



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 153 of 2019**

Avinash Dubey S/o V. P. Dubey Aged About 53 Years R/o 18/1,
Maharishi Devendra Road, 8th Floor Kolkata (W. B).

---- Appellant

Versus

1. Satyajeet Dubey S/o Late Shri Sutikshan Dubey Aged About 20 Years R/o Near Schafer School Kududand Bilaspur Tehsil And District Bilaspur Chhattisgarh R/o Near Schafer School Kududand Bilaspur Tehsil And District Bilaspur Chhattisgarh Through Power of Attorney Holder Shriram Khedia S/o Late Shri Purushottam Das Is It About 58 Years R/o Rishabh Kunj Vikash Nagar, Bilaspur P. S. Civil Line Bilaspur Tehsil and District Bilaspur Chhattisgarh
2. Kumari Shailja Dubey D/o Late Shri Ravi Banna Aged About 28 Years R/o Near Dharam Prakash Baal Schafer School, Bilaspur Tehsil And District Bilaspur Chhattisgarh Through Power Of Attorney Holder Shriram Khedia S/o Late Shri Purushottam Das Is It About 58 Years R/o Rishabh Kunj Vikash Nagar, Bilaspur P. S. Civil Line Bilaspur Tehsil and District Bilaspur Chhattisgarh
3. Smt. Swechha W/o Late Shri Venkatesh Prasad Aged About 48 Years R/o C/62, Shri Krishna Apartment, Mowa, Raipur Tahsil And District Raipur Chhattisgarh Through Power Of Attorney Holder Shriram Khedia S/o Late Shri Purushottam Das Is It About 58 Years R/o Rishabh Kunj Vikash Nagar, Bilaspur P. S. Civil Line Bilaspur Tehsil and District Bilaspur Chhattisgarh
4. Smt. Savita Dubey W/o Late Shri Sutikshan Dubey Aged About 48 Years R/o Near Schafer School Kududand Bilaspur Tehsil And District Bilaspur Chhattisgarh through Power of Attorney Holder Shriram Khedia S/o Late Shri Purushottam Das Is It About 58 Years R/o Rishabh Kunj Vikash Nagar, Bilaspur P. S. Civil Line Bilaspur Tehsil and District Bilaspur Chhattisgarh
5. Ku. Suvigya Dubey D/o Late Sutikshan Dubey Aged About 24 Years R/o Near Schafer School Kududand Bilaspur Tehsil And District Bilaspur Chhattisgarh Through Power of Attorney Holder Shriram Khedia S/o Late Shri Purushottam Das Is It About 58 Years R/o Rishabh Kunj Vikash Nagar, Bilaspur P. S. Civil Line Bilaspur Tehsil and District Bilaspur Chhattisgarh
6. MKD Resources Private Limited Bilaspur through Director Kailash Sukhlani S/o Jeevan Ram Sukhlani Aged 48 Years R/o Sarkanda, Bilaspur Tehsil and District Bilaspur Chhattisgarh,
7. Nazul Officer Nazul Office, Collectorate Premises, Bilaspur District Bilaspur Chhattisgarh,
8. Commissioner Nagar Palika Nigam Bilaspur District Bilaspur Chhattisgarh
9. District Excise Officer, Exercise Department Bilaspur, District





Bilaspur Chhattisgarh

10. State of Chhattisgarh through Collector, Bilaspur District
Bilaspur Chhattisgarh --- Respondents

For Appellant	: Shri Amit Kumar, Advocate
For Respondents 1 to 6	: Shri Ratnesh Kumar Agrawal, Advocate
For Respondent No.8	: Shri Pankaj Agrawal, Advocate
For Respondents 7, 9 & 10/State	: Smt. Meena Shastri, Additional Advocate General

Hon'ble Justice Shri Goutam Bhaduri

Hon'ble Justice Shri N.K. Chandravanshi

Order On Board

Per Goutam Bhaduri, J

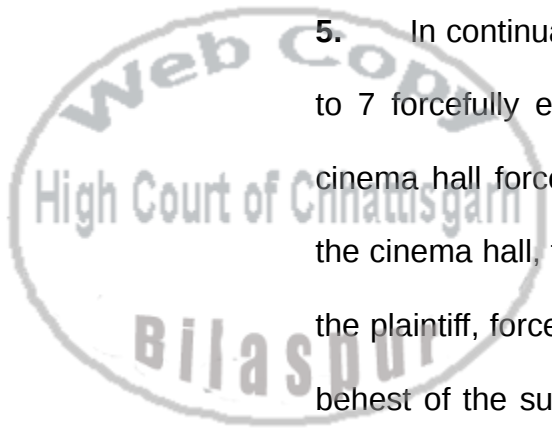
21.02.2023

1. Heard.
2. The present appeal is directed against judgment and decree dated 28.11.2018 passed by the Second Additional District Judge, Bilaspur in Civil Suit No.202-A/2014.
3. The plaintiff filed a suit that he was inducted as a tenant on a premises comprised over Plot No.11/3 & 19/2 admeasuring area 18025 sq. feet situated at Shivaji Nagar Ward, Bilaspur which is popularly known as Shyam Talkies Cinema Hall. The suit was filed for permanent injunction, damages and declaration. The suit was dismissed, therefore, this appeal by the plaintiff/appellant.
4. The plaintiff allegation would show that the suit premises i.e. "Shyam Talkies" was given on rent by Koteshwar Dubey (since deceased), H/o. Smt. Pushpa Devi to the father of the plaintiff. The tenancy commenced sixty years back and father of the plaintiff continued the business of cinema hall after obtaining license to run



the cinema from the respective authorities. The initial tenancy was ended on 31.12.2000 and thereafter the plaintiff paid the arrears of rent to the tune of Rs.4,50,000/- and a fresh tenancy agreement was entered on 29.01.2001 with the plaintiff by the defendants. Subsequent to such tenancy agreement, the plaintiff got his name registered in the Central Circuit Cine Association and licence to show the cinema was obtained. Accordingly, furniture, cooler, Cinema machine, Screen, Projector, exhaust fan, lights and other ancillary items i.e., fittings & fixtures, coolers which were required to run the Cinema Hall with comfort were installed. Further plaintiff allegation is that the defendants 1 to 6 tried to sell the said property in favour of third party during subsistence of tenancy.

5. In continuance, on 13.02.2010 during wee hours, defendants 1 to 7 forcefully entered into the premises and started demolition of cinema hall forcefully. In furtherance thereof, barring frontal wall of the cinema hall, the entire cinema hall was demolished. According to the plaintiff, forceful demolition of the premises was carried out at the behest of the subsequent purchaser to whom the property was sold by the owners and in connivance with each other, the said act of demolition took place. The plaintiff asserted that by wrongful demolition, all of a sudden, the business of cinema came to a stand still and entire materials and goods including the furniture and fixtures, which were installed to run the cinema theater were destroyed which caused a loss to the tune of Rs.32,70,100/-. The plaintiff further claimed the damages of Rs.5000/- per day from 13.02.2010 the date of demolition from the defendants. The plaintiff further claimed that the defendants including the subsequent purchaser wanted to raise a super structure so as to eliminate the

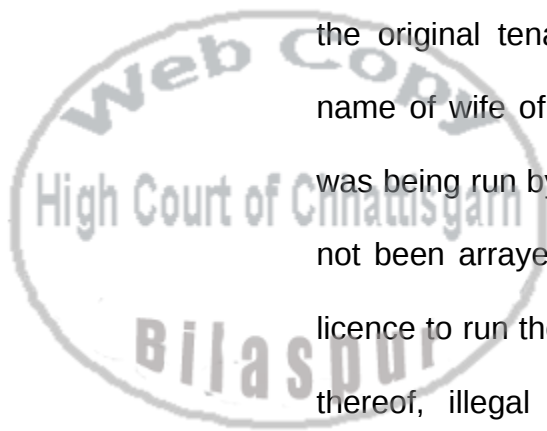




possession of the plaintiff. Consequently, they should be restrained to raise any construction over area which comprised suit premises by injunction and the plaintiff still holds the possession.

6. Per contra, learned counsel for the respondents 1 to 7, owners of the said premises stated that the plaintiff had never supported his father Venkatesh Prasad Dubey in running the cinema hall and actually the cinema hall was being run by second son of Venkatesh Prasad Dubey namely Alok Dubey . It was stated that Alok Dubey was running the cinema hall along with one Ashok Meghani. Further it was stated that after initial tenancy came to an end on 31.02.2012, neither the plaintiff has paid any rent nor has executed any agreement and after the death of Venkatesh Prasad Dubey, who was the original tenant, formally tenancy agreement was drawn in the name of wife of Venkatesh Prasad Dubey, but the cinema business was being run by Alok Dubey. It is further stated that Alok Dubey has not been arrayed as defendant. Further the defendants stated that licence to run the cinema was alive uptill 31.02.2008 and subsequent thereof, illegal show was being run in the cinema hall which subsequently was stopped.

7. It was further stated that according to the permission granted, the furniture, cooler, Cinema machine, Screen, Projector, exhausts, fan, lights and other items were not installed in the cinema hall and the machinery, furniture and fixtures were completely in a dilapidated condition which were taken away by Alok Dubey, the brother of plaintiff. Therefore, the movable property which was in possession of Alok Dubey, the plaintiff can claim the damages from him. The defendants further stated that the plaintiff has not continued his business of cinema in the premises till 12.02.2010 for the reasons

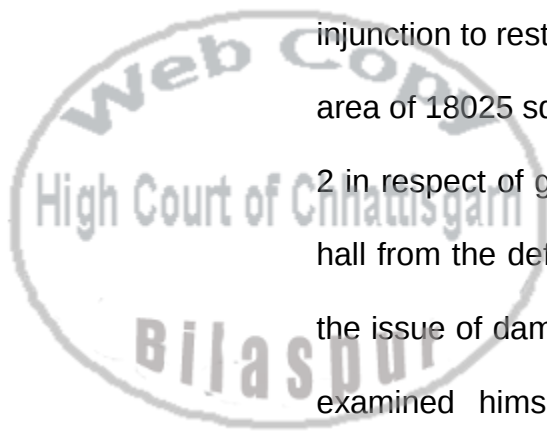




that the entire premises was in dilapidated condition and the tenancy expired on 28.01.2008 and in consequence thereof on 13.02.2010 Alok Dubey and Ashok Meghani had handed over the vacant possession of the premises to the defendants. It is stated that since the premises was in dilapidated condition, it was demolished by the defendants 1 to 7 through their agent. Further stated that the said premises was sold to defendant No.6 M/s. KD Resources Private Limited, Bilaspur by registered deed and since earlier business of plaintiff came to be stopped, the plaintiff is not entitled to any relief of damages.

8. The learned trial Court framed six issues and with respect to issue No.1, as to whether the plaintiff is entitled for permanent injunction to restrain the defendants to raise any construction over the area of 18025 sq.ft., the finding was in negative. Further for issue No. 2 in respect of getting back the property i.e. materials in the cinema hall from the defendants, the finding was in negative. Consequently, the issue of damages was also negated. The plaintiff Avinash Dubey examined himself and one witness Sharad Kaser (PW-2) was examined. Whereas on behalf of the defendants no evidence was adduced. The learned trial Court dismissed the suit. Hence, this appeal by the plaintiff.

9. Learned counsel for the appellant/plaintiff would submit that in any case, since the tenancy was continued with Avinash Dubey, he could not have been dispossessed otherwise than in due course of law. He would further submit that Alok Dubey did not have any right to surrender the premises or to part with the premises as he was not the lessee or the tenant. He would further submit that in order to get the vacant possession, at the relevant time the Chhattisgarh



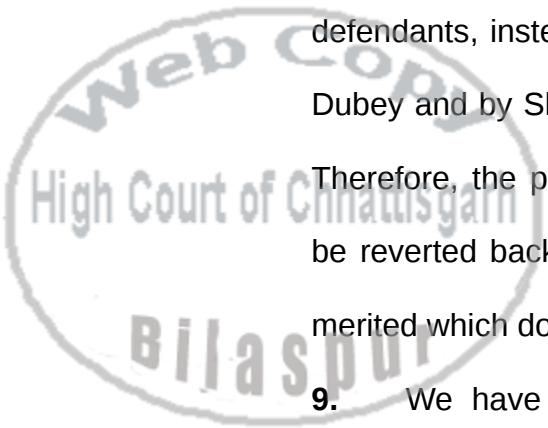


Accommodation Control Act, 1961 was in operation and *dehors* such act, the premises could not have been got vacated. Therefore it is submitted, under these circumstances, the trial Court completely misdirected itself to hold that the plaintiff has failed to prove his case despite the fact that no evidence was adduced by the defendants.

10. Per contra, learned counsel for the respondents/ defendants would submit that the cinema hall in fact was being run by Alok Dubey along with one Ashok Meghani. He would further submit that the tenanted premises was under HUF, consequently, Alok Dubey has all the rights to deal with the possession of the property. He would further submit that statement of the witness Sharad Kaser (PW-2) would clearly show that forceful possession was not obtained by the defendants, instead, the premises was handed over to them by Alok Dubey and by Sharad Kaser, who was in charge of the Cinema Hall. Therefore, the premises having been legally handed over, it cannot be reverted back to the plaintiff and the dismissal of the suit is well merited which does not call for any interference.

9. We have learned counsel for the parties and perused the record.

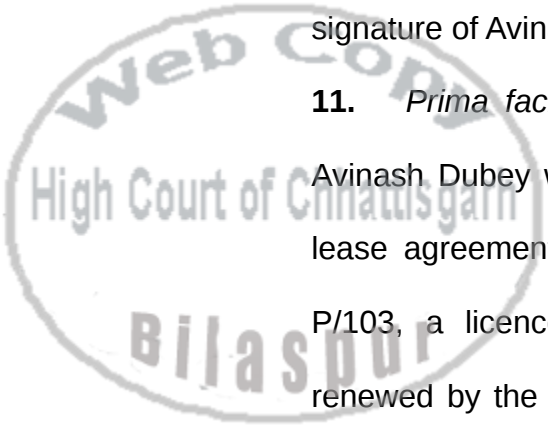
10. In the background of the fact, the prime question which falls for consideration as to whether the possession which was acquired by respondents 1 to 7 was legal or unjustified. To explore the facts, we went through the evidence adduced by the parties. Avinash Dubey (PW-1) claimed that after the death of his father, separate rent agreement was executed. The facts would show that an area of 18025 sq. feet which is comprised in Plot No.11/3 & 19/2 at Shivaji Nagar, Ward No.24 Nazool Land, was initially leased out to Venkatesh Prasad Dubey, father of the plaintiff, sixty years back and





in that premises cinema hall was being run in the name of Shyam Talkies. It is not in dispute that Venkatesh Prasad Dubey had died in the year 1997 and thereafter according to the plaintiff, he started running the cinema hall after obtaining the permission. The plaintiff stated that thereafter fresh agreement was executed on the tenancy. The tenancy agreement is marked as Ex-P/1 which was of 30.01.2001 to 29.01.2004, then subsequent lease agreement was Ex-P/2 which was executed on 25.01.2005 and the lease was granted uptill 28.01.2006 and lastly, the agreement Ex-P/3 was executed which was from 29.01.2006 to 28.01.2007. In all these lease deeds, the tenant has been shown as Avinash Dubey, the plaintiff, in his individual capacity, however, at the last page, at the bottom the signature of Avinash Dubey as Karta (HUF) is scribed.

11. *Prima facie* reading of the rent agreement would show that Avinash Dubey was inducted as a tenant in the suit premises by a lease agreement which was lastly terminated on 28.01.2007. Ex-P/103, a licence to exhibit the pictures in cinema theater was renewed by the Assistant Commissioner, Excise, Distt. Bilaspur and Ex-P/71 is the rent receipt dated 05.12.2007, which shows that the amount of Rs.8,000/- was received from the plaintiff Avinash Dubey by the landlord Pushpa Dubey, which contains the signature of Pushpa Dubey. The agreement of rent though according to Ex-P/3 expired on 28.01.2007, but Ex-P/71, which is a rent receipt of 05.12.2007 and renewal licence of cinema of 2009-10(Ex-P/103) demonstrates the fact that tenancy continued in the said premises and the cinemas were being run even after the written period of lease expired on 28.01.2007. No rent receipt is found after 05.12.2007 till 13.02.2010 till the alleged demolition was caused. Therefore,

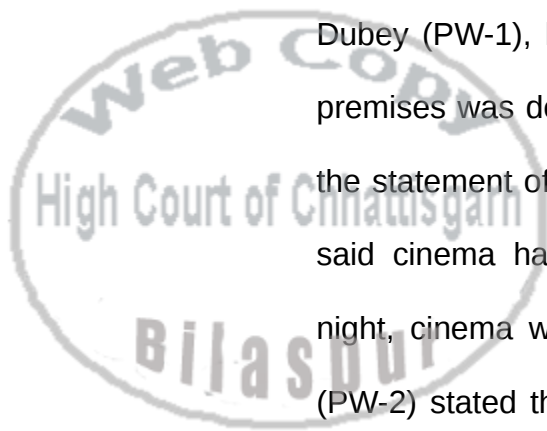




whether the tenancy of the plaintiff can be termed to be a trespasser and can be evicted by force?

12. It is a settled preposition that the tenancy though was not extended according to the provisions of the Transfer of Property Act, but, possession of the tenant would be a statutory tenant after expiry of lease. At this point, though the tenancy was created for more than one year, we do not wish to deliberate on the admissibility of the documents but the fact remains that the plaintiff was in possession of the suit premises even after the termination of the tenancy period and for another year rent was paid.

13. The plaintiff claimed that neither there is implied surrender nor express surrender of the premises. In the statement of Avinash Dubey (PW-1), he maintained the fact that all of a sudden, the suit premises was demolished in the intervening night of 13.02.2010 and the statement of Sharad Kaser (PW-2), who was the manager in the said cinema hall, maintained the stand that uptill 12.02.2010 late night, cinema was being run in the said premises. Sharad Kaser (PW-2) stated that on 12.02.2010 and 13.02.2010, he called up the plaintiff to inform about forceful demolition but nothing could happen. Narrating the incident, he stated that on 12.02.2010, at the behest of one Ram Khedia and others he was forced to leave the premises. Submission of the respondents that the premises was handed over by Alok Dubey and Ashok Meghani is not proved as no evidence was adduced by defendants 1 to 7. Further the lease deed shows that the tenanted premises was in exclusive possession of the plaintiff Avinash Dubey wherein Sharad Kaser (PW-2) was operating as Manager to run the cinema hall named and styled as "Shyam Talkies". There is no document on record to appreciate that under



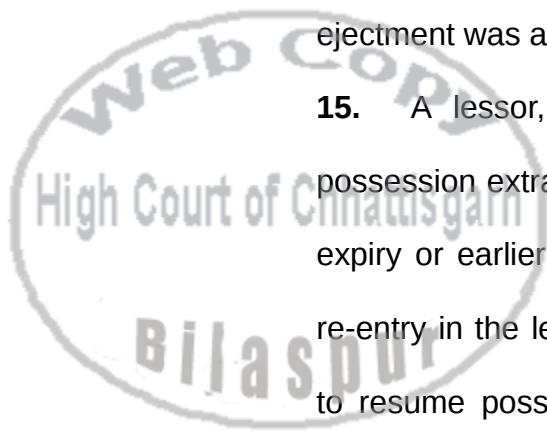


what circumstances and authority, Alok Dubey handed over the possession to the defendants/ respondents. Even otherwise he was a stranger and not lessee. It was stated that it was oral. If such defence is accepted, then in a given case, it would lead to anarchy shelving the all law of the land and the people would resort to muscle power to evict a person according to their wish and will and would resort to oral surrender of premises.

14. It would not be inconsistent to say that at the relevant time, in 2010 the Chhattisgarh Accommodation Control Act, 1961 was in operation. The primary evidence led by the plaintiff would show that without resorting to any such legal remedy, by resorting to power game, the plaintiff was ejected, meaning thereby, the so called ejection was attempted otherwise than in due course of law.

15. A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after expiry or earlier termination of lease by forfeiture or otherwise. The re-entry in the lease deed cannot be made by extra-judicial method to resume possession. The Supreme Court way back observed in **AIR 1989 SC 1997 – State of U.P. Versus Maharaja Dharmander Prasad Singh** that resuming the possession by extra judicial way cannot be appreciated. At para 15, the Court observed as under :

“15. Sri Sorabjee submitted that great hardship and injustice would be occasioned to the respondents if the State Government, on the self-assumed and self-assessed validity of its own action of cancellation of the lease, attempts at and succeeds in, a resumption of possession of extrajudicially by physical force. Sri Sorabjee referred to the notice dated 19-11-1985 in which the Government, according to Sri Sorabjee, had left no one in doubt as to its intentions of resorting to an extrajudicial





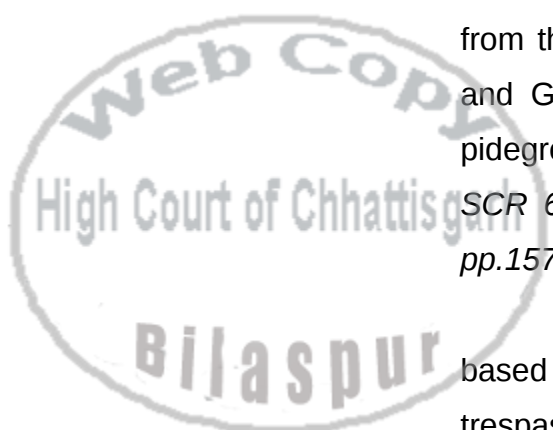
resumption of possession. Sri Sorabjee referred to paras 3.10 and 4 of the order dated 19.11.1985.

A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of expression “re-entry” in the lease deed does not authorise extrajudicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a ‘legal pedigree’. In *Bishandas v. State of Punjab*, (1962) 2 SCR 69 : (AIR 1961 SC 1570), this Court said (at pp.1574 & 1575 of AIR) :

“We must therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order.”

“Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law.”

Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extrajudicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly, prohibited from

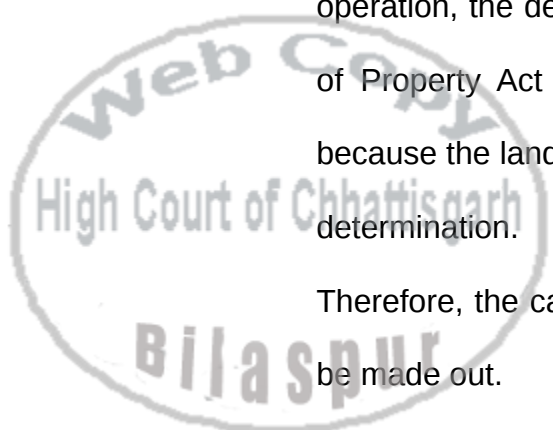




taking possession otherwise than in due course of law.”

16. It is further stated that at present the entire premises has been demolished except certain wall which was standing in the premises. Therefore, the presumption of possession would hold the sway in favour of the plaintiff to hold that he is in possession as illegality cannot be perpetuated and the person cannot be evicted otherwise than in due course of law. The *de jure* possession by holding over the tenancy would be in favour of the plaintiff and any illegal dispossession cannot be given a way to eject a person by force. The Supreme Court in ***V. Dhanapal Chettiar V. Yesodai Ammal AIR 1979 S.C. 1745*** held that when the State Rent Control Act is in operation, the determination of lease in accordance with the Transfer of Property Act is unnecessary and would be a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. Therefore, the case for eviction under Rent Control Act is required to be made out.

17. After expiry of contractual tenancy, though the fresh rent note was not executed yet the plaintiff was in occupation. Therefore, the tenant would be a statutory tenant after expiry of the contractual tenancy. Reliance is placed in ***Premdas Vs. Laxmi Narayan 1964 MPLJ 190*** and ***Gulshan (Smt. Dr.) Vs. Sahdevi Pal (Smt) 1985 JLJ 527*** wherein it was specifically held that after expiry of contractual tenancy, under Section 12 of the Accommodation Control Act, the tenancy rights are protected and the tenant would be a statutory tenant. Likewise, yet another principle laid down in ***V. Dhanapal Chettiar vs. Yesodai Ammal, 1979 MPLJ (SC) 719*** is that merely because the lease was determined by efflux of time, no





eviction decree can be granted by the trial Court without satisfying the requirement of Section 12 of the Accommodation Control Act as the State Rent Control Act does not permit the landlord to snap his relationship with the tenant otherwise than in due course of law.

18. Another aspect which falls for consideration is to the damages caused to the cinema hall by taking away the materials i.e. fittings and fixtures kept in the cinema hall. According to the admission of the defendants, in the written statement, the premises was demolished and the entire goods were handed over to Alok Dubey, brother of the plaintiff. No evidence has been adduced by the defendants. The plaintiff claimed that he sustained loss of Rs.30,70,100/-. In the cross examination of PW-1, we do not find that such statement has been rebutted. Despite the pleading and the submission, when the plaintiff claimed that he sustained the loss of Rs.30,70,100/- and there is no cross examination to this effect by following the dictum laid down by the Hon'ble Supreme Court in ***Vinod Kumar vs. State of Haryana, (2015) 3 SCC 138***, wherein it was held that when no cross examination has been made on the point, the evidence of plaintiff witness would be deemed to be admitted. At para 24 the Court held thus :

“24. In this context, we may usefully refer to the authority in ***State of U.P. V. Nahar Singh (1998) 3 SCC 561*** wherein the Court has dealt with the effect of absence of cross-examination. True it is, the factual matrix was different therein, but the observations are salient. In the said case, it has been held:

“13.In the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. [Section 138](#) of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of



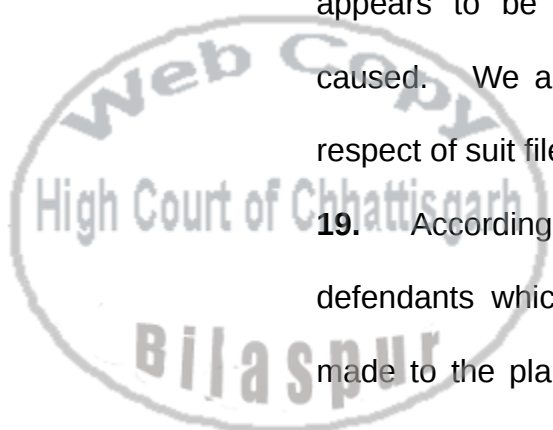
that provision is enlarged by [Section 146](#) of the Evidence Act by allowing a witness to be questioned:

(1) to test his veracity, (2) to discover who he is and what is his position in life, or (3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture”.

In the instant case, no whisper has been made to dispute the claim of loss sustained by the plaintiff. Accordingly, in view of such submission made and taking all the practicability of the facts which may cause all removal of running cinema hall and depriving the plaintiff of his rights, claim of Rs.30,70,100/- made by the plaintiff appears to be justified especially when the subsequent loss is caused. We are aware of the depreciation of value, therefore, in respect of suit filed earlier no interest is granted on such damages..

19. Accordingly, we order for payment of Rs.30,70,100/- from the defendants which would be paid jointly and severally for the loss made to the plaintiff within a period of two months, failing which, it would carry out the further interest of 9% per annum.

20. With respect to loss sustained in running the business, though the plaintiff has stated that he claimed loss of Rs.5,000/- per day, but to ascertain the quantum of loss, no document has been adduced or earlier statement of account has been placed to ascertain the loss. The plaintiff has further placed certain documents to show that he was served with a notice calling him for contribution for statutory payment of the employees by which an inference may be drawn that certain employees were working. Be that as it may, drawing principle from Section 73 of the Indian Contract Act in the facts of this case, since it is established that cinema hall was running, we deem it





proper to grant Rs.15,000/- per month towards damages to the plaintiff from 13.02.2010 which would include the set off of rent which was being paid before the demolition of cinema hall. The rent would be deemed to be set off/adjusted towards the damages of Rs.15,000/- per month.

21. Further according to the plaintiff, demolition of maximum part has been carried out, but by demolition of superstructure in a manner by adopting extra-judicial method, the eviction cannot be made justified. Accordingly we hold that the appellant would be treated to be in possession of the suit premises as statutory tenant and shall not be ejected otherwise than in due course of law.

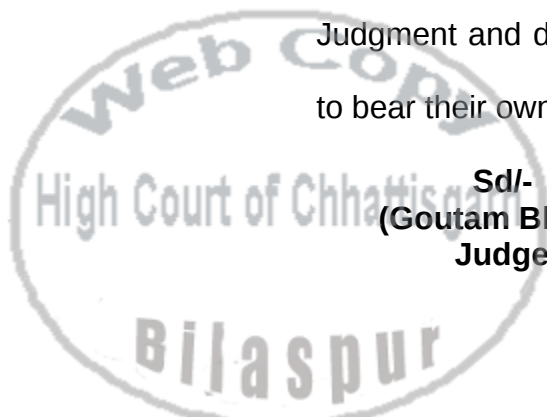
22. In view of the forgoing discussion, the appeal is allowed.

Judgment and decree of the learned trial Court is set aside. Parties to bear their own cost. A decree be drawn accordingly.

Sd/-
(Goutam Bhaduri)
Judge

Sd/-
(NK Chandravanshi)
Judge

Bini/
Rao





HEAD-NOTES

(i) A lessor, with the best of title, has no right to resume possession extra judicially by use of force from a lessee even after expiry of lease.

एक पट्टाकर्ता जिसके पास स्वत्व है, उसे पट्टे की अवधि के पर्यावसान के पश्चात भी बल का प्रयोग कर न्यायिकेत्तर रूप से पट्टेदार से आधिपत्य प्राप्त करने का कोई अधिकार नहीं है।

(ii) After expiry of contractual tenancy, under section 12 of the Accommodation Control Act, the tenancy rights are protected and the tenant would be a statutory tenant.

स्थान नियंत्रण अधिनियम की धारा 12 के तहत संविदात्मक किरायेदारी की अवधि का पर्यावसान हो जाने के पश्चात, किरायेदारी के अधिकार सुरक्षित रहेंगे तथा वह किरायेदार एक वैधानिक किरायेदार होगा।

(iii) In absence of any cross examination on the point, the evidence of plaintiff witness remains unchallenged and would be deemed to be admitted.

किसी बिंदु पर प्रतिपरीक्षण के अभाव में वादी के साक्षी का साक्ष्य चुनौती रहित रहेगा तथा इसे स्वीकृत माना जावेगा।

