

Supreme Court of India

Prithvichand Ramchand Sablok vs S.Y.Shinde on 13 May, 1993

Equivalent citations: 1993 AIR 1929, 1993 SCR (3) 729

Author: Ahmadi

Bench: Ahmadi, A.M. (J)

PETITIONER:

PRITHVICHAND RAMCHAND SABLOK

Vs.

RESPONDENT:

S.Y.SHINDE

DATE OF JUDGMENT 13/05/1993

BENCH:

AHMADI, A.M. (J)

BENCH:

AHMADI, A.M. (J)

MOHAN, S. (J)

CITATION:

1993 AIR 1929 1993 SCR (3) 729

1993 SCC (3) 271 JT 1993 (3) 348

1993 SCALE (2)948

ACT:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947-Section 12(3)-Terms of compromise before court including non-execution of decree for possession where entire arrears paid by specified date-Character of the compromise terms whether penal or a concession-Held, where defendant benefits for complying with a requirement, and does not suffer for failing to abide by it, it is not penal-Civil Procedure Code, order XXI Rule 35.

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947-Section 12(3) (b)-Transfer of property Act, 1882-Section 114-Held, Section 12(3) (b) is a special provision and cases governed by the Bombay Act must be resolved in accordance with Section 12(3) of the Act and not under section 114 of Transfer of property Act.

HEADNOTE:

The appellant-landlord filed an eviction suit for possession of the demised premises mainly on the ground of arrears of rent under Section 12(3) of the Bombay rent Act, 1947.

The suit was settled between the parties. By the terms of the compromise, possession would be given by the tenant to the landlord by 10 October 1970, or the landlord may recover

possession by execution based on this decree; but, if the tenant paid the entire arrears in full by 10 October 1970, the landlord would not execute the decree for possession. The tenant failing to pay the entire arrears as stipulated the landlord decree holder filed execution proceedings. The executing Court issued a warrant for possession but the Appellate Court set aside the order and dismissed the prayer for eviction. The High Court remanded the matter to the Appellate Court to determine the character of the compromise terms. That court again allowed the appeal and dismissed the execution proceedings altogether.

On appeal, the High Court agreed with the Appellate Court. It found

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that clause permitting eviction was penal in nature and therefore, not enforceable.

The questions before this court were: did the parties to the compromise intend to create or continue the relationship of landlord and tenant; whether the compromise terms in the consent decree were penal in nature or merely gave a concession; and whether Section 114 Transfer of Property Act could be invoked while executing a decree for possession, notwithstanding Section 12(3) of the Bombay Act.

Allowing the appeal, this Court,

HELD: It is well-settled that a decree passed on the basis of a compromise by and between the parties is essentially a contract between the parties which derives sanctity by the court superadding its seal to the contract. But all the same the consent terms retain all the elements of a contract to which the court's imprimatur is affixed to give it the sanctity of an executable court order. The court will not add its seal to the compromise terms unless the terms are consistent with the relevant law. (735-H)

If the law vests exclusive jurisdiction in the court to adjudicate on any matter, the court will not add its seal to the consent terms unless it has applied its mind to the question.

In such a case it is the independent satisfaction of the court which changes the character of the document from a mere contract to a court's adjudication which will stop the tenant from contending otherwise in any subsequent proceedings and operate as resjudicata. (736-B)

The character of the consent-decree will depend on the nature of the dispute resolved and the part played by the court while superadding its seal to it. (736-C)

(2) If a defendant is required to suffer the consequence of his failure to abide by terms stipulated, such consequence would be penal in nature. But if the defendant gets some benefit by complying with a requirement, such as clause can never be penal in character. (739-B)

(3) Admittedly the tenant had failed to pay or tender in court the

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standard rent and permitted increases due to the landlord.
(736-E)

The clause in the consent terms whereby, upon payment of the entire rent etc. due from the tenant, by a stipulated date was dearly to secure his dues i.e. arrears of rent etc. This is in the nature of a concession.

Where a landlord grants a concession and agrees that if the entire arrears is cleared by a stipulated date, he will not insist possession that will not render the clause penal in nature. (739-E)

(4) If the condition precedent for availing of the benefit of concession under clause (3) of the consent terms is satisfied, the relationship of landlord and tenant continues but if the tenant fails to comply with the condition precedent for availing (of the benefit or concession the forfeiture operates and the tenant becomes liable for eviction under the decree. (739-G)

(5) After the enactment of clause (b) to section 12(3) which is a special provision incorporating the equity provision contained in section 114, T.P. Act, in a modified form, cases governed under the Act must be resolved in accordance with section 12(3) of the Act and not under section 114 T.P. Act. The landlord's right to seek eviction has been drastically reduced and circumscribed by sections 12 and 13 of the Act. Similarly the tenant must also seek protection from eviction by complying with the requirements of the Act.
(740-B)

If such is not the legal position, Sections 12 (3) (a) and 12 (3) (b) would be rendered wholly nugatory. Under the Act a tenant is allowed to continue in possession notwithstanding the termination of the contractual tenancy if he abides by the provisions of the Act. If he fails to abide by the requirement of section 12(3) of the Act, he must take the consequences flowing therefrom. There is no question of granting him double protection. (740-C-E)

Krishnabai v. Hari 8 BLR 813 and Gajanand Govind v. Pandurang Keshav, 53 B.L.R. 100, referred to. (840-B)

Pradesh Kumar Bajpai v. Binod Behari Sharkar, [1980] 3S.C.R. 93, relied on. (840-H)

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2881 of 1993. From the Judgment are Order dated 16.1.85 of the Bombay High Court in W.P. No. 1755 of 1983 V.M. Tarkunde, R. Karanjawala, Rajesh Kumar and Ms. Suruchi Aggarwal for the Appellant.

S.B. Bhasme and A.S. Bhasme for the Respondent. The Judgment of the Court was delivered by. AHMADI, J. Special leave granted.

The appellant, landlord, filed an eviction suit No. 419 of 1968 for possession of the demised premises mainly on the ground of arrears of rent under section 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called 'the Act'). That suit was settled between the parties, the relevant terms whereof read as under:

(1) The possession of the suit premises is to be given by the defendant to the plaintiff by 10th October, 1970. If the defendant does not give possession, then the plaintiff is to take possession by execution on the basis of this decree.

(2)..... (3)The defendant is given a concession that if the defendant paid the entire amount mentioned in clause (2) above, i.e., the amount involved in the suit, future mesne profits, electricity charges, water charges, the rent of the godown, expenses of the suit by 10th October, 1970, the plaintiff will not execute the decree for possession."

Under clauses (2) and (4) of the compromise terms the rent in respect of the suit premises was to be calculated on the basis of standard rent of Rs. 30 per month, the rent of the store room (godown) was to be calculated at the standard rent of Rs. 9 per month and electricity and water charges at Rs. 3 per month and so calculated. the entire arrears had to be paid on or before 10th October, 1970 to avail of the concession given in clause (3) of the compromise terms. The Trial Court passed a decree in terms of the compromise.

The arrears so calculated worked out to Rs. 3353. 58p. as on 10th October, 1970. The tenant, however, paid a sum of Rs. 2040 only on 9th February, 1970 and, therefore, did not comply with the terms regarding payment of entire arrears on or before 10th October, 1970. Thereupon, the decree holder filed execution proceedings on 2nd November, 1970. The tenant raised objections in regard to the executability of the decree. The Executing Court rejected the objections raised by the tenant and issued a warrant for possession of the demised premises under order 21 Rule 35 of the Code of Civil Procedure, 1908 (hereinafter called 'the Code'). The tenant preferred an appeal against the order of the Executing Court which came to be allowed. The order of the Executing Court was set aside and the prayer for eviction was dismissed. The decree-holder moved the High Court under Article 227 of the Constitution. The High Court set aside the order of the Appellate Court and remitted the matter to the Appellate Court with a direction to decide the character of the compromise terms on the basis of which eviction was sought. After the matter went back to the Appellate Court that court reconsidered the matter and once again allowed the appeal setting aside the order of the Executing Court directing issuance of warrant under Order 21 Rule 35 of the Code. The Appellate Court dismissed the execution proceedings altogether. Against that order passed by the Appellate Court the decree-holder once again moved the High Court under Article 227 of the Constitution. The High Court considered the various submissions made before it by the rival parties and summarised the propositions emerging from the relevant provisions and the case law in paragraph 32 of the judgment as under "(1) If by a consent decree the status of a landlord and tenant is established between the plaintiff and the dependent, the Court in exercise of its equitable jurisdiction is not precluded from granting relief against forfeiture of a term contained in the consent decree.

(2) Where the question is not one of the creation of a tenancy or the continuation of a tenancy and where a decree passed either by consent or in invitum permits payment of the decretal amount in installments and provides that the decretal amount becomes payable at once in the event of failure in the payment of one or more installments, there is no question of granting relief. The Courts are bound to execute the decree in accordance with its terms.

(3) Where, however, the relationship of landlord and tenant is continued between the parties by a compromise decree, the judo-

ment-debtor, who is a tenant, would be entitled to relief against forfeiture resulting from his failure to pay the rent on the stipulated date.

(4) Where the consent decree provides for the continuance of the possession of the tenant up to a particular date beyond which he has no right to remain in possession at all and on which date the landlord is entitled to execute the decree for possession, the time given from the date of the decree till the other date is by way of concession and in such a case, there is no creation of new tenancy or continuation of the existing tenancy.' ((5) If the consent decree provides possession for the continuation of the of the tenant on certain terms up to a particular date and also provides for the continuation of the tenant's possession after the date if lie complies with certain conditions, then such a decree provides for the continuance of the possession of the tenant from the date of the consent decree itself. In such a case, it cannot be said that the plaintiffs allowing the defendant to continue up to and beyond that specified date is by way of concession."

The High Court, therefore, concluded that the refusal by the Appellate Court to exact the tenant on the basis of the consent decree was correct in law and hence it was not required to interfere with the order of the Appellate Court. It came to the conclusion, on a true interpretation of the relevant clauses of the consent decree, that the clause by which eviction was permitted was penal in nature and, therefore, not enforceable. Clause (3) of the compromise term was treated as granting relief against forfeiture. In this view of the matter the judgment-creditor, landlord, having failed to secure possession of the demised premises by putting the consent decree to execution, has approached this Court under Article 136 of the Constitution. The Act was enacted to amend and consolidate the law relating to the control of rents and of evictions from demised premises. It imposes certain restrictions on the right of the landlord from recovering possession so long as the tenant pays or is ready and willing to pay standard rent and permitted increases and observes and performs the other conditions of the tenancy which are consistent with the provisions of the Act. If the tenant has failed to pay the rent and permitted increases due from him he can be evicted for that neglect in the manner set out in section 12 of the Act. The other provision which confers a right of eviction is section 13 of the Act with which we are not concerned in this case. The facts of the case clearly reveal that the landlord had sought eviction under section 12 of the Act as the tenant had committed a breach of sub-section (1) thereof, in that, he had failed to pay the rent to the landlord. To comply with the requirement of sub-section (2) of that provision the landlord had served the tenant with a notice prior to the institution of the suit seeking eviction under section 12(3) of the Act. This sub-section is in two parts and may be extracted for ready reference "12 (3) (a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted in-

creases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the court may pass a decree for eviction in any such suit for recovery of possession. 12(3) (b) In any other case no decree for eviction shall be passed in any such suit if on the day of hearing of the suit or on or before such other date as the court may fix, the tenant pays or tenders in court the standard rent and permitted increases then due and thereafter continues to pay or tender in court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the court."

Clause (a) sets out the circumstances in which the tenant forfeits the protection of the statute and entitles and landlord to evict him. If the case does not fall within the scope of clause (a) the question to be considered is whether eviction should be ordered under clause (b). This is clear from the opening words, "in any other case," If, however, the tenant satisfies the conditions of the said clause, the law protects him from eviction as is clear from the words, "no decree of eviction shall be passed in any such suit". The suit in the present case was filed under section 12(3) of the Act but before the court could adjudicate whether clause (a) or clause (b) was attracted the parties arrived at a settlement, the relevant terms hereof have been extracted hereinbefore. It is well-settled that a decree passed on the basis of a cc, promise by and between the parties is essentially a contract between the names which derives supporting by the court superadding its seal to the contract. But all the same the consent terms retain all the elements of a contract to which the court's imprimatur is affixed to give it the sanctity of an executable court order. We must, however, point out that the court will not add its seal to the compromise terms unless the terms are consistent with the relevant law. But, if the law vests exclusive jurisdiction in the court to adjudicate on any matter, e.g. fixation of standard rent, the court will not add its seal to the consent terms by which the parties have determined the standard rent unless it has applied its mind to the question and has satisfied itself that the rent proposed by consent is just and reasonable. In such a case it is the independent satisfaction of the court which changes the character of the document from a mere contract to a court's adjudication which will stop the tenant from contending otherwise in any subsequent proceedings and operate as resjudicata. If the standard rent is fixed solely on the basis of agreement between the parties, such a decree in invitum will not preclude the tenant from contending in any subsequent proceeding that the rent is excessive and require the Court to fix the standard rent. Therefore, the character of the consent decree will depend on the nature of the dispute resolved and the part played by the court while superadding its seal to it. Under clause (a) of section 12 (3) of the Act, if the conditions stated therein are satisfied, the court has to pass a decree to evict the tenant from the demised premises. So also under clause (b) of that sub-section, if the tenant fails to pay or tender in court the standard rent and permitted increases due on the first date of hearing of the suit or on or before such date as the court may fix, the court has to pass a decree for ejection. In the present case the suit was governed by section 12(3) of the Act and even if we assume that it fell within the purview of clause

(b), the tenant was liable to be evicted as admittedly the tenant had failed to pay or tender in court the standard rent and permitted increases due to the landlord as is obvious from clause (2) of the consent terms. It is for this reason that the tenant suffered a decree for eviction and agreed to deliver possession of the suit-premises by 10th October, 1970. By clause (2) of the consent terms the

tenant further agreed to pay to the landlord by 10th October, 1970 the entire amount due including legal fees and expenses from the date of the suit till delivery of possession. Clause (3) of the consent terms carries the crucial term that the tenant is given a concession, and that concession is that if he pays the entire amount mentioned in clause (2) by 10th October, 1970, the landlord will not execute the decree for possession. That has given rise to the question whether clause (1) of the consent decree is in the nature of a penalty for non-payment of the outstanding dues upto 10th October, 1970 or clause (3) of the consent decree is merely a concession given to the tenant if he complies with the terms or requirements of that provision. Now as pointed out earlier the ejectment suit was filed on the allegation that the tenant had neglected to pay the rent and other charges in respect of the demised premises. The suit was, therefore, founded on the right to evict conferred by section 12(3) of the Act. We will assume that it was a case to which clause (b) to that sub-section was attracted. It is evident from the terms of the compromise that even on the date of the compromise in July 1970 the tenant was in arrears of rent. If the suit had gone to trial the landlord may have secured a decree in ejectment for the tenant's failure to comply with the requirements of clause (b) of section 12(3) of the Act. By clause (1) of the compromise decree it was, therefore, provided that the tenant will vacate and deliver possession of the demised premises by 10th October, 1970. Failure to deliver peaceful possession by that date would entitle the landlord 'to take possession by execution' of the decree. Clause (2) indicates the rate at which the arrears will be calculated and clause (4) describes those rates as standard rent. Clause (4) describes those rates as standard rent. Clause (3) which is the crucial clause gives a concession. What is that concession? It is that if the tenant pays up the entire amount of arrears, i.e., the amount involved in the suit meaning thereby the claim of arrears set out in the suit, future mesne profits, electricity and water charges, the rent of the godown, cost of the suit, by 10th October, 1970, the landlord will not execute the decree for possession. Counsel for the appellant argued that as the tenant had failed to clear the arrears of rent and other charges payable under the terms of the lease, he was liable to be evicted under clause (b) of section 12(3) of the Act. That is reflected in clause (1) of the compromise terms. However, the landlord gave a concession by clause (3) to the effect that if the entire arrears are cleared by 10th October, 1970, he would not execute the decree for possession. This, counsel argued, does not show that the decree for possession was provided for as in terrorism to be construed as a penalty and not a concession. Counsel contended that while a penal stipulation cannot be enforced, a grant of a concession cannot undo the main operative part of the eviction decree unless it is shown that the tenant had done all that was necessary to avail of the concession. Counsel for the tenant, however, insisted that the provision for delivery of possession is in the nature of a penalty and was, therefore, unenforceable. He supported the judgment of the High Court and submitted that the appeal should be dismissed with costs. It is settled law that unless the terms of contract are ambiguous the intention of the parties must be gathered from the terms themselves. It is only where the terms are ambiguous and capable of more than one meaning that evidence aliunde can be permitted to gather the intention of the parties. In our view, the terms forming the basis of the consent decree in the instant case are clear and unambiguous and do not call for extrinsic material to gather the intention of the parties. Two questions, therefore, arise for consideration, namely, (i) did the parties to the compromise intend to create or continue the relationship of landlord and tenant?

and, (ii) is the Clause providing for eviction penal in character? Now, as pointed out earlier by clauses (1) and (2) of the compromise terms, the tenant is required to deliver vacant possession of

the demised premises to-, ether with arrears of rent etc. by 10th October, 1970. It is further provided that if the tenant fails to deliver possession and defaults in paying the arrears due from him by 10th October, 1970, the landlord will be entitled to recover both possession and arrears of rent, etc., by executing the decree. Thus by the first two clauses of the consent terms, the landlord secured a decree for possession as well as arrears of rent, etc., giving a grace period to the tenant to comply therewith by 10th October, 1970. Thereafter by clause (3) of the consent terms, the tenant is given a concession, in that, if he pays the entire arrears of rent, mesne profits, electricity and water charges, cost of the suit, etc. by 10th October, 1970, the landlord agrees not to execute the decree for possession. In other words on the fulfillment of the obligation to clear the entire arrears of rent and other charges by 10th October, 1970, the tenant is given a concession that the decree for possession passed against him will not be put to execution. Such a clause cannot, in our opinion, be said to be penal in character. It is necessary to understand when a clause in the contract can be described as penal in character. Let us illustrate by taking two concrete situations. A plaintiff files a suit to recover Rs. 20,000 with interest and costs from the defendant. They enter into a compromise, the terms whereof are as under:

Situation 1:

The defendant shall pay to the plaintiff a sum of Rs. 15,000 and costs on or before 31st December, 1993. If, however, he fails to pay the said amount of Rs. 15,000 with costs within the time stipulated, the plaintiff will be at liberty to recover the entire sum of Rs. 20,000 with interest and costs from the defendant by executing the decree. The latter clause of such a decree will clearly be in terrorem and, therefore, penal in character. No court will execute the same. Situation 2:

The decree provides that the defendant shall pay Rs. 20,000 with interest and costs to the plaintiff. However, if the defendant pays Rs. 15,000 and costs on or before 31st December, 1993 to the plaintiff, the plaintiff will treat the decree as fully satisfied and will not claim the balance amount from the defendant.

In such a case the latter clause operates as a concession and the plaintiff waives his right to the balance amount. Such a decree will be executable to the full extent if the defendant fails to avail of the concession by paying Rs. 15,000 and costs on or before 31st December, 1993.

From the above two illustrations it should become clear that if the defendant is required to suffer the consequence for his failure to abide by the terms by a stipulated date such a consequence would be penal in nature but on the other hand if the defendant gets some benefit by complying with the requirement by the stipulated date such a clause granting benefit can never be treated as penal in character. Applying this test to the decree in question, it is obvious that by the first two clauses of the consent terms a decree for possession of the demised premises as well as arrears of rent, etc. is passed and the tenant is given a grace period upto 10th October, 1970 to comply with the same failing which the landlord is given the right to put the decree to execution and obtain possession of the premises and recover the arrears of rent, etc. through court. By clause (3) of the consent terms,

however, the tenant is granted a concession that if he pays the entire rent etc. due from him by 10th October, 1970, the landlord will not put the decree to execution for recovery of possession. This stipulation is clearly to secure his dues i.e. arrears of rent, etc. Depending on the situation in which a landlord is placed, he may grant the concession to the tenant to ensure that the huge amount of arrears is not lost. If he grants such a concession and agrees that if the entire arrears is cleared by a stipulated date he will not insist on possession that will not render the clause penal in nature. In a given situation where the tenant is in financial difficulty and is not in a position to comply with the requirement of section 12(3) of the Act, he can request the landlord to grant him a concession in the nature of relief against forfeiture. If such a concession is to be read as penalty rendering the decree nonexecutable even where the tenant fails to satisfy the requirements of availing the concession, no landlord will in future grant such a concession, thereby causing hardship in deserving cases. We are, therefore, of the opinion that the First Appellate Court as well as the High Court were in error in treating clause (3) of the consent terms as penal in character and incapable of execution. If the condition precedent for availing of the benefit or concession under clause (3) of the consent terms is satisfied, the relationship of landlord and tenant continues but if the tenant fails to comply with the condition precedent for availing of the benefit or concession the forfeiture operates and the tenant becomes liable for eviction under the decree.

The High Court has placed reliance on the Full Bench decision in *Krishnabai v. Hari*, 8 BLR 8 13 and *Gajanand Govind v. Pandurang Keshav*, 53 BLR 100. in taking the view that the Executing Court can grant relief against forfeiture on the strength of section 114 of the Transfer of Property Act, 1882. The High Court seems to think that in execution of a consent decree, such as the one with which we are concerned, it is open to the Executing Court to go behind the decree by invoking section 114, T.P.Act, notwithstanding section 12(3) of the Act. In our view After the enactment of clause (b) to section 12(3) which is a special provision incorporating the equity provision contained in section 114, T.P.Act, in a modified form, cases governed under the Act must be resolved in accordance with section 12(3) of the Act and not under section 114, T.P.Act The landlord's right to seek eviction has been drastically reduced and circumscribed by section 12 and 13 of the Act. Similarly the tenant must also seek protection from eviction by complying with the requirements of the Act. If such is not the legal position, section 12(3) (a) of the Act which mandates the Court to pass a decree for eviction if the requirements of that clause are satisfied would be rendered wholly nugatory. Same would be the position in the case of application of section 12(3) (b) of the Act because that clause precludes the passing of the decree if the tenant satisfies the requirements of that provision. It must be remembered that after the enactment of the Act the landlord's right to reenter on expiry of the lease is curtailed by the provisions of the Act which has made special provisions granting protection from eviction if the tenant abides by his obligations under the Act. Under the Act a tenant is allowed to continue in possession notwithstanding the termination of the contractual tenancy if he abides by the provisions of the Act. If he fails to abide by the requirement of section 12(3) of the Act, he must take the consequences flowing therefrom. There is no question of granting him double protection. That is what this Court clarified in *Pradesh Kumar Bajpai v. Binod Behari Sharkar*, [1980] 3 SCR 93. That was a case arising under the provisions of the U.P. (Temporary) Control of Rent and Eviction Act, 1947. The question which was seriously debated at the Bar before this Court was whether in addition to the safeguards provided to the tenant under the said Act, the tenant was also entitled to the benefit of section 114, T.P.Act. The right of the landlord to have the tenant evicted was restricted

under the said rent restriction legislation. As that law had restricted the power of the landlord to evict the tenant except in accordance with the provisions therein contained, the terms of the contract and the provisions of the T.P.Act, it was urged, were no longer attracted. Clause (a) of section 3(1) inter alia provided that the suit may be filed with the permission of the District magistrate when the tenant is in arrears of rent for more than three months and has failed to pay the same to the landlord within one month of the service upon him of the notice of demand. Dealing with this contention this Court held that once the requirements of the rent legislation are satisfied, the tenant cannot claim the double protection of invoking the provisions of the T.P.Act or the terms of the contract and the provision of section 114, T.P.Act, cannot be read into the rent legislation.

This Court concluded thus :

"In the case before us, it is not indispute that after the Rent Act came into force, the landlord cannot avail himself of clause 12 which provides for forfeiture, even if the tenant neglected to pay the rent for over two months. The landlord cannot enter into possession forthwith without notice. The only remedy for him is to seek eviction under the provisions of the Rent Act. In such circumstances the tenant cannot rely on section 114 of the Transfer of Property Act and claim that he should be given an opportunity to pay the arrears of rent, even though the requirements of section 3(1) had been fulfilled."

It is, therefore, obvious that the tenant cannot avail of the benefit of section 114, T.P.Act since his case was governed by the provisions of section 12(3) (b) of the Act.

For the foregoing reasons, we are of the opinion that the executing court was right in issuing a warrant for possession under order 21 Rule 35 of the Code against the tenant since the tenant had failed to take advantage of the concession clause by clearing the arrears of rent, mesne profits, etc. by 10th October, 1970. The First Appellate Court as well as the High Court were in error in holding that the decree was not executable as clause (3) thereof was in the nature of a penalty. We set aside the order of the First Appellate Court as well as the High Court and remit the matter to the executing court to proceed further in accordance with law. We may, however, make it clear that if there have been subsequent developments between, the parties creating any de novo relationship that will not be affected by this order. In the facts and circumstances of the case, we make no order as to costs.

U.R.

Appeal allowed.