IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10039 OF 2025

IN

MARJI APPLICATION NO. 51 OF 2025

IN

R.A.E. SUIT NO. 371/582 OF 2007

Sud Chemie India Pvt Ltd,
A Company incorporated under the
Provisions of the Indian Companies Act,
1956, having its registered office at
Ediar Industrial Development Sector,
P.O. Binanipuram – 683 590
Kerala and its Branch Office at
Third Floor, Navsari Building,
240, D.N. Road, Fort, Mumbai – 400 001
through its Authorised representative
Jagdish Narmadashankar Pandya ..Petitioner/Orig Defendant No.2

Versus

1) Kotak & Company Limited,
A Company incorporated under the
provisions of the Indian Companies Act,
1956, having its registered office at
Navsari Building, 240, Dr D.N. Road,
Mumbai – 400 001.

2) Unknown heirs and legal representatives
of deceased Shri Abbas Lalji,-
Through: The Registrar, Small Causes Court,
Mumbai,
Address: Small Causes Court, Mumbai,
Address: Premises No. 31, Navsari Building,
240, D.N. Road, Fort,
Mumbai – 400 001. …Respondents/ Orig Plaintiff No.1 and Orig Defendant No.1

WITH

WRIT PETITION NO. 10040 OF 2025

IN

MARJI APPLICATION NO. 50 OF 2025

IN

R.A.E. SUIT NO. 370/581 OF 2007

Sud Chemie India Pvt Ltd,
A Company incorporated under the
Provisions of the Indian Companies Act,
1956, having its registered office at
Ediar Industrial Development Sector,
P.O. Binanipuram – 683 590
Kerala and its Branch Office at
Third Floor, Navsari Building,
240, D.N. Road, Fort, Mumbai – 400 001
through its Authorised representative
Jagdish Narmadashankar Pandya ..Petitioner/Orig Defendant No.2

Versus

1) Kotak & Company Limited,
A Company incorporated under the
provisions of the Indian Companies Act,
1956, having its registered office at
Navsari Building, 240, Dr D.N. Road,
Mumbai – 400 001.

2) Unknown heirs and legal representatives
of deceased Shri Aziz Lalji,-
Through: The Registrar, Small Causes Court,
Mumbai,
Address: Small Causes Court, Mumbai,
Address: Premises No. 31, Navsari Building,
240, D.N. Road, Fort,
Mumbai – 400 001. …Respondents/ Orig Plaintiff No.1 and Orig Defendant No.1

Mr. Shailendra S. Kanetkar, for the Petitioner.
Mr. Abhay Khandeparkar, Senior Advocate, with Rajesh A. Revankar, i/b A.G. Revankar & Co, for the Respondents.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 23rd JULY 2025
PRONOUNCED ON : 5th AUGUST 2025.

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. In Writ Petition No. 10039 of 2025, the Petitioner-Original Defendant No.2, takes exception to an order passed by the learned Judge, Court of Small Causes in MARJI Application No. 51 of 2025, dated 11th July 2025, whereby an Application preferred by the Petitioner to declare that the decree dated 6th January 2025 passed in RAE Suit No. 371/582 of 2007 was null and void and not executable as the same had been passed by the Court which had no jurisdiction, came to be rejected, and two consequential orders dated 11th July 2025 and 15th July 2025, issuing possession warrant and declining to stay the execution of the said possession warrant, respectively.

3. In Writ Petition No. 10040 of 2025, there is an identical challenge to the order dated 11th July 2025 passed in MARJI Application No. 50 of 2025 in respect of decree passed in RAE Suit No. 370/581 of 2007 dated 6th January 2025 and consequential orders dated 11th July 2025

and 15th July 2025, in the same set of facts, save and except the change that in RAE Suit No. 371/582 of 2007, the original tenant was Abbas Lalji and the Suit premises is premises No. 31; whereas in Writ Petition No. 10040 of 2025, the original tenant was Aziz Lalji and the Suit premises is premises No.34.

4. Since identical questions of fact and law arise for determination, both the Petitions were heard together and are being decided by this common judgment.

5. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they were arrayed before the Trial Court in R.A.E. Suit No. 371/582 of 2007, and Writ Petition No. 10039 of 2025 is considered a representative case.

6. Shorn of superfluities, the background facts leading to these Petitions can be summarised as under:

> 6.1 The Plaintiff is a company incorporated under the Companies Act 1956. Abbas Lalji, whose, unknown heirs and legal representatives were impleaded as Defendant No.1; represented by the Registrar of the Court of Small Causes, Mumbai, was the tenant in respect of the Premises No. 31, situated at third floor of Navsari Building, D.N. Road, Fort, Mumbai ("the Suit premises").

6.2. Abbas was paying monthly rent of Rs.1455/-. Abbas expired on 19th April 1988. The tenancy of late Abbas came to be terminated vide Notice 4th November 2003.

6.3 Asserting that the Plaintiff had not known who were the heirs and legal representatives of late Abbas and nobody turned up to claim the tenancy rights in respect of the Suit premises, after the demise of Abbas, the landlord instituted a Suit against unknown heirs and legal representatives of late Abbas and Defendant No.2; to whom the Suit premises was allegedly illegally and unlawfully sub-let by late Abbas.

6.4 It was, *inter alia,* asserted that the Suit premises was sub-let to Defendant No.2 without the knowledge and consent of the Plaintiff. Defendant No.2 was in exclusive use, occupation, possession and control of the Suit premises. Consequently, the late, Abbas and his unknown heirs and legal representatives have not been using the Suit premises for the purpose for which it was let, for a continuous period of six months prior to the

institution of the Suit. Eviction of the Defendants was also sought on the ground of reasonable and bona fide requirement of the Suit premises for the use and occupation of the Plaintiff.

6.5 Qua the Defendant No.2, it was averred that, Defendant No.2 was a multinational Company, being a member of the AG Group and was thus not entitled to claim any protection under the rent control legislation.

6.6 The Defendant No.2 contested the Suit by filing a Written Statement. It was denied that the Defendant No.1 had illegally sub-let the Suit premises to Defendant No.2; the Defendant No.2 was in exclusive use, possession, occupation and control of the demised premises and that the Defendant No.1 has not been using the Suit premises for the purpose for which it was let for a continuous period of six months prior to the institution of the Suit.

6.7 It was, in terms, contended that the Defendant No. 2 was entitled to protection under the provisions of Maharashtra Rent Control Act 1999 ("the Rent Act 1999").

6.8 The learned Judge of the Court of Small Causes, after appraisal of the evidence and the material on record, decreed the Suit for eviction on the grounds of unlawful sub-letting, non-user and reasonable and bona fide requirement of the landlord. The learned Judge also held that the Defendant No.2 was not entitled to the protection of the provisions contained in the rent control legislation.

6.9 It seems that Defendant No.2 did not prefer any Appeal against the judgment and decree passed by the Trial Court. Instead, the Defendant No.2 preferred an application purportedly under Section 151 of the Code of Civil Procedure, 1908 ("the Code") seeking a declaration that the said decree of eviction dated 6th January 2025 passed in RAE Suit No. 371/582 of 2007 was null and void and non-executable. The principal ground for seeking such declaration was that the suit premises, having been let to Defendant No.2, a multinational Company, was exempted from the provisions of Section 3(1)(b) of the Rent Act 1999. Consequently, the Court of Small

Causes at Mumbai had no jurisdiction to entertain, try and decide the Suit for eviction against the Defendant No.2.

6.10 The Application was resisted by the Plaintiff.

6.11 By the impugned order, the learned Judge, Court of Small Causes was persuaded to reject the challenge to the executability of the decree observing, *inter alia,* that the Defendant No.2 was found to be in unauthorised occupation of the Suit premises and no issue touching the jurisdiction of the Small Causes Court was framed by the Court while adjudicating the Suit as it was not specifically raised. Conversely, the Plaintiff had instituted the Suit to evict the Defendant No.1, the tenant on the statutory grounds. Therefore, the Court of Small Causes had the subject mater jurisdiction.

6.12 Being aggrieved, the Defendant No.2 has invoked the writ jurisdiction.

7. I have heard, Mr. Shailendra S. Kanetkar, the learned Counsel for the Petitioner, and Mr. Abhay Khandeparkar, the learned Senior Advocate, for the Respondent No.1 at some length. With the assistance

of the learned Counsel for the parties, I have perused the material on record including the impugned orders.

8. Mr. Kanetkar, the learned Counsel for the Petitioner, mounted a multi-pronged challenge to the impugned orders. Firstly, Mr. Kanetkar would urge, the learned Judge committed a grave error in recording a finding that the issue of jurisdiction of the Court was not raised by any of the parties. Inviting attention of the Court to the averments in the Plaint, Mr. Kanetkar would submit that the Plaintiff itself had approached the Court with a case that the Defendant No.2 was a multinational Company. In fact, the Trial Court had also framed an issue as to whether the Defendant No.2 was entitled to the protection under rent control legislation, and answered the same in the negative. In such fact-situation, the Application could not have been rejected on the specious ground that the issue of jurisdiction was not raised by the parties.

9. Secondly, Mr. Kanetkar submitted with a degree of vehemence that, the the learned Judge misdirected himself in focusing on the status of the parties. In the process, the learned Judge ignored the settled position in law that the exemption from the Application of the rent control legislation is qua the premises and not the relationship between the parties. This manifest error in appreciating the legal position vitiated the finding of the learned Judge. To this end, Mr. Kanetkar,

placed strong reliance on the judgments of he Supreme Court in the cases of **Parwati bai Vs Radhika**[1] and **Kersi Commissariat and Ors Vs Ministry of Food and Civil Supplies, Government of Maharashtra, Mumbai & Anr.**[2]

10. Thirdly, Mr. Kanetkar would urge, it is well recognized that, if the Court lacks inherent jurisdiction to pass the decree, the decree is non-est in the eyes of law and the executing Court is empowered to make a declaration of nullity and decline to execute the decree. In the case at hand, Since the Defendant No.2 falls within the class of the entities exempted from the operation of the provisions of the Rent Control Act 1999, the Court of Small Causes could not have assumed the jurisdiction and passed the decree of eviction. Therefore, the order rejecting MARJI Applicaton deserves to be quashed and set aside and, as a necessary corollary, the consequential orders also deserve to be quashed and set aside.

11. In opposition to this, Mr. Abhay Khandeparkar, the learned Senior Advocate, for the Respondent No.1-Original Plaintiff, would submit the Defendant No.2 has, in fact, taken a somersault. Before the Trial Court, till the passing of the decree, Defendant No.2 had never raised the ground that the Suit was not maintainable before the Court of Small Causes as the premises was sub-let to Defendant No.2, a multinational

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1 (2003) 12 SCC 551.

2 (2012) 5 SCC 187.

Company. On the contrary, the Defendant No.2 had flatly denied the factum of sub-letting and exclusive possession over the Suit premises. What impairs the case now sought to be canvassed by the Defendant No. 2 is a categorical contention in paragraph 17 of the Written Statement that the Defendant No.2 was entitled to protection under the provisions of Rent Control Act 1999. Therefore, the Defendant No.2 cannot be permitted to assail the validity of the Decree by taking a diametrically opposite stand that the Suit premises was exempted from the operation of the provisions of the Rent Act 1999.

12. Mr. Khandeparkar would urge, the Defendant No.2 is precluded from raising such ground after the passing of the decree by the principles of res judicata. Reliance was sought to be placed on a decision of the Supreme Court in the case of **Erach Boman Khavar Vs Tukaram Shridhar Bhat and Ors.**[3]

13. At any rate, Mr. Khandeparkar would urge, the Defendant No.2 who has been in unauthorised occupation of the Suit premises cannot be placed on a higher pedestal than that of Abbas, the original tenant. In the face of a clear case of unlawful sub-letting, the learned Judge was justified in rejecting a wholly misconceived Application, submitted Mr. Khandeparkar.

14. To start with, there does not appear much controversy over the foundational facts. The jural relationship between the Plaintiff and

3 2013 15 SCC 655.

Abbas, as landlord and tenant, is not put in contest. The fact that Defendant No.2 is in the occupation of the Suit premises is also incontrovertible. The commercial character of Defendant No.2, i.e., a multinational Company is, by and large, not in dispute.

15. The parties were at issue over the character in which Defendant No.2 has been in the occupation of the Suit premises. In MARJI Application No. 51 of 2025, the core controversy revolved around the question as to whether the Court of Small Causes lacked jurisdiction, in view of the exemption from the applicability of the Act to the premises let or sub-let to, *inter alia,* a multinational Company, envisaged by Section 3(1)(b) of the Rent Act 1999.

16. Before adverting to appreciate the core question in controversy, it may be expedient to keep in view the powers of the executing Court in the matter of declining to execute the decree on the premise that it was null and void. Two postulates operate in this branch of law. At the one end of spectrum is, the principle that the executing Court cannot go behind the decree. Nor the executing Court has the jurisdictional competence to question the legality and correctness of the decree, which is put to execution. At the other end of the spectrum is, the exclusive domain of the executing Court to determine all questions relating to the execution, discharge or satisfaction of the decree; which finds statutory recognition in Section 47 of the Code. In between these

two positions lies an area where the executing Court can legitimately decline to execute the decree, on the premise that the decree passed by the Court is a nullity. Such a situation arises where the Court which passed the decree lacked inherent jurisdiction. Since the objection to the executability of the decree goes to the very root of the matter, dismantling the jurisdictional competence of the Court which has passed the decree, it is rendered null and void. Such a ground of nullity can be raised at any stage and in any proceeding, wherever such decree is sought to be executed. If the executing Court finds that the decree suffers from such inherent lack of jurisdiction or breach of a statutory mandate as to render it in-executable, the declaration by the executing Court that the decree is nullity does not partake the character of going behind the decree or questioning its legality or correctness. In such a situation, there is no decree in the eyes of law.

17. In an earliest pronouncement in the case of **Hira Lal Patni Vs Kali Nath**[4] the Supreme Court enunciated that the validity of the decree can be challenged in execution proceeding only on the ground that the Court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because subject matter was wholly foreign to its jurisdiction or that the Defendant was dead at the time the Suit had been instituted or decree passed or some such other ground which could have the effect of rendering the Court

4 AIR 1962 SC 199.

entirely lacking in jurisdiction in respect of the subject matter of the Suit or over the parties to it.

18. The decision of the Supreme Court in the case of **Sunder Dass Vs Ram Prakash**[5] illuminatingly postulates circumstances in which the executing Court can embark upon an inquiry in regard to the executability of the decree. The observations of the Supreme Court in paragraph 3 read as under:

> "3. "Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all. Vide Kiran Singh Vs Chaman Paswan, AIR 1954 SC 340: (1955) 1 SCR 117, and Hira Lal Patni Vs Kali Nath,

5 (1977) 2 SCC 662.

(1962) 2 SCR 747: AIR 1962 SC 199. It is, therefore, obvious that in the present case, it was competent to the executing court to examine whether the decree for eviction was a nullity on the ground that the civil court had no inherent jurisdiction to entertain the suit in which the decree for eviction was passed. If the decree for eviction was a nullity, the executing court could declare it to be such and decline to execute it against the respondent."

(emphasis supplied)

19. The aforesaid position in law was reiterated by the Supreme Court in the case of **Harpal Singh Vs Ashok Kumar & Anr.**[6]

20. Mr. Kanentkar made an endeavour to persuade the Court to hold that the Court of Small Causes lacked inherent jurisdiction as the Suit premises was allegedly sub-let to the Defendant No.2, a multinational Company. To appreciate this submission, it may be necessary to extract the provisions contained in Section 3(1)(b) of the Rent Act 1999.

"**3. Exemption**

(1) This Act shall not apply—

(a) … … …

(b) to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more.

Explanation.—

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6 (2018) 11 SCC 113.

… … …

21. The object of exempting the premises let to the entities referred to in clause (b) sub-Section (1) Section (3) was to strike a balance between the need for protection of tenants and the interest of the landlords. By their very nature, the entities included in Clause (b) of Section 3(1) of the Rent Act 1999, are such entities which are not constrained by resources and could afford the payment of rent at the prevailing market rates. The landlords of the premises let out to such entities were thus not to be restrained from exploiting the full economic potential of their properties.

22. In the case of **Leelabai Gajanan Pansare Vs Oriental Insurance Com Ltd,**[7] while considering the question as to whether a Government company falls within the compendious expression "any public sector undertaking" or "Corporation", the Supreme Court, enunciated that by enacting Section 3(1)(b), the Legislature has tried to maintain a balance by offering an economic package to the landlords. The change introduced in the Rent Act 1999, namely, permitting the landlords to charge premium, exclusion of cash-rich entities covered by Clause (b) of Section 3(1) and provisions of annual increase at a nominal rate of 5%, were the structural changes brought about by the Rent Act 1999, vis-a-vis the Bombay Rents, Hotel and Lodging House Rates (Control) Act,

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7 (2008) 9 SCC 720.

1947 (“the Bombay Rent Act 1947”), as a part of the economic package to the landlord. The Supreme Court further held that the entities included in Section 3(1) (b) are basically cash-rich entities. They have positive net asset value. They have positive net worth. They can afford to pay rents at the market rates.

23. Normally the question of non-applicability of the provisions contained in the Rent Act 1999, in the context of Section 3(1)(b) arises where an entity claims that it would not be governed by the exclusionary clause (b) of Section 3(1). Meaning thereby, it is entitled to protection of the rent control legislation.

24. In the case at hand, however, the Defendant No.2 seeks to derive advantage of the purported non-applicability of the provisions of the Rent Act 1999 to Defendant No.2, being a multinational company, to question the validity of the decree of eviction passed against it. The objection proceeds on the premise that the determinative factor is the use to which the Suit premises is put to, and not the relationship between the parties. Mr. Kanetkar made an earnest endeavour to drag home this point.

25. The aforesaid submission of Mr. Kanetkar that the exemption is qua the premises and not the relationship between the parties appears to be well-founded. A series of judgments crystallize the aforesaid proposition.

26. In the case of **Bhatia Coop Housing Society Ltd Vs D.C. Patil**[8] while considering the provisions contained in Section 4(1) of the Bombay Rent Act 1947, in the context of sub-Section 4(a) which was introduced by the Amendment Act 1953, the Supreme Court exposited that the exemption granted under the earlier part of sub-Section (1) of Section 4 is in respect of the premises and not in respect of the relationship.

27. The Supreme Court observed *inter alia* as under:

> "9. … … … Section 4(1) provides for an exemption from or exception to that general object. The purpose of the first two parts of Section 4(1) is to exempt two cases of relationship of landlord and tenant from the operation of the Act, namely, (1) where the Government or a local authority lets out premises belonging to it, and (2) where the Government lets out premises taken on lease or requisitioned by it. It will be observed that the second part of Section 4(1) quite clearly exempts "any tenancy or other like relationship" created by the Government but the first part makes no reference to any tenancy or other like relationship at all but exempts the premises belonging to the Government or a local authority. If the intention of the first part were as formulated in item (1), then the first part of Section 4(1), like the second part, would have run thus:
>
> > This Act shall not apply to any tenancy or other like relationship created by Government or local authority in respect of premises belonging to it.

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8 AIR 1953 SC 16.

The Legislature was familiar with this form of expression, for it adopted it in the second part and yet it did not use that form in the first part. The conclusion is, therefore, irresistible that the Legislature did not by the first part intend to exempt the relationship of landlord and tenant but intended to confer on the premises belonging to Government an immunity from the operation of the Act.

10. Learned counsel for the respondent next contends that the immunity given by the first part should be held to be available only to the Government or a local authority to which the premises belong. If that were the intention then the Legislature would have used phraseology similar to what it did in the second part, namely, it would have expressly made the Act inapplicable "as against the Government or a local authority". This it did not do and the only inference that can be drawn from this circumstance is that this departure was made deliberately with a view to exempt the premises itself.

11. … … … In our opinion, therefore, the consideration of the protection of the interests of the sub-tenants in premises belonging to the Government or a local authority cannot override the plain meaning of the preamble or the first part of Section 4(1) and frustrate the real purpose of protecting and furthering the interests of the Government or a local authority by conferring on its property an immunity from the operation of the Act."

(emphasis supplied)

28. In the case of **Parwati Bai (Supra),** on which reliance was placed by Mr. Kanetkar, the question of exemption to the premises belonging to the Government or local Authority under the provisions of Madhya Pradesh Accommodation Control Act, 1961, arose for consideration. The Supreme Court held that the immunity from the operation of the Madhya Pradesh Accommodation Control Act, 1961, is in respect of the premises and not with respect to the parties. If a tenant in municipal premises lets out the premises to another, a Suit by the tenant for ejectment of his tenant and arrears of rent would not be governed by the Act as the premises are exempt under Section 3(1)(b) of the said Act though the Suit is not between the municipality as a landlord and against its tenant.

29. In **Kersi Commissariat and Ors (Supra),** which was strongly relied upon by Mr. Kanetkar, the facts were that the landlord had let the premises to New India Assurance Company Ltd, which, in turn, without the knowledge and consent of the landlord, had inducted the Ministry of Food and Civil Supplies, Government of Maharashtra as a sub tenant. The latter took the defence that it was a protected tenant under the Rent Act 1999 and the relief of eviction was untenable.

30. In that context, the Supreme Court, after following the decisions in **Bhatia Coop Housing Society Ltd (Supra)** and **Parwati Bai (Supra),** held that the New India Assurance Company Limited (D1) was itself not

protected under the Rent Act 1999 and, thus, once the original tenant was not protected, the Food and Civil Supplies Department (D2), the sub-tenant, cannot enjoy a better protection or privilege by ostracizing the concept of premises which is the spine of the provision.

31. In the light of the aforesaid enunciation of law, the moot question that comes to the fore is whether the Defendant No.2, being a multinational company, to whom the Suit premises was found to be unlawfully sub-let, can question the validity of the decree on the ground that the provisions of the Rent Act 1999 do not apply to the premises in question.

32. For an answer, a brief reference to the facts becomes necessary. Late Abbas was indisputably in the occupation of the Suit premises as a tenant. The Plaintiff alleged the Suit premises was illegally and unlawfully sub-let to the Defendant No.2. Consequently, the original tenant had not used the Suit premises for the purpose for which it was let for a continuous period of six months immediately preceding the date of the Suit, without reasonable cause.

33. In the context of aforesaid nature of the Plaintiff's claim, it is necessary to note the response of Defendant No.2 thereto. Firstly, Defendant No.2 categorically denied that the Suit premises was unlawfully sub-let by late Abbas. Secondly, the very factum of exclusive possession, use and occupation of the Suit premises by Defendant No.2

was explicitly denied. Thirdly, instead of claiming that the Suit before the Court of Small Causes was not tenable on account of the inapplicability of the provisions of the Rent Act 1999, the Defendant No.2 expressly contended that it was entitled to the protection of the provisions contained in the Rent Act 1999.

34. The aforesaid stance of the Defendant No.2 cannot be said to inconsequential. The observations of the executing Court that, it appeared that the issue of jurisdiction of the Court of Small Causes was not raised, are required to be appreciated in the light of the aforesaid stand of Defendant No.2.

35. Indeed, the Trial Court returned a finding that the Defendant No.2 was not entitled to the protection of the provisions of the rent control legislation. However, this finding does not necessarily imply that the Suit before the Court of Small Causes was untenable. Undoubtedly, the exemption under the provisions of Section 3(1)(b) of the Rent Act 1999, is qua the premises and not the relationship between the parties. Nonetheless, the Court cannot loose sight of the primary fact that the Suit for eviction was principally against the unknown heirs and legal representatives of late Abbas-the tenant, and for the enforcement of the liability to vacate the Suit premises incurred by the tenant on account of the alleged act of unlawful sub-letting and non-user of the Suit premises. Since the jural relationship between the Plaintiff and

Defendant No.1 was beyond the pale of controversy, the Suit against Defendant No.1 was perfectly tenable and squarely fell within the exclusive jurisdiction of the Court of Small Causes. The impleadment of Defendant No.2 was for the reason of being in unauthorized occupation of the Suit premises which was allegedly unlawfully sublet to Defendant No.2, by the tenant. Thus, the provisions of Rent Act 1999 squarely governed the Suit premises as it was let to a person who did not fall within the excluded categories.

36. Mr. Kanetkar attempted to salvage the position by canvassing a submission that Section 3(1)(b) governs the premises let or sublet and, therefore, the alleged unlawful subletting by late Abbas to Defendant No.2, would fall within the ambit of Clause (b). It was submitted that the Legislature has not used the expression "lawfully sublet" in clause (b).

37. The aforesaid submission is in teeth of the provisions contained in Section 26 of the Rent Act 1999 and Section 15 of the Bombay Rent Act 1947, which statutorily proscribed the creation of sub-tenancy in the absence of the contract to the contrary. The expression "sublet" in Section 3(1)(b) would necessarily mean either the subtenancy which is protected under the provisions of Section 15(A) of the Bombay Rent Act 1947 in respect of the sub-tenants, who are deemed to be the tenants of the landlords, or the sub-tenancy lawfully created.

38. If the submission on behalf of the Petitioner that the provisions of the Rent Act 1999 would not apply to the premises in respect of which there is unlawful subletting to the entities specified in Clause (b) of Section 3(1) is accepted, the provisions of Rent Act 1999 can be defeated by resorting to disingenuous methods, like after the suit for eviction reaches an advanced stage, the tenant may unlawfully sublet the Suit premises to an excluded entity and then it could be urged that the Court of Small Causes lacked the jurisdiction as the premises has been sublet to an excluded entity. Such a construction would lead to absurd results.

39. The conspectus of the aforesaid consideration is that in the fact-situation of the present nature, since the Court of Small Causes had exclusive jurisdiction to entertain, try and decide the Suit for eviction instituted against Defendant No.1, who had allegedly unlawfully sublet the Suit premises to Defendant No.2, an excluded entity, which was found to be in unauthorized occupation of the Suit premises, the validity of the decree which is primarily passed against the tenant cannot be questioned on the ground of inherent lack of jurisdiction.

40. As this Court has found that the challenge to the validity of the decree on the ground of it being null and void does not merit countenance, the consequential orders passed by the executing Court in order to execute the said decree cannot be faulted at.

41. Resultantly, Writ Petition No. 10039 and 10040 of 2025 fail.

42. Hence, the following order.

: O R D E R :

(i) The Petitions stand dismissed.

(ii) Rule discharged.

(iii) In the circumstances of the case, there shall be no order as to costs.

[N. J. JAMADAR, J.]