred with the jurisdiction to entertain and try all the suits and proceedings between a "licensor" and a "licensee" relating to recovery of possession of any immovable property or relating to recovery of licence fee. Section 5(4A) of the Rent Act defines the term "licensee" while section 52 of the Indian Easement Act, 1882 defines the term "licence". A mere look at both

these provisions would show that sub-section (4A) of section 5 of the Bombay Rent Act clearly provides that the "licensee" means a person who is in occupation of the premises or such part as the case may be, under a subsisting agreement for licence given for a "licence fee or charge". The definition of "licensee" under sub-section (4A) of section 5 is very exhaustive and is inclusive and exclusive in character. However, it would suffice to note that the licensee under sub-section (4A) must be a licensee whose licence is supported by material consideration. In other words, a gratuitous licensee is not covered under the definition of licensee under sub-section (4A) of section 5 of the Rent Act.

43. As opposed to this, the expression "licence", as defined under section 52 of the Indian Easement Act, provides that where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to easement or an interest in the property, the right is called a license. Section 52 does not require any consideration, material or non material, to be an element of the definition of licence, nor does it

require that the right under the licence must arise by way of contract or as a result of a mutual promise. Thus, licence as defined in section 52 of the Indian Easement Act can be a unilateral grant and unsupported by any consideration. The Supreme Court in **State of Punjab vs. Brig Sukhjit Singh** 1993(3) SCC 459 has observed that, "payment of licence fee is not an essential attribute for subsistence of licence".

44. Let us see as to how the expressions "licence" and "licensee" are understood, used and spoken in common parlance. It is often said that a word, apart from having the meaning as defined under different statutes, has ordinary or popular meaning and that a word of everyday usage it must be construed in its popular sense, meaning that sense which people conversant with the subject matter with which the statute is dealing would attribute to it. A "licence" is a power or authority to do some act, which, without such authority, could not lawfully be done. In the context of an immovable property a "licence" is an authority to do an act which would otherwise be a trespass. It passes no interest, and does not amount to a demise, nor does it give the licensee an exclusive right to use the property. (See *Puran Singh Sahani Vs Sundari Bhagwandas*

Kriplani (1991) 2 SCC 180). Barron's Law Dictionary has given the meaning of word "licensee" to mean "the one to whom a licence has been granted; in property, one whose presence on the premises is not invited but tolerated. Thus, a licensee is a person who is neither a customer, nor a servant, nor a trespasser, and does not stand in any contractual relation with the owner of the premises, and who is permitted expressly or impliedly to go thereon usually for his own interest, convenience, or gratification". Stroud's Judicial Dictionary of Words and Phrases, Sixth Edition, Vol.2, provides the meaning of word "licensee" to mean "a licensee is a person who has permission to do an act which without such permission would be unlawful. (See Vaughan C.J., in Thomas Vs Sewell, Vaugh at page 330, at page 351, quoted by Romour, J, in Frank Warr & Co. Vs. London County Council (1940) 1 K.B. 713)." In Black's Law Dictionary, Seventh Edition, the word "licence" means "a revocable permission to commit some act that would otherwise be unlawful" and the word "licensee" means "one to whom a licence is granted or one who has permission to enter or use another's premises, but only for one's own purposes and not for the occupier's benefit." Thus, it is seen that even in popular sense the word "licence" is not understood to mean it should be on payment of licence

fee for subsistence of licence. It also covers a "gratuitous licensee", that is, a person who is permitted, although not invited, to enter another's property and who provides no consideration in exchange for such permission.

45. The concept of "licence" as reflected in the definition of licensee under sub-section (4A) of section 5 of the Bombay Rent Act and section 52 of the Indian Easement Act are contra distinguishable. Under sub-section (4A) there cannot be licence unsupported by any material consideration whereas under section 52 payment of licence fee is not an essential attribute for subsistence of licence. Therefore, we are considering as to whether meaning of the expression "licensee", as reflected in sub-section (4A) of section (5), could be attributed to the expression "licensee" employed in section 41(1) of PSCC Act or the meaning of the expression "licence" as reflected in section 52 of the Indian Easement Act could be derived for making the expression "licensee" used in section 41(1) wider so as to cover the term "gratuitous licensee" as well. The intention of the Legislature which amended PSCC Act in 1976 and inserted the expressions "licensee" and "licensor" in section 41 (1) of the said Act, will have

to be discerned.

46. If the definition of "licensee" in sub-section (4A) of section 5 of Rent Act is accepted to understand the expressions "licensee" in section 41(1) of PSCC Act as held by the division bench in **Ramesh Dwarkadas Mehra's** case, undoubtedly, in every case instituted by the landlord in the Small Cause Court/City Civil Court for recovery of possession of the premises, if the defendant raises a question of his status and on the basis thereof an issue of jurisdiction the only option that would be left open to the landlord would be to get the issue of jurisdiction decided first and then to proceed on merits before the Court which has jurisdiction to entertain and try the suit on merits. Every such landlord will have to begin a fresh round of litigation either by withdrawing the suit from the court where it was filed or after the plaint is returned for presenting it to an appropriate court, whenever the issue of jurisdiction is decided in favour of the defendant.

47. In our opinion, the legislature in its wisdom has neither defined the word "licensee" in any of the definitions of the Act nor has clarified it. The

primary object of the Act is to avoid multiplicity of proceedings in different Courts and consequent waste of public time and money and unnecessary delay, hardship and expense to the suitors, and to have uniformity of procedure. It was considered expedient to make the required supplementary provisions in PSCC Act so that all suits and proceedings between a landlord and a tenant or a licensor and a licensee for recovery of possession of premises or for recovery of rent or licence fee, irrespective of the value of the subject-matter, should go to and be disposed of by the Small Cause Court, either under PSCC Act or the Rent Control Act. In these circumstances, therefore, the word "licensee", in our opinion, obviously has been used by the legislature in general sense of the term as defined in the Indian Easement Act, which is the statute that governs all the licence of immovable properties. In other words, the word "licensee" being a term of well known legal significance having well ascertained incidents, the legislature did not think it necessary to define it separately.

48. The provisions of section 41(1) of PSCC Act neither specifies as to what the expression "licensee" used therein exactly means, nor does it expressly

exclude any particular category of licensee. A plain reading of section 41(1) would show that the expression "licensee" is used in a general sense. It does not exclude a gratuitous licensee from its purview. The defined meaning of the expression "licensee" under section 5(4A) of the Rent Act cannot be assigned or attributed to the word "licensee" occurring in section 41(1) of PSCC Act. Merely because some expressions in section 28 of the Rent Act are pari materia with the expressions employed in section 41(1) of PSCC Act does not mean the wider meaning of the expression "licensee" stands restricted or shrunk to mean only the licence given for licence fee or charge. The object behind bringing the licensor and the licensee within the purview of section 41(1) by the 1976 Amendment was to curb any mischief of unscrupulous elements using dilatory tactics in prolonging the cases for recovery of possession instituted by the landlord/licensor and to defeat their right of approaching the Court for quick relief and also to cause inconvenience to the court making it to deal with an issue of jurisdiction in such cases for years together even before touching upon the merits of the case.

49. We are fortified in the aforesaid view by the

decision of the Supreme Court in **Soniya Bhatia Vs. State of U.P.** AIR 1981 Supreme Court 1274 wherein the Supreme Court was concerned with the ambit of expression "transfer" and "consideration" occurring in U.P. Imposition of Ceiling on Land Holdings Act. Those words were neither defined in any of the definitions of the said Act nor clarified it after considering the primary object of the Act. In these circumstances, the Supreme Court has observed that the word "transfer" has obviously been used by the legislature in general sense of the term as defined in the Transfer of Property Act. It was further observed that the word "transfer" being a term of well known legal significance having well ascertained incidents, the legislature did not think it necessary to define the term "transfer" separately. It would be relevant to reproduce the observations made by the Supreme Court in paragraph 10 of the judgment in **Soniya Bhatia's case**:

"10. It is well settled that whenever the legislature uses certain terms of expressions of well-known legal significance or connotation the courts must interpret them as used or understood in the popular sense. In the case of C.I.T. Andhra Pradesh V. M/s.Taj Mahal Hotel, Secunderabad, (1972) 1 SCR 168; (AIR 1972 SC 168) this Court while laying down guidelines for holding how a particular expression has been defined,

observed as follows:-

"Now it is well settled that where the definition of a word has not been given, it must be construed in its popular sense means 'that sense which people conversant with the subject matter with which the statute is dealing would attribute to it'."

Lord Alkinson in Keates V Lewis 1911 AC 641 observed as follows:

"In the construction of a statute it is of course, at all times and under all circumstances permissible to have regard to the state of things existing at the time the statute was passed, and to the evils, which as appears from its provisions, it was designed to remedy. If the words are capable of one meaning alone; then it must be adopted, but if they are susceptible of wider import, we have to pay regard to what the statute or the particular piece of legislature had in view."

In our opinion, these observations are fully applicable to the present Act which has for its object to remedy the mischief likely to be raised by the occupant/defendant by taking different defences and raising an issue of jurisdiction and making the landlord run from one court to another to have his suit decided on merits. In any case, it cannot be said that the word "licensee" is capable of one meaning, as defined under section 5(4A) of PSCC Act. It is susceptible of wider import and, therefore we have to pay regard to what the

legislature had in view.

50. We have already seen the background against which section 15-A of the Bombay Rent Act, 1947 was introduced by the 1973 Amendment Act, by which a person who is in occupation on 1st February 1973 of any premises or any part of which is not less than a room as a licensee, shall on that day deemed to have become, for the purpose of Rent Act, 1947, the tenant of the landlord in respect of the said premises. We cannot overlook that it was introduced to remedy the mischief. On introduction of this provision a consequential amendment to section 5 was made and sub-section (4-A) was inserted as also the definition of "tenant" under sub-section 11 was made wider so as to include licensees in possession of the premises.

51. Insofar as the 1976 Amendment, by which a new chapter VII was inserted in PSCC Act in the place of earlier Chapter VII, is concerned the intention of the legislature, in our opinion, was not the same as reflected in the amendment made in 1973 by which section 15-A and section 5(4A) in the Bombay Rent Act, 1947 were inserted. It may be relevant to notice the Statement of Objects and Reasons appended to LA Bill No.I of 1973,

which reads thus:

"It is now notorious that the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, is being avoided by the expedient of giving premises on leave and licence for some months at a time, often renewing from time to time at a higher licence fee. Licensees are thus charged excessive licence fees; in fact, several times more than the standard rent, and have no security of tenure, since the licensee has no interest in the property like a lessee. It is necessary to make provision to bring licensees within the purview of the aforesaid Act. It is therefore provided by clause 14 in the Bill that persons in occupation on the 1st day of February 1973 (being a suitable anterior date) under subsisting licences, shall for the purposes of the Act, be treated as statutory tenants, and will have all the protection that a statutory tenant has, under the Act."

52. The statement of objects and reasons of the amendment made in 1976 by which new Chapter VII was substituted in PSCC Act will have to be noticed and we deem it appropriate to reproduce the same which reads thus:

. "At present in Greater Bombay, all suits and proceedings between a landlord and tenant relating to recovery of possession of premises or rent, irrespective of the value of the subject-matter, lie in the Court of Small Causes, Bombay, under section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Under that section, suits

and proceedings for the recovery of the licence fee between a licensor and licensee as defined in that Act also lie in the Court of Small Causes, irrespective of the value of the subject-matter. Under Chapter VII of the Presidency Small Cause Courts Act, 1882, an application can be made by a licensor for recovery of possession of premises, of which the annual value at a rack rent does not exceed three thousand rupees. If the rack rent exceeds three thousand rupees, the licensor has to take proceedings in the City Civil Court where the rack rent does not exceed twenty five thousand rupees and for higher rents in the High Court. Similarly, for recovery of licence fees to which the provisions of the Bombay Rent Control Act do not apply, the licensor has to seek his remedy in the Small Cause Court, the City Civil Court or the High Court, as the case may be, according to the value of the subject-matter. Under the existing law, the licensor has to go to different Courts for recovery of possession of premises and licence fees and if the plea of tenancy is raised by the defendant and succeeds, the matter has again to go to the Small Cause Court. Similarly, where proceedings on the basis of tenancy are started in the Small Cause Court and subsequently the plea of licence is taken and succeeds, the plaint is returned and has to be re-presented to the City Civil Court or the High Court, as the case may be, depending on the valuation. Thus there is unnecessary delay, expense and hardship caused to the suitors by going from one Court to another to have the issue of jurisdiction decided. Moreover, Chapter VII of the Presidency Small Cause Courts Act envisages applications which culminate in orders and are always susceptible of being challenged by separate suits on title where the relationship is admittedly not between a landlord and tenant.

2. In order to avoid multiplicity of proceedings in different Courts and consequent waste of public time and money and unnecessary delay, hardship and expense to

the suitors, and to have uniformity of procedure, it is considered expedient to make the required supplementary provisions in the Presidency Small Cause Courts Act, so that all suits and proceedings between a landlord and tenant or a licensor and licensee for recovery of possession of premises or for recovery of rent or licence fee, irrespective of the value of the subject-matter, should go to and be disposed of by the Small Cause Court, either under that Act or the Rent Control Act.

3. The Bill is intended to achieve these objects."

53. It is true that the statement of objects and reasons may not be admissible as an aid to the construction of a statute and it may be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the bill to introduce the same and the extent and urgency of the evil which was sought to be remedied. (**See M.K.Ranganathan Vs Government of Madras, AIR 1955 S.C.604**). However, the statement of objects and reasons, at the same time, cannot be overlooked and could be used to assess the intent of the legislature in the event of there being any confusion and no exception can be taken. The Supreme court in **Arnit Das** (*supra*) has observed that the ambiguity can be resolved by taking into consideration the preamble and the statement of object and reasons, which suggests what the Act was

intended to deal with. If language used is ambiguous or controversy is raised on the language the Courts are permitted to look into it. It would be useful to interpret the enactment so as to harmonise it with the object which legislature had in its view. It is true that this is not an indispensable requirement but when forced with an imperative need to appreciate the proper intent of legislature it may be looked into. In the facts of this case and the manner in which the controversy has arisen we deem it appropriate to look into the object which the legislature intended to achieve by substituting Chapter VII in 1976. The Statement of Object and Reasons is a key to unlock the mind of legislature in relation to substantive provisions of statutes. It is now well settled that a statute is best interpreted when we know why it was enacted. We, therefore, would like to examine the necessity which gave rise to the 1976 Amendment Act and look at the mischief which the legislature intended to redress.

54. It is pertinent to note that the Division Bench in **Ramesh Dwarkadas Mehra's** case after considering the Statement of Object and Reasons in paragraph 42 observed thus:

"..... depending on whether plea of licensee/tenancy succeeded in one or the other Court, the plaintiff would be returned and the suitor would have to recommence his long and arduous challenge in another Court. The Bill was intended to cut through this Gordian Knot to save public time and money and avoid unnecessary delay, expenses and hardships to suitors. By the amendment carried out in Section 41, all suits of the type indicated therein were brought within the jurisdiction of the Small Causes Court irrespective of the value of the subject matter."

(emphasis supplied)

These observations show that the statement of objects and reasons was appreciated in its right perspective, but we are at a loss to understand as to why a category of "gratuitous licensee" was excluded.

55. It is settled by the Supreme Court in catena of decisions that a reference to the statement of objects and reasons is permissible for understanding the background, the antecedents, state of affairs, the surrounding circumstances in relation to the statute and the evil which the statute sought to remedy. The Supreme Court recently in **Bhaiji Vs Sub-Divisional Officer Thandla, 2003 (1) SCC 692** has reiterated this principle and has further added that "the weight of the judicial authority leans in favour of the view that the

Statement of Objects and Reasons cannot be utilised for the purpose of restricting and controlling statute and excluding from its operation such transactions which it plainly covers." This is what exactly been done, in **Ramesh Dwarkadas Mehra's** case, after referring to the Statement of Objects and Reasons plain meaning of the expression "licensee" occurring in section 41(1) of PSSC Act has been restricted to mean the licensee with monetary consideration as defined under section 5(4A) of the Rent Act.

56. In a suit under section 41 before its amendment in 1976 if the plea of tenancy was raised and succeeded, the matter would again have to be tried by the Small Causes Court. Conversely, in a proceedings initiated in the Small Cause Court on the footing of tenancy, if a defence of licence is taken and succeeded, the plaintiff would have to be returned and re-presented to the City Civil Court or the High Court depending on the valuation. That would cause unnecessary delay, expense and hardship to the suitor to move from one Court to another to have the issue of jurisdiction decided. In order to overcome these difficulties, and to eliminate delay, expenses and hardship to the suitor, and to have uniformity of procedure, the Chapter VII in PSSC Act was

substituted in 1976 so that all suits and proceedings between "landlord and tenant" or "licensor or licensee" for recovery of possession of premises or for recovery of rent or licence fee or charge irrespective of the value of the subject matter should go to and be disposed of by Small Cause Court. Thereby, the legislature intended to bring "all suits" between landlord and tenant and licensor and licensee, whether under the Rent Act or under PSCC Act under one roof. It would not be proper to state that after the amendment the third forum, that is, City Civil/District Court or the High Court is available. In our opinion, any other interpretation would not fit in the scheme and looking at the phraseology employed by the legislature in drafting the 1976 Amendment Act, we find no reason as to why "gratuitous licensee" is also not covered within the meaning of the expression "licensee" in sub-section (1) of section 41 of PSCC Act.

57. We find it difficult to accept the submission based on the observation in **Ramesh Dwarkadas Mehra's** case that the inspiration for using the expression "licensee" in section 41 of PSCC Act was derived from the amendment of 1973 carried out in the Bombay Rent Act by which section 15-A was introduced. Nothing had

prevented the legislature from saying so specifically if that would have been the intention and if that was so the legislature would have certainly amended section 41 of PSCC Act also in the year 1973 itself and not waited to substitute Chapter VII until 1976. As a matter of fact it appears that even after the amendment of 1973 by which section 5(4A) and 15-A of the Rent Act was introduced the legislature seems to have found that the mischief was not remedied and to bring all suits in respect of the licences, whether or not supported by the material consideration, before the Court of Small Causes. The very object and purpose will be defeated if the expression "licensee" is not read to mean and include the gratuitous licensees also. The expression "licensee" must be given the widest interpretation so as to bring gratuitous licensee within its sweep and it is also consistent with the very object with which the 1976 Amendment was brought into force.

58. The principle of noscitur a sociis cannot be applied in the present case to restrict the meaning of the expression "licensee" so as to include only the licence given for a licence fee or charge. The Supreme Court very recently in **Chandigarh Housing Board Vs. Devendra Singh, 2007-AIR SC 2724**, has observed that "if

a plain meaning can be given effect to, there is no reason why it should not be applied. The Court would not take recourse to any other principles of interpretation when it is not necessary". In our opinion, applying the principle "noscitur a sociis" is unnecessary since we find no reason why a plain meaning to the expression "licensee" employed in section 41 (1) of PSCC be applied. It must be borne in mind that noscitur a sociis, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. Intention of the legislature in using the expression "licensee" in section 41(1) of PSCC Act, in our opinion, is clear and need not be interpreted by applying the principle of noscitur a sociis. (In this connection, see **State of Bombay Vs Hospital Mazdoor Sabha, AIR 1960 SC 610**). The Supreme Court in **Bank of India Vs. Vijay Transport, AIR 1988 SC 151** has stated that the rule of noscitur a sociis has no application when the meaning is not in doubt. This maxim is not to

be mechanically applied. It is of assistance only insofar as it forbids guidance by compendiously summing up principles based on rules of common source and logic. The observations of the Supreme Court in **Rohit Pulp and Paper Mills Ltd Vs. Collector of Central Excise**, AIR 1991 SC 754, **Samatha V. State of Andhra Pradesh**, (1997) 8 SCC 191 and **Brindavan Bangle Stores V. Assistant Commissioner of Commercial taxes**, AIR 2000 SC 691 supports this canon of interpretation of statute. It may be interesting to note that in **Letang Vs Coopex** (1965) 1 Q.B. Lord Diplock C.J. has described the maxim noscitur a sociis in his inimitable style as " a treacherous one unless one knows the *societas* to which the *socii* belongs". It is true that the Supreme Court in **State of Bombay Vs. Hospital Mazdoor Sabha** (supra) has observed that where two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. However, in our opinion, this principle cannot be made applicable in the present case merely because the words licensor and licensee are associated with the words landlord and tenant. This, at the most, could be applied to understand the meaning of the expression "licensor" and "licensee" to mean a "landlord" and "a person in possession" of the premises owned by such

landlord. It cannot be applied to exclude "gratuitous licensees".

59. It is now well settled that the intention must be found in the language finally adopted in the statutes under consideration and in that language alone. No doubt, general words may in certain cases properly be interpreted as having a meaning or scope other than the literal or usual meaning. They may be so interpreted where the scheme appearing from the language of the legislature, read in its entirety, points to consistency as requiring the modification of what would be the meaning apart from any context, or apart from the purpose of the legislature as appearing from the words which the legislature has used, or apart from the general law. In the present case, in our opinion, the wider words have been deliberately used in order to make the scope of the expression "licensee" correspondingly wider. It is also well settled that for the purpose of interpretation of statute, the entire statute is to be read in its entirety. The purport and object of the Act must be given full effect. This principle has been reiterated by the Supreme Court in **Indian Handicraft Emporium Vs. Union of India, 2003 (7) SCC 589**. We find the expression "licensee" in section 41(1) of PSCC Act

employed by the legislature is precise, plain and proclaims its intent in unequivocal terms. We therefore, would like to give full effect to the expression licensee in section 41(1) and hold that even a "gratuitous licensee" is covered under this provision keeping in view the legislative history of PSCC and Rent Act, basic scheme and framework of the statutes as a whole and the object sought to be achieved.

60. In Halsbury's Laws of England, Volume 44(1), fourth reissue, para 1474, pages 906 and 907, it is stated thus:

**"1474. Construction by reference to the mischief.** Parliament intends that an enactment shall remedy a particular mischief and it is therefore presumed that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment corresponds to its legal meaning, should find a construction which applies the remedy provided by it in such a way as to suppress that mischief. This doctrine originates in Heydon's Case where the Barons of the Exchequer resolved that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered:

(1) what was the common law before the making of the Act;

(2) what was the mischief and defect for which the common law did not provide;

(3) what remedy Parliament has resolved and appointed to cure the disease of the commonwealth; and

(4) the true reason of the remedy, and then the office of all the judges is always to make such construction as shall:

(a) suppress the mischief and advance the remedy; and

(b) suppress subtle inventions and evasions for the continuance of the mischief pro privato commodo (for private benefit); and

(c) add force and life to the cure and remedy according to the true intent of the makers of the Act pro bono publico (for the public good).

There is some presumption that an Act passed to amend the law is directed against defects which came into notice about the time when the Act was passed."

61. Clubbing of the "licensor and licensee" with "landlord and tenant", in section 41(1) of PSCC Act, and clubbing of causes relating to recovery of licence fee also in our opinion is only with a view to bring all the suits between the "landlord and tenant" and the "licensor and licensee" under one roof to avoid unnecessary delay, expense and hardship to the suitor. The terms "landlord and tenant" and "licensor and licensee" though have a close association the context in which they are used cannot be said to have a

relationship based only on material consideration. We find it difficult to accept the proposition that the legislature after having invested one court with exclusive jurisdiction in all the suits between the licensor and licensee should have carved out small exception in case of gratuitous licensee. Such interpretation limits against very purpose of the amendment and the mischief that was sought to be remedied. The Supreme Court in **Amir Trading Corporation Ltd. Vs. Shapoorji Data Processing Ltd.** AIR 2004 SC 355 in a similar situation has applied the doctrine of suppression of mischief rule as enumerated in Heydon's case. In order to ascertain the true meaning of the expression "licensee" employed in section 41(1) of PSCC Act, it would be legitimate to call in aid the well recognised rules of construction such as its legislative history, the basic scheme and the framework of a statute as a whole, the purpose of the legislation, the object sought to be achieved and the mischief sought to be remedied. **Heydon's Rules** (3 Co.rep.7a, 76 ER 637) referred to in paragraph 1474 in Halsbury's Laws of England has been applied by the Supreme Court as well as High Courts in a large number of cases in order to suppress the mischief which the legislature intended to be remedied while enacting or amending the statute as

against the literal rule which could otherwise cover the field. (see in this connection **Goodyear India Ltd Vs State of Haryana and ors** , AIR 1990 SC 781). Furthermore, in a case of this nature, principles of purposive construction must come into play. (See **Indian Handicraft Emporium Vs. Union of India** (2003) 7 SCC 589). We are of the considered opinion that the expression "licensee" employed in section 41 is used in general sense of term as defined in section 52 of the Indian Easement Act. The intention of the legislature was to suppress the mischief, that was likely to be raised by the defendants in the suits filed by the landlords.

62. Thus, looking at the controversy raised in these petitions from all points of view, we answer the questions formulated by us as follows: The expression "licensee" used in section 41(1) of PSCC Act does not derive its meaning from the expression "licensee" as used in sub-section (4A) of section 5 of the Rent Act. The expression licensee used in section 41(1) is a term of wider import so as to mean and include a "gratuitous licensee" also. In view of this, we hold that a suit by a licensor against a gratuitous licensee is tenable before the Presidency Small Cause Court under section 41

of PSCC Act.

63. We accordingly direct to place both the writ petitions before appropriate bench for final disposal on merits in the light of the aforesaid opinion recorded by us.

**DR . S . RADHAKRISHNAN , J .**

**D . B . BHOSALE , J .**

**SMT . V . K . TAHILRAMANI , J .**



IN HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE SIDE

WRIT PETITION NO.148 OF 2004  
WITH  
WRIT PETITION NO.561 OF 2005

Date of Judgment: 10th July, 2007

For approval and signature

THE HON'BLE DR.JUSTICE S.RADHAKRISHNAN ::

THE HON'BLE MR.JUSTICE D.B.BHOSALE :

THE HON'BLE SMT. V.K. TAHLIRAMANI

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?
5. Whether it is to be circulated to the Civil Judges?
6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?