æ° REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4481 OF 2010
(Arising out of S.L.P. (Civil) No. 29478 of 2009)

M/s Speedline Agencies .... Appellant(s)

Versus

M/s T. Stanes & Co. Ltd. .... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) Leave granted.

2) This appeal is directed against the final judgment and order dated 05.08.2009 passed by the High Court of Judicature at Madras in Civil Revision Petition (NPD) No. 1729 of 2003 whereby the High Court dismissed the civil revision filed by the appellant herein.

3) Brief facts in a nutshell are as under:

(a) The appellant took the suit premises in TS No. 1357 (bearing Old No. 6/499 and New No.8/499) on Trichy Road, Coimbatore comprising an area of 1.4 acres, i.e., 61,872 sq. ft. with a building having built up area of 5,274 sq. ft. on lease under lease

deed dated 17.11.1965 for use as residence-cum-office from M/s United Coffee Supply Co. Ltd., for a period of five years on a monthly rental of Rs.400/-. On the expiry of the period, the lease was further renewed for a period of five years under lease deed dated 01.10.1970. On failure to renew the lease from 01.10.1975, the appellant instituted a suit in O.S. No. 209 of 1976 for specific performance of the renewal clause in the lease agreement dated 1.10.1970. In the said suit, a settlement dated 12.04.1978 was arrived at whereby the appellant agreed to pay fair rent of Rs.1200/- w.e.f. 1.10.1975.

(b) In the meantime, Government of Tamil Nadu brought into force the

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (hereinafter referred to as "the Ceiling Act") on 17.05.1978. Under the provisions of the said Act, ceiling was fixed regarding extent of vacant land which may be owned by a person and Government had the right to take possession of the excess land over the ceiling limit. On 13.09.1978, the erstwhile landlord-company applied for exemption from acquisition of excess vacant lands. On 04.11.1981, the erstwhile landlord company was granted partial exemption from acquisition of vacant lands under Section 21(1)(a) of the Ceiling Act on the ground of public interest by way of G.O. Ms. No. 2900. On 25.06.1986, by way of G.O. (Rt) No. 852 issued by the Revenue Department, the partial exemption earlier granted was reviewed and

extended to the entire extent of the suit premises under Section 21(1)(a) of the Ceiling Act, i.e. on the ground of public interest.

(c)In 1984, the landlord-company filed RCOP No. 397 of 1984 claiming monthly rental of Rs. 9500/- retrospectively from 01.10.1980. However, the Rent Controller, by order dated 18.10.1994, fixed the fair rent as Rs.6465/- from 1.10.1980. The appellant filed R.C.A. No. 171 of 1994 whereunder the rent was fixed as Rs.7852/- on 19.12.2001 which is currently being paid. On 15.09.1985, the name of the landlord-company, M/s United Coffee Supply Co. Ltd. was changed to Stanes Tea and Coffee Ltd.

(d) Stanes Tea and Coffee Ltd. filed RCOP No. 105 of 1987 on 03.04.1987 under Sections 10(3)(a)(i) and (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the ‘Act’) on the ground that it required the building and premises for their own use and occupation and for providing residential accommodation to its employees and that vacant areas

were required for agency, warehouses and research and development building, office quarters and amenities for staff such as garage, cycle stand, staff recreation club, community hall etc. The Rent Controller, by its order, dated 09.04.1992 allowed the petition and directed eviction of the appellant. Aggrieved by the said order, the appellant filed an appeal being RCA No. 42 of 1992 before the

Appellate Authority and IInd Additional Subordinate Judge of Coimbatore and the same was dismissed on 10.04.2003. Against the said order, the appellant filed C.R.P. No. 1729 of 2003 before the High Court. During the pendency of the said C.R.P. before the High Court, by a Scheme of Amalgamation, M/s Stanes Tea and Coffee Limited was transferred to M/s T. Stanes & Company Ltd., with effect from 01.04.2005 under Sections 391 to 394 of the Companies Act, 1956 and this was duly approved by the High Court. Thereafter, an application for amendment of the cause title was filed which was also duly allowed by the High Court by order dated 10.07.2009. On 05.08.2009, the High Court dismissed the revision filed by the appellant herein. Aggrieved by the said order, the appellant has preferred the above appeal before this Court by way of special leave petition.

4) Heard Mr. K.K. Venugopal, learned senior counsel for the appellant-tenant and Mr. K. Parasaran, learned senior counsel for the respondent-landlord.

5) Mr. Venugopal, learned senior counsel for the appellant-tenant mainly submitted that upon the amalgamation of the original rent control petitioner with the respondent herein, the new entity was not entitled to continue the eviction proceedings under Section 10(3)(a)(i) and (iii) of the Act since the need of the new entity will be different. In addition to the same, though not seriously raised before the Courts below, he submitted that other residential

and non-residential buildings owned by the respondent herein disable

the new entity to claim the benefit of order of eviction.

6) On the other hand, Mr. K. Parasaran, learned senior counsel for the respondent-landlord, by taking us through the Scheme of Amalgamation approved by the Company Judge and the relevant provisions in the Act, submitted that after merging of the Company which is the landlord with another Company, there is no forfeiture of any right of the landlord under the provisions of the Rent Control Act or the Transfer of Property Act. He also submitted that the amalgamation of the erstwhile landlord with the respondent herein involved not merely the transfer of the particular leasehold property but the entire business of the erstwhile landlord including their requirement of the leasehold premises for the acquired business. He also submitted that the subsequent events, namely, the merger had taken place during the pendency of the Revision before the High Court, are not matters of automatic cognizance by this Court or a mandate on the Courts below. He elaborately submitted that in the present case, the landlord required the premises for its own business and for residential purposes of its employees and the requirement continues to exist also for the transferee company since the entire business of the transferor company stood transferred to the transferee company.

7) We have considered all the relevant materials and rival contentions.

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8) It is not in dispute that Stanes Tea and Coffee Ltd. has approached the Rent Controller by filing a petition under Section 10 (3) (a) (i) and (iii) of the Act for possession and eviction against the tenant with regard to the premises in question for its own use and occupation for residential and non-residential purpose. The relevant provisions are extracted hereunder:

"10. Eviction of tenants.- (1) xxx xxxx
(2) xxxxx
(3) (a) A landlord may, subject to the provisions of clause (d),

apply to the Controller for an order directing the tenant to put the landlord in possession of the building-
(i) in case it is residential building, if the landlord requires it for his own occupation or for the occupation of any member of his family and if he or any member of his family is not occupying a residential building of his own in the city, town or village concerned;
(ii) xxxx
(iii) in case it is any other non-residential building, if the landlord or any member of his family is not occupying for purposes of a business which he or any member of his family is carrying on, a non-residential building in the city, town or village concerned which is own:....."

9) After analyzing the materials the Rent Controller and the Appellate Authority accepting the case of the landlord concurrently found that there is a bona fide need and passed an order of eviction against the tenant-appellant herein. It is relevant to note that the rent control petition was filed on 03.04.1987 and the Rent Controller ordered eviction on 09.04.1992. The appeal filed by the tenant came to be dismissed on 10.04.2003 by the Rent Control Appellate Authority. Thereafter, the tenant filed a civil revision petition under Section 25 of the Act on 18.08.2003 before the High

Court. During the pendency of the above said civil revision petition before the High Court, the Scheme of Amalgamation was finalized and by order dated 26.06.2006, the Company Court sanctioned the Scheme. Thereafter, an application was filed for amendment of the cause title in the civil revision petition was filed by the tenant and the same was also allowed.

10) The Scheme of Amalgamation, filed in the appeal paper-book, contains various definitions and clauses. Clause 1.1 defines "Transferor Company" and Clause 1.2 defines "Transferee Company". Among other clauses, we are concerned with Clauses 1.5 and 6, which read thus:

"1.5 The "Effective date" shall mean the date on which the certified copy of the order of the High Court of Madras sanctioning the scheme vesting the assets, properties, liabilities, rights, duties, obligations and the line of the Transferor Company in the Transferee Company are filed with Registrar of Companies of Tamil Nadu after obtaining the consents, approvals, permissions, resolutions agreements, sanctions and orders necessary thereof."

"6. Legal Proceedings - With effect from the effective date, if any suit, petition, appeal, revision or other proceedings of whatever nature (hereinafter called "the proceedings) by or agents the

Transferor Company under any statute whether pending on the Transfer Date or which may be instituted in future (whether before or after the effective date) in respect of any matter arising before the effective date and relating to the Transferred undertaking as agreed between the Transferor Company and the Transferee Company shall not abate be discontinued or be in any way prejudicially affected by reason of the transfer of the said assets/liabilities of the Transferor Company or of anything contained in the scheme but the proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would be or might have been continued prosecuted and enforced by or against the Transferor Company as if the Scheme had not been made."

Clause 15 makes it clear that the Transferor Company shall be dissolved without winding up as and from the effective date or such other date as the High Court of Madras may direct.

11) As mentioned earlier, after analyzing the Company Petition filed for sanctioning the Scheme of Amalgamation under Sections 391 to 394 read with Section 79 of the Companies Act, 1956 and after satisfying all aspects, by order dated 26.06.2006, the High Court sanctioned the Scheme with effect from the transfer dated 01.04.2005 and allowed the petitions accordingly.

12) After getting the order from the Company Court, the Transferee Company filed a petition in the pending civil revision petition filed by the tenant for amendment of the cause title and it is not in dispute that the same was ordered by the learned single Judge subject to objection by the tenant. In the light of the above factual position, let us consider whether after amalgamation of the original landlord with the Transferee Company, the Transferee Company is entitled to avail the benefit of the order of eviction granted under Section 10 (3) (a) (i) and (iii) as passed by the Rent Controller, approved by the Appellate Authority and the High Court.

13) Mr. Venugopal, learned senior counsel submitted that the eviction was ordered on the ground of personal requirement and such requirement must continue to exist till final determination of the case. In view of the same, according to him, the Appellate/Revisional Court must take cognizance of subsequent events

taking into account that the requirement of the landlord is still

continuing. In support of the above proposition, he relied on the

following three judgments:-

(i) In Hasmat Rai & Anr. vs. Raghunath Prasad (1981) 3 SCC 103, this Court held:-

"14.....If a landlord bona fide requires possession of a premises let for residential purpose for his own use, he can sue and obtain possession. He is equally entitled to obtain possession of the premises let for non-residential purposes if he wants to continue or start his business. If he commences the proceedings for eviction on the ground of personal requirement he must be able to allege and show the requirement on the date of initiation of action in the court which would be his cause of action. But that is not sufficient. This requirement must continue throughout the progress of the litigation and must exist on the date of the decree and when we say decree we mean the decree of the final court. Any other view would defeat the beneficial provisions of a welfare legislation like the Rent Restriction Act. If the landlord is able to show his requirement when the action is commenced and the requirement continued till the date of the decree of the trial court and thereafter during the pendency of the appeal by the tenant if the landlord comes in possession of the premises sufficient to satisfy his requirement, on the view taken by the High Court, the tenant should be able to show that the subsequent events disentitled the plaintiff, on the only ground that here is tenant against whom a decree or order for eviction has been passed and no additional evidence was admissible to take note of subsequent events. When a statutory right of appeal is conferred against the decree or the order and once in exercise of the right an appeal is preferred the decree or order ceases to be final. What the definition of "tenant" excludes from its operation is the person against whom the decree or order for eviction is made and the decree or order has become final in the sense that it is not open to further adjudication by a court or hierarchy of courts. An appeal is a continuation of suit. Therefore a tenant against whom a decree for eviction is passed by trial court does not lose protection if he files the appeal because if appeal is allowed the umbrella of statutory protection shields him. Therefore it is indisputable that the decree or order for eviction referred to in the definition of tenant must mean final decree or final order of eviction. Once an appeal against decree or order of eviction is preferred, the appeal being a continuation of suit, the landlord's need must be shown to continue to exist at appellate stage. If the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it

would be open to him to point out such events and the court including the appellate court has to examine, evaluate and adjudicate the same. Otherwise the landlord would derive an unfair advantage. An illustration would clarify what we want to convey. A landlord was in a position to show that he needed possession of demised premises on the date of the suit as well as on the date of the decree of the trial court. When the matter was pending in appeal at the instance of the tenant, the landlord built a house or bungalow which would fully satisfy his requirement. If this subsequent event is taken into consideration, the landlord would have to be non-suited. Can the court shut its eyes and evict the tenant? Such is neither the spirit nor intendment of Rent Restriction Act which was enacted to fetter the unfettered right of re-entry. Therefore when an action is brought by the landlord under Rent Restriction Act for eviction on the ground of personal requirement, his need must not only be shown to exist at the date of the suit, but must exist on the date of the appellate decree, or the date when a higher court deals with the matter. During the progress and passage of proceeding from court to court if subsequent events

occur which if noticed would non-suit the plaintiff, the court has to examine and evaluate the same and mould the decree accordingly. This position is no more in controversy in view of a decision of this Court in Pasupuleti Venkateswarlu where Justice Krishna Iyer speaking for the court observed as under: (SCC p. 772, para 4)
We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the Rules of fairness to both sides are scrupulously obeyed.....
.....Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlord's requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events. He can be precluded from so contending when the decree or order for eviction has become final. In view of the decision in Pasupuleti case the decision of the Madhya Pradesh High Court in Taramal case must be taken to have been overruled and it could not be distinguished only on the ground that the definition of "tenant" in the Madhya Pradesh Act is different from the one in Andhra Pradesh Act. Therefore, the High Court was in

error in declining to take this subsequent event which was admittedly put forth in the plaint itself into consideration....."

In the present case, Clause 6 (Legal proceedings) of the Scheme of Amalgamation makes it clear that with effect from the effective date i.e. 01.04.2005 all proceedings in which Transferor Company was a party be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would be or might have been continued, prosecuted and enforced by or against the Transferor Company as if the Scheme had not been made. In view of the above specific clause coupled with other clauses of the Scheme and taking note of the fact that the Transferor Company in its entirety merged with the Transferee Company, the above decision is not directly applicable to the case on hand.
(ii) The next decision relied on by him is Saraswati Industrial Syndicate Ltd. vs. C.I.T. 1990 (Supp) SCC 675. In that case, the question was whether on the amalgamation of the Indian Sugar Company with the appellant-Company i.e. Saraswati Industrial Syndicate Ltd., the Indian Sugar Company continued to have its entity and was alive for the purposes of Section 41 (1) of Income Tax Act, 1961. This Court held as under:-
"5. Generally, where only one company is involved in change and the rights of the shareholders and creditors are varied, it amounts to reconstruction or reorganisation of scheme of arrangement. In amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or 'amalgamation' has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See: Halsbury's Laws of England (4th edition

volume 7 para 1539). Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation. When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity.
6. In General Radio and Appliances Co. Ltd. v. M.A. Khader the effect of amalgamation of two companies was considered. M/s General Radio and Appliances Co. Ltd. was tenant of a premises under an agreement providing that the tenant shall not sub-let the premises or any portion thereof to anyone without the consent of the landlord. M/s General Radio and Appliances Co. Ltd. was amalgamated

with M/s National Ekco Radio and Engineering Co. Ltd. under a scheme of amalgamation and order of the High Court under Sections 391 and 394 of Companies Act, 1956. Under the amalgamation scheme, the transferee company, namely, M/s National Ekco Radio and Engineering Company had acquired all the interest, rights including leasehold and tenancy rights of the transferor company and the same vested in the transferee company. Pursuant to the amalgamation scheme the transferee company continued to occupy the premises which had been let out to the transferor company. The landlord initiated proceedings for the eviction on the ground of unauthorised sub-letting of the premises by the transferor company. The transferee company set up a defence that by amalgamation of the two companies under the order of the Bombay High Court all interest, rights including leasehold and tenancy rights held by the transferor company blended with the transferee company, therefore the transferee company was legal tenant and there was no question of any sub-letting. The Rent Controller and the High Court both decreed the landlord's suit. This Court in appeal held that under the order of amalgamation made on the basis of the High Court's order, the transferor company ceased to be in existence in the eye of law and it effaced itself for all practical purposes. This decision lays down that after the amalgamation of the two companies the transferor company ceased to have any entity and the amalgamated company acquired a new status and it was not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets. .....

.....The true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there cannot be any doubt that when two companies amalgamate and merge into one the transferor company loses its entity as it ceases to have its business. However, their respective rights or liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective."

This case deals with reference to liability to pay income tax by Transferor Company after amalgamation and hence not applicable to the case on hand.
(iii) The third decision heavily relied on by Mr. Venugopal is Hindustan Lever & Anr. vs. State of Maharashtra & Anr. (2004) 9 SCC 438. In that case, Tata Oil Mills Co. Ltd. (transferor Company) was incorporated on 10.12.1917 under the Companies Act, 1913. Hindustan Lever Ltd. (transferee Company) was incorporated under the same Act on 17.10.1933. The scheme of amalgamation of the transferor Company with the transferee Company was formulated and approved by the Board of Directors of the respective companies on 19.03.1993. On

03.03.1994 the scheme of amalgamation of the transferor Company with the transferee Company was sanctioned with certain modifications by a learned single Judge of the High Court. Appeal filed against the judgment and order of the learned single Judge was rejected by the

Division Bench on 18.05.1994. The special leave petition against the above judgment of the Division Bench was dismissed by this Court on 24.10.1994. The drawn-up order of amalgamation of the transferor Company with the transferee Company was approved by the High Court on 24.11.1994. On presentation of the certified copy of the Court's order, the Registrar of Companies, Maharashtra issued a certificate amalgamating the two companies. In view of the stamp duty sought to be levied on the order of amalgamation passed under Section 394 of the Companies Act, 1956 the appellant-Hindustan Lever filed writ petition in the Bombay High Court challenging the constitutional validity of the provisions of Section 2 (g)(iv) of the Bombay Stamp Act, 1958. The Division Bench upheld the validity and dismissed the writ petition. This decision mainly deals with payment of stamp duty levied on the order of amalgamation and not helpful to the case on hand.

14) With reference to the submissions made by Mr. Venugopal and the above mentioned decisions relied on, amalgamation of a company with another company under Sections 391 to 394 of the Companies Act has different legal consequences on the rights of the Company in a case where it is a tenant of a building entitled to the benefits of the Act and in a case where company which amalgamates with another company is a landlord of the building. When a company which is a tenant amalgamates with another company, the amalgamating company (Transferor Company) loses its identity. It would, in law, amount to the amalgamating company inter alia transferring its right under the lease even if it be considered as an involuntary transfer. Such amalgamation would fall within the mischief of Section 10(2)(ii)(a) of the Act when it is without the written consent of the landlord and would result in forfeiture of the tenancy [vide General Radio and Appliances Co. Ltd. & Ors. vs. M.A. Khader (dead) by LRs. (1986) 2 SCC 656 and Singer India Ltd. vs. Chander Mohan Chadha and Ors. (2004) 7 SCC 1.] As in the present case, the company which is the landlord merges with another company, there is no forfeiture of any right of the landlord under the provisions of the Act or under the Transfer of Property Act.

15) In a case where a company is a tenant, amalgamation is the cause of action for the landlord to sue the tenant company for eviction on the ground of subletting without the consent of the

landlord. In the present case, the petition by the landlord for eviction of the tenant was filed on 03.04.1987. The cause of action has no relation to amalgamation, irrespective of whether it is prior or subsequent to filing of the application for eviction. The Rent Controller ordered eviction on 09.04.1992. The appeal of the tenant was disposed of by the Appellate Authority on 10.04.2003. The rights of the landlord are to be determined as on the date of the application for eviction. The order of eviction crystallized the rights of the landlord. The tenant had filed the revision in the High Court on 18.08.2003. During the pendency of the revision petition, the order for amalgamation under the Companies Act passed

by the High Court was made on 26.02.2006 which is a subsequent event. Revision Petition was disposed of by the High Court on 05.08.2009. As rightly pointed out by Mr. Parasaran, learned senior counsel, had the revision petition been disposed of before 26.02.2006, this contention would not have arisen at all. The delay in the disposal of the revision petition should not prejudice the vested rights of the landlord under the decree of the Rent Controller confirmed by the Appellate Authority.

16) Further, the amalgamation of the erstwhile landlord with the respondent herein involved not merely the transfer of the particular leasehold property but the entire business of the erstwhile landlord including the requirement of the leasehold premises for the acquired business. In view of the factual details including various clauses

in the Scheme of Amalgamation which was approved by the High Court, while there is no quarrel about the proposition in the decision relied on by Mr. Venugopal, they are not applicable to the case on hand.

17) As far as the appellant's prayer before this Court to take note of the subsequent event of amalgamation, it is at the outset submitted that subsequent events are not matters of automatic cognizance by this Court or a mandate on the courts below. A subsequent event is one which may be taken into account in certain circumstances and deserves to be eschewed and kept out of the purview of judicial consideration in certain other cases. Mr. Parasaran, learned senior counsel pointed out that in cases under Rent Acts there are two lines of cases. One has taken into account subsequent events and moulded the relief and the other refused to take into account subsequent events. According to him, the present case falls within the line of cases where subsequent event was not taken into account. In the present case, he submitted that the subsequent events do not have a fundamental impact on the order of

eviction based on the requirement of the landlord for its own occupation and/or for purpose of its business. According to him, the subsequent event is therefore not to be taken into account. In Shakuntala Bai and Ors. vs. Narayan Das & Ors. (2004) 5 SCC 772, it was held that with regard to the category of cases where a decree for eviction is passed and the landlord died during the pendency of

the appeal, the estate is entitled to the benefit which, under a decree, has accrued in favour of the landlord and the legal representatives are entitled to defend further proceedings like an appeal which is challenged to the benefit under the decree.

18) We agree with Mr. Parasaran that, in normal circumstances, after passing of the decree by the trial Court, the landlord would have obtained possession of the premises, but for the tenant continuing in occupation of the premises only on account of stay order from the appellate court. In such circumstances, the well known principle that "an act of the court shall prejudice no man" shall come into operation. Therefore, the heirs of the landlord will be fully entitled to defend the appeal preferred by the tenant. When a company stands dissolved (with or without winding up) due to amalgamation, its rights under the decree for eviction devolves on the amalgamated company.

19) Further in Usha P. Kuvelkar & Ors. vs. Ravindra Subrai Dalvi, (2008) 1 SCC 330, this Court clearly brought out the distinction between the cases where death occurred after the decree and death occurring during the decree. It was held in para 14 that:-

".....In the same decision a contrary note expressed by this Court in P.V. Papanna v. K. Padmanabhaiah was held to be in the nature of an obiter. This Court in Shakuntala Bai referred to the decision in Shantilal Thakordas v. Chimanlal Maganlal Telwala and specifically observed that the view expressed in Shantilal Thakordas case did not, in any manner, affect the view expressed in Phool Rani v. Naubat Rai Ahluwalia to the effect that where the death of landlord occurs after the decree for possession has been passed in his favour, his legal heirs are entitled to defend the further

proceedings like an appeal and the benefit accrued to them under the decree. Here in this case also it is obvious that the original landlord, Prabhakar Govind Sinai Kuvelkar had expired only after the eviction order passed by the Additional Rent Controller. This is apart from the fact that the landlord had sought the possession not only for himself but also for his family members. There is a clear reference in Section 23(1)(a)(i) of the Act regarding occupation of the family members of the landlord. In that view the contention raised by the learned counsel for the respondent must be rejected."

20) As to subsequent events, this Court in Gaya Prasad vs. Pradeep

Srivastava (2001) 2 SCC 604 at 609 para 10 observed as under:

"10. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post-petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow-process system subsists. During 23 years, after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period."

It was further held in para 15 that:-
"15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady

afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused."

It would inflict great injustice in many cases if subsequent events are taken into account when long years have passed unless there are very compelling circumstances to take into account the subsequent events.

21) In Smt. Phool Rani & Ors. vs. Shri Naubat Rai Ahuluwalia,

(1973) 1 SCC 688, at page 693, this Court, after discussing the

issue in paras 9, 10, 11 and 12 held in para 13 and 14 as under:-

"13. Several decisions were cited before us but those falling within the following categories are to be distinguished--
(i) cases in which the death of the plaintiff occurred after a decree for possession was passed in his favour; say, during the pendency of an appeal filed by the unsuccessful tenant;
(ii) cases in which the death of the decree-holder landlord was pleaded as a defence in execution proceedings; and
(iii) cases in which, not the plaintiff but the defendant -- tenant died during the pendency of the proceedings and the tenant's heirs took the plea that the ejectment proceedings cannot be continued against them.
14. Cases of the first category are distinguishable because the decisions therein are explicable on the basis, though not always so expressed, that the estate is entitled to the benefit which, under a decree, has accrued in favour of the plaintiff and therefore the legal representatives are entitled to defend further proceedings, like an appeal which constitute a challenge to that benefit."

22) Particularly in matters governed by the Rent Acts to take into account subsequent events would inflict hardship to landlords, in a case like the present one. In this context, it was held in para 9 of Joginder Pal vs. Naval Kishore Behal (2002) 5 SCC 397 that:-

"9. The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society

requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords -- both....."

23) It is pointed out by Mr. Parasaran, learned senior counsel that the tenant, in the present case, is an affluent company and is not a tenant falling under the category of weaker sections of tenants of small properties. He further submitted that the principle of taking into consideration subsequent event is to be confined only to appeals on the principle that an appeal is a continuation of the proceedings and the appellate court exercises all the powers of the trial Court. [Vide Lachmeshwar Prasad Shukul and Ors. vs. Keshwar Lal Chaudhuri & Ors. AIR 1941 F.C. 5 at page 13.]

24) In the present case, subsequent event of amalgamation of a company took place during the pendency of the revision in the High Court. Though, subsequent events which have occurred during the

pendency of a revision petition in the High Court or the matter was pending before this Court, have been taken into consideration by this Court in some cases, the question as to the difference between the exercise of jurisdiction in appeal and revision was not argued or decided in those cases.

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25) In a revision under Section 25 of the Act, the Court is exercising a restricted jurisdiction and not wide powers of the appellate court. In M/s Sri Raja Lakshmi Dyeing Works and Ors. vs. Rangaswamy Chettiar (1980) 4 SCC 259 at page 262 it was held:-

".....Therefore, despite the wide language employed in Section 25, the High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority. The power conferred on the High Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act may not be as narrow as the revisional power of the High Court under Section 115 of the Code of Civil Procedure but in the words of Untwalia, J., in Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval1; "it is not wide enough to make the High Court a second Court of first appeal".

26) Mr. Parasaran reiterated that the High Court having only the power of limited jurisdiction and not powers of appellate court, the subsequent event which occurred during the pendency of the revision petition is not to be taken into account, the High Court will decide only as to the legality of the order under revision.

27) Coming to the expression "for its own use/occupation", it has to be construed widely and given wide and liberal meaning. When a company wants to expand its business and amalgamates with another company, this would also be a case of "for its own use". If a landlord which is a company cannot advance its interest in the business by amalgamating with another company by putting to use its own property, it would be unjust, unfair and unreasonable. Further, the provisions of Rent Control Act should not be so construed as to frustrate and defeat the legislation. If in a case of landlord

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requiring the premises for its own use, to amalgamate with another company and expands its business, the rent control legislation may

clash with the provisions of the Companies Act. The Companies Act and the Rent Control Act have to be harmoniously interpreted and not to be so interpreted as to result in the one Act destroying a right under the other Act.

28) As stated earlier, death of a landlord after passing the order of eviction does not ipso facto destroy the accrued right under the decree. The cases which have taken into account the subsequent event in favour of the tenant are cases where during the pendency of the appeal or revision, the requirement of the landlord had been fully satisfied and met or ceased to exist. In the case on hand, the landlord required it for its own business and for residential purposes of its employees. That requirement continues to exist also for the transferee company since the entire business of the transferor company stood transferred to the transferee company. The requirement of the company has neither been satisfied nor extinguished. The right to evict has already crystallized into a decree to which the company after amalgamation has succeeded by involuntary assignment. As the decree for eviction was under stay, the decree could not be executed. Once the stay is vacated or dissolved, the respondent would be entitled to execute the decree. In the present case, the amalgamation order has also preserved the said right. As per Clause 1.7 of the Scheme, all assets vest in the

transferee company. As per Clause 6, any suit, petition, appeal or other proceedings in respect of any matter shall not abate or be discontinued and shall not be prejudicially affected by reason of the transfer of the said assets/liabilities of the Transferor Company or of anything contained in the scheme but the proceedings may be continued, prosecuted and enforced by or against the transferee company in the same manner and to the same extent as it would be or might have been continued prosecuted and enforced by or against the Transferor company as if the scheme has not been made. In view of the same, by virtue of the provisions in the Scheme of Amalgamation and operation of Order 21 rule 16 of C.P.C., the decree

holder is deemed to execute the decree. Section 18 of the Act provides that the order of eviction shall be executed by the Controller as if such order is an order of a civil court and for this purpose, the Controller shall have all the powers of the civil court. For the purpose of execution of the order, all the powers of civil court have been invested in the Rent Controller. Therefore, the principle of Order 21 Rule 16 of the C.P.C. will apply. In any event, as rightly pointed out by learned senior counsel for the respondent that the C.P.C. provisions to the extent advance public interest or ensure a just, fair and reasonable procedure and does not conflict with the Act will apply to execution of the order of eviction.

29) The landlord's entitlement to evict the tenant had merged with the decree. Further, the amalgamation took place long after the decree for eviction and rights had crystallized under the decree for eviction and merged into it. The tenant has been in possession of vast extent of property which comprises of a big building with built up area of 5,274 sq. ft. together with appurtenant space i.e. vacant land total measuring 61,872 sq. ft. from the year 1965 for a period of over 45 years. The appellant was initially paying rent of Rs. 400/- for the building and Rs. 300/- for the furniture and fixtures which was raised to Rs. 400/- and Rs. 475/- respectively in 1970's. The Rent Controller fixed the fair rent as Rs. 6,465/- by order dated 18.10.1994 which was enhanced by the appellate authority in an appeal filed by the appellants to Rs. 7,852/- by order dated 19.12.2001.

30) The assets of the erstwhile company had vested in the amalgamated company. A decree constitutes an asset. The said asset of erstwhile company has devolved on the amalgamated company. The eviction was on the ground of its own requirement of the erstwhile company. The said business will be continued to be carried by the amalgamated company. If the amalgamated company is deprived of the said benefit, it will frustrate the very purpose of amalgamation and

defeat the order of amalgamation passed by the High Court exercising jurisdiction under the Companies Act.

31) Further, the vacant land which was leased along with the building is the subject matter of the proceedings under the Ceiling Act. The landlord has obtained an order of exemption under Section 21 of the Act vide G.O. Rt. No. 2900 dated 04.11.1981 and the order G.O. Rt. No. 852 dated 25.06.1986. The exemption was expressly for the extension of the industry which is a public purpose. It is relevant to mention that under Section 21, only when the requirement of public interest is satisfied, the Government has power to grant exemption. It is also pointed out the conduct of the tenant when the landlord obtained an order of exemption under Section 21 of the Ceiling Act, the tenant moved the Government for cancellation of exemption and to assign the land in its favour. It also challenged the order of exemption before the High Court in Writ Petition No. 6434 of 1987 which was dismissed by the High Court by order dated 18.04.1991 and Writ Appeal No. 1177 of 1992 which was dismissed by the Division Bench of the High Court by order dated 12.07.1993.

32) The reliance placed on behalf of the tenant, Section 10, sub-clause 3, first proviso, is a new plea. The said proviso reads as under:-

"Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument inter vivos shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered."

It has no application to pending revisions. On the other hand, it applies only to an application made before the Rent Controller. The proviso enjoins that the landlord "is not occupying" the building. Even if the landlord owns other properties but is not in occupation

thereof, the proviso will not be attracted. The Rent Act does not deal with the ownership or title, but only with regard to the entitlement to occupation. Even otherwise, this Court will not permit this new plea to be raised for the first time. In any event, it is pointed out that the plea taken in the application for permission to place on record additional facts and documents that the amalgamated company owns other land, it is not pleaded that it is in occupation of such land, therefore, the proviso to Section 10(3)(iii) is not attracted.

33) The object of the Act is to prevent unreasonable eviction of the tenant in occupation and to control rents. Similarly, when landlord wants the property for its own purpose, it takes into account the fact of the landlord's occupation of other properties and not its ownership of other properties which does not in occupation. The Act permits eviction on reasonable grounds as provided for in the Act. It may be that there may be cases where it would be reasonable to evict the tenant, but that requirement may not strictly fall in any one of the provisions of Section 10 of the Act to entitle the landlord to evict the tenant. Section 29 of the Act therefore, enables the Government to grant exemption of the building in such cases so that the landlord may be entitled to evict the tenant under the ordinary remedy of suit.

34) The present case being one where the order of eviction is eminently just, fair and equitable as ordered by two authorities and confirmed by the High Court, we do not find any valid ground for interference, on the other hand, we are in agreement with the conclusion arrived at by the authorities as well as the High Court. Taking into consideration the appellant-tenant is continuing in the

premises for more than four decades, we grant time for handing over possession till 31.12.2010 on usual condition of filing an undertaking within a period of four weeks. With the above observation, the appeal fails and the same is dismissed. No order as to costs.

.....J.
(P. SATHASIVAM)

.....J.
(J.M. PANCHAL)

NEW DELHI;
MAY 14, 2010.

ITEM NO. 1-A COURT NO. 10 SECTION XVII

CIVIL APPEAL NO.4481/2010
(Petition for Special Leave to Appeal © No.29478/2009)

M/S. SPEEDLINE AGENCIES ..APPELLANTS

VERSUS

M/S. T. STANES & CO.LTD. ..RESPONDENT

DATE: 14/05/2010 This matter was called on for pronouncement of judgment today.

For Appellant: Ms. Liz Mathew,Adv.

For Respondent: Mr. Shiv Prakash Pandey,Adv.

...

Hon'ble Mr. Justice P. Sathasivam pronounced the judgment of the Bench comprising Hon'ble Mr. Justice J.M. Panchal and His Lordship.

Leave granted.

The appeal is dismissed.

No order as to costs.

(Arvind) (Savita Sainani)
Sr.PA Court Master

(Signed reportable judgment is placed on the file)