A

DWARKA PRASAD

v.

DWARKA DAS SARAF

August 11, 1975

B [A. N. RAY, C.J., K. K. MATHEW, V. R. KRISHNA IYER AND S. M. FAZAL ALI, JJ.]

U.P. (Temporary) Control of Rent and Eviction Act, 1947 *s.* 2(*a*)—*Scope of —Test to determine what is accommodation where the lease is composite.*

Interpretation—Proviso—How could be read

C The term "accommodation" is defined by s. 2(a) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 to mean residential and non-residential accommodation in any building or part of a building and includes, among others, any furniture supplied by the landlord for use in such building or part of a building and any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. A proviso was added to clause (a) by the Amending Act XVII of 1954 which says "but does not include any accommodation used as a factory or for an industrial purpose where the business carried on in or upon a building is also leased out to the lessee by the same transaction."

D The respondent took on lease the cinema theatre of which the appellant was the owner. The lease deed provided a rent of Rs. 400 p.m. for the building *simpliciter* and Rs. 1000 for the projector, fittings, fans and other fixtures. The suit for eviction filed by the appellant was dismissed by the trial court holding that the suit property was not accommodation within the meaning of the Act. The High Court upheld the view of the trial court.

E On appeal to this Court it was contended that the dominant purpose or real subject of the lease was the cinema apparatus and fittings, including subsidiarily and incidentally the building.

Allowing the appeal,

HELD : The lease sued on does not fall within the scope of accommodation. The appellant is entitled to a decree of eviction. [290B]

F (1) (a) The lease of an accommodation must essentially be of a building—not a business or industry together with the building in which it is situated. [282B-C]

(b) Where the lease is composite and has a plurality of purposes, the decisive test is the dominant purpose of the demise. The additions such as gardens, grounds and out-houses, if any, appurtenant to such building, any furniture supplied by the landlord for the use in such building, electrical fittings, sanitary fittings, and so on, are subservient and beneficial to the building itself. They make occupation of the building more convenient and pleasant when the principal G thing demised is the building and the additions are auxiliary. The furniture and fittings visualised in the concept of building are calculated to improve the beneficial enjoyment of the premises leased. [282D-E]

(c) The legislative policy is to control rents and evictions of buildings, rack-renting and profiteering by indiscriminate eviction from buildings, residential and non-residential. The law sought to rescue exploited tenants of buildings. It is, therefore, fair to hold that the protected category of accommodation was residential and non-residential buildings and not business houses. [283A-B]

H (d) It would be a travesty of language to speak of a lease of a building when what is substantially made over is a business or industrial plant. If a business were the subject matter of the lease, the prominent thing will be not what houses the business but the business itself. The building becomes secondary since every

business or industry has to be accommodated in some enclosure or building. In all such cases the lessor makes over possession of the building as part and parcel of the transfer of possession of the business. [283E-F] A

In the instant case a conspectus of factors settles the issue in favour of the landlord that the real intention of the parties to the lease was to demise primarily the cinema equipment and secondarily the building, the lease itself being a composite one. [284B-C]

(2) If on a fair construction, the principal provision is clear, a proviso cannot expand or limit it. Sometimes a proviso is engrafted by an apprehensive draftsman to remove possible doubts, to make matters plain, to light up ambiguous edges. A proviso ordinarily is but a proviso although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction. The Amending Act in this case clarified what was implicit earlier and expressly carved out what otherwise might be mistakenly covered by the main definition. The proviso does not expand by implication, the protected area of building tenancies to embrace business leases. [284F-G] B C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 210 of 1973.

From the Judgment and Decree dated 13th March, 1972 of the Allahabad High Court in First Appeal No. 448 of 1968.

R. K. Garg, S. C. Agarwala, V. J. Francis and *Madho Prasad,* for the appellant. D

V. M. Tarkunde, Hardayal Hardy and *P. P. Juneja,* for respondent No. 1.

The Judgment of the Court was delivered by

KRISHNA IYER, J.—The rent control law has been a rich source of lengthy litigation in the country and the present appeal, by certificate under Art. 133(1)(a) of the Constitution, at the instance of the appellant-landlord, is illustrative of one reason for such proliferation of cases, namely, the lack of clarity in legislative drafting and dovetailing of amendments which have the potential for creating interpretative confusion. E F

The facts are few and may be stated briefly, although, at a later stage, further details may have to be mentioned at relevant places to illumine the arguments advanced on both sides by counsel, Shri R. K. Garg (for the appellant) and Shri V. M. Tarkunde (for the respondent). Shortly put, the legal issues are only three : (A) Is a cinema theatre, equipped with projectors and other fittings and ready to be launched as an entertainment house, an 'accommodation' as defined in s. 2(1)(d) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (U.P. Act III of 1947) (for short, the Act)? (B) If it is an 'accommodation' as so defined, what is the impact of the proviso brought in by amendment in 1954 (Act XVII of 1954) (for short, the Amending Act)? (C) If the Act barricades eviction by the landlord because the premises let constitutes an 'accommodation', does the repeal of the Act and exclusion of cinema houses altogether from the operation of the 1972 Act (U.P. Act 13 of 1972) (for short, the later Act) rescue the right of the appellant-landlord to eject the tenant-respondent? G H

A The building covered by the suit is admittedly one built and adapted for screening films. The plaintiff had been carrying on a cinema business in this theatre for a long number of years but, when he discontinued, the defendant approached him in January 1952 for the grant of a lease of the building with all the equipment and fittings and furniture necessary for his operating the cinema. The necessary certificates, sanctions and permissions, preliminary to the conduct of B cinema shows, stood in the name of the plaintiff, including water-pipe connection, electricity supply and structural fitness. Before commencement of cinema shows, a licence is necessary under the U.P. Cinemas (Regulation) Act and this licence has to be taken out by the actual operator of the cinema and not by the landlord of the theatre and equipments. Therefore, once the lease for the entire building and cinema projector, accessories and the like was finalised, C the deed of demise was actually executed, it being provided that the commencement of the lease would synchronize with the inaugural cinema show on March 25, 1953. It was provided in the lease deeds that the rent for the building, *simpliciter,* may be shown separately from that attributable to the costly equipments, for the purposes of property tax and other taxes. By this apportionment, the building, as such, was to bear a burden of Rs. 400/- per mensem by way of rent D and a monthly sum of Rs. 1,000/- was fixed for the projector and all other items fixed in the building. The leases were renewed from time to time till 1959. The suit for eviction was based on these leases which formed the foundation of the action.

At this stage it may be noticed that the learned counsel for the defendant-tenant 'did not dispute that running a cinema business did E constitute an *industrial purpose* so that the accommodation was used for an industrial purpose'. Another significant fact admitted by the defendant's counsel before the High Court was 'that for the purpose of this case, in spite of there being separate documents of lease in respect of the demised properties as referred to above, these sets of contracts may be treated as a *single transaction* each time'. On these facts and circumstances, we have to decide whether the subject matter F of the demise is an 'accommodation' within the meaning of the Act. After settling this issue, the other two points adverted to above may have to be considered. While the trial Judge held that the suit property was not 'an accommodation' within the sweep of the Act, the High Court, on appeal before a Division Bench, could not agree and, on account of the difference of opinion between the two Judges who heard the appeal, the case was posted before a third Judge who G took the view that the subject matter of the lease in question was an 'accommodation' within the meaning of the Act. The suit, on this view, had to be dismissed. The aggrieved landlord has come up to challenge this judgment.

Let us now take a close-up of the definition of 'accommodation' in the Act and apply it to the admitted facts here. Section 2(a), H as it stood at the time of the first lease, ran thus :

> "Accommodation" means residential and non-residential accommodation in any building or part of a building and includes,

(i) gardens, grounds and out houses, if any appurtenant to such building or part of a building;

(ii) any furniture supplied by the landlord for use in such building or part of a building;

(iii) any fitting affixed to such building or part of a building for the more beneficial enjoyment thereof."

The Amending Act added a clause reading thus :

"but does not include any accommodation used as a factory or for an industrial purpose where the business carried on in or upon the building is also leased out to the lessee by the same transaction"

at the end of clause (a). We have to go by the amended definition in the present case. Since the basic fabric of the demise remained the same notwithstanding several renewals its terms have a bearing on the decision of the case. So we may reproduce it (relevant part) at this stage :

"We have taken a Cinema hall known as Dwarka Prasad Theatre Hall ... for running a cinema... on a monthly rent of Rs. 200/- commencing from March 25, 1953."

To complete the picture, we quote from the factual summing-up by Satish Chandra J., since it is convenient and uncontested :

"The same day the defendants executed another lease deed stating that they had taken the Dwarka Theatre Hall on a rent of Rs. 200/- per month and that in this building there is new furniture fitted for about 500 seats with ceiling and fittings of electric light and fans, complete machinery, ceiling fans and operating machine together with all articles present in the hall of the theatre a list whereof has been duly signed by the executant and that they had taken this also on a monthly rent of Rs. 1,100/- besides rent of the building. The lease deed dated 1-4-1954 executed by the defendants stated that whereas besides the cinema house popularly known as Dwarka Theatre Hall which has been taken on hire of Rs. 200/- per month, the defendants had also taken on rent of Rs. 800/- per month the new furniture with tapestry about 500 seats and ceiling and complete electric fittings including fans and machine and ceiling fans and operating machine together with the entire paraphernalia present in the theatre hall. The defendants in this lease deed stated that they had taken the building on rent to *continue running a cinema.* The lease deed of 10th January 1956 was a confirmation of the same subject matter of the lease. It appears that by now the landlord was fitting

A new furniture in the hall and for that reason the rent was increased to Rs. 1200/- per month. Similarly, in the lease deed dated 26th May, 1959 the defendants stated that they have taken a cinema hall known as Dwarka Theatre Hall on a monthly rent of Rs. 400/- and the furniture of about 500 seats, ceiling, electric fittings, with fans, complete machine, ceiling fans, operating machine and other articles present in B the theatre hall, a list whereof was attached, on a monthly rent of Rs. 1000/-."

Let us revert to the law. 'Accommodation', in plain English, may cover cinema houses with or without fittings. But legislaitve drafting does not always leave things that easy. Had there been a definition of 'controlled accommodation', he who runs and reads would have gathered the intendment of the statute. Here is a C further complication introduced by the addition of a proviso of sorts by the amending Act and a whole host of authorities on the canons of construction and functional role of a proviso and its indirect impact on the main provision has been brought to our notice. Does a proviso carve out something from the whole? Does it serve an independent enacting purpose? We do not think that legislative simplicity is an abstruse art, provided we reform our drafting methodology. The D Renton Committee in England high-lighted the importance of easy comprehensibility of law and wrote :

> "There is hardly any part of our national life or of our personal lives that is not affected by one statute or another. The affairs of local authorities, nationalised industries, public corporations, and private commerce are E regulated by legislation. The life of the ordinary citizen is affected by various provisions of the statute book from cradle to grave."

The instant case which deals with a legislation affecting the shelter of common people brings up the same problem.

The main definition of 'accommodation' in the Act brings within F its sweep not all kinds of buildings nor all types of realty leases. The protected category is confined to those species of leases whose purpose and subject matter answer the statutory prescriptions. More explicitly, the wider connotation or dictionary meaning of 'accommodation' must yield to the definitional delimitation. The core of the controversy here is (a) whether the lease is of the building, the fittings and other fixtures merely making for the beneficial enjoyment G of and ancillary to the building, as urged by the tenant, or whether the building provides a bare, though appropriately designed, enclosure to house an enterprise, the dominant purpose or real subject of the lease being the cinema, apparatus and fittings, including subsidiarily and incidentally, though necessarily, the structure of brick and mortar; and (b) whether the cinema, to fall within the exclusionary clause added by the Amending Act, must be actually a going concern with H all the licenses for showing films and running the theatre being in the name of the lessor. Lastly, the ffect of the repeal of the Act and the opening provision of the later Act putting cinemas out of its application, has been debated at the bar.

The Central Act (The Cinematograph Act) and the State Act (The U.P. Cinema Regulation Act) govern the exhibition of films and it is not in dispute that the theatre had been built for and used as a cinema house even before the first lease to the respondent in 1953. The further agreed facts are that when the last renewed lease of 1959 with which we are directly concerned was executed, there was a running cinema business and further that the rent apportioned for the building *qua* building was only a fraction of the rent 'for the costly fixtures intended for the cinema business'.

Looking at the three problems posed, unaided by the many decisions cited by counsel, we are inclined to the view that a lease of an 'accommodation' must essentially be of a building—not a business or industry together with the building in which it is situated. Of course, a building which is ordinarily let, be it for residential or non-residential purposes, will not be the bare walls, floor and roof, but will have necessary amenities to make habitation happy. That is why the legislature has fairly included gradens, grounds and out houses, if any, *appurtenant* to such building. Likewise, leases sometimes are of furnished buildings and that is why 'any furniture supplied by the landlord for use in such building' is treated as part of the building. In the same strain, we may notice, as a matter of common occurrence, many fittings 'such as electrical fittings, sanitary fittings, curtains and venetian blinds and air-conditioning equipment being fixed to the building by the landlord so that the tenant's enjoyment of the tenement may be more attractive. The crucial point is that these additions are appurtenant, subservient and beneficial to the building itself. They make occupation of the building more convenient and pleasant but the principal thing demised is the building and the additives are auxiliary. Where the lease is composite and has a plurality of purposes, the decisive test is the dominant purpose of the demise.

Forgetting for a moment the clause introduced by the amending Act, it is plain that the furniture and fittings visualized in the concept of 'accommodation' are calculated to improve the beneficial enjoyment of the premises leased. Counsel for the tenant has countered this interpretation by an ingenious and plausible submission. He emphasizes that the present building was conceived, designed and structured expressly as a cinema house conforming to the regulations in this behalf and the purpose of the owner was to use the auditorium and annexes purely as a cinema house. According to him, when a cinema theatre is erected, it becomes useless unless the necessary equipment for exhibiting films are also fitted up. In this view, the relative cost of the fixtures is immaterial and all these items, however costly, are calculated to fulfil the very object of the construction of the cinema theatre. In short, the fittings and furniture and like items are beneficial to and enhance the worth of the building and cannot be divorced or dissected from the whole object which animated the project of the building construction *qua* a cinema house. So presented, there is a certain attractiveness in the argument, although this fact of interpretation does not find a place in the submission on behalf of the respondent in the High Court.

A What then is the flaw in this submission, or merit in the earlier one? The legislative policy, so far as we can glean from the scheme of the Act, is to control rents and evictions of buildings, rack-renting and profiteering by indiscriminate eviction from buildings, residential and non-residential, being the evil sought to be suppressed. The law sought to rescue exploited tenants of buildings. If this be a sound B reading of the mind of the legislature it is fair to hold that the protected category of accommodation was residential and non-residential buildings and not business houses.

We have been at pains to explain that the subject matter of the leases covered by the definition of 'accommodation' is 'any building or part of a building'. We have carefully analysed the inclusive ex- C pressions in the original definition such as appurtenant gardens, grounds and out-houses, furniture for use in the building and fittings affixed to the building. In this statutory context, gardens, out-houses, furniture and fittings mean annexures for the better enjoyment of the building. In this sense, the dominant intention must be to lease the building *qua* building. If that be the intention, the rent control law protects. On the other hand, if a going undertaking such as a running D or ready-to-launch and fully equipped cinema house is covered by the provision, the emphasis is not so much on the building but on the business, actual or imminent. There is nothing in the present definition which helps this shift in accent.

We may reinforce our view from the expressions used, because all the three categories included as additions play a subservent role, E while if a business were the subject matter of the lease, the prominent thing will be not what houses the business but the business itself. The building becomes secondary since every business or industry has to be accommodated in some enclosure or building. In all such cases, the lessor makes over possession of the building as part and parcel of the transfer of possession of the business. It would be a travesty of language to speak of a lease of a building when what is substantially F made over is a business or industrial plant.

How then do we distinguish between a lease of a business or industry housed in a building from a building which has fixtures for more beneficial enjoyment? The former is a protected 'accommodation' while the latter is left for free market operation. In the persent case we have to visualize what was the dominant or decisive component G of the transaction between the parties, the tenancy of the building *qua* building or the taking over of a cinema house as a business, the projectors, furniture, fittings and annexes being the moving factor, the building itself playing a secondary, though necessary, role in the calculations of the parties. Going by the rental apportioned, it is obvious that the parties stressed the cinema equipment as by far the more important. Judging by the fact that there had already been a H cinema in this house for several years, with the necessary certificates under the various statutes for running a cinema theatre obtained by the landlord and that the lease itself was to commence only from the date of the first show of the films, doubts regarding the essential

object and subject of the bargain stand dispelled. The mere circumstance that the licence for showing films was taken by the tenant is of little consequence as the law itself requires it to be in his name. The further circumstance that the term of the lease in one case may vary from the other also where, as here, two deeds are executed, is not a telling factor, in view of the clear admission by counsel for the respondent that the two lease deeds together constituted *a single transaction* and that the lease was for an *industrial purpose,* to wit, running a cinema business. The conspectus of factors no one circumstance taken by itself—thus settles the issue in favour of the landlord who contends that what has been granted is a lease of a cinema business and, at any rate, the real intent of the parties to the lease was to demise primarily the cinema equipment and secondarily the building, the lease itself being a composite one.

Social justice, legislative policy, legal phraseology and precedential wisdom converge to the same point that the scheme of control includes, as its beneficiary, premises *simpliciter* and excludes from its ambit businesses accommodated in buildings. To hold otherwise is to pervert the purpose and distort the language of s.2(a).

The amending clause, argues Shri Tarkunde, strikes a contrary note. For, if the main definition in itself fences off leases of business and industry, why this superfluous proviso expressly excluding accommodation 'used as a factory or for an industrial purpose where the business is carried on in or upon the building is also leased out to a lessee by the same transaction'? The whole section must be read harmoniously, each part throwing light on the other and redundancy being frowned upon. A proviso carves out of a larger concept and the argument is that the need for the exclusionary clause itself shows that otherwise factories and businesses are within the operational area of the main definition.

There is some validity in this submission but if, on a fair construction, the principal provision is clear, a proviso cannot expand or limit it. Sometimes a proviso is engrafted by an apprehensive draftsman to remove possible doubts, to make matters plain, to light up ambiguous edges. Here, such is the case. In a country where factories and industries may still be in the developmental stage, it is not unusual to come across several such units which may not have costly machinery or plant or fittings and superficially consist of bare buildings plus minor fixtures. For example, a beedi factory or handicraft or carpentry unit—a few tools, some small contrivances or collection of materials housed in a building, will superficially look like a mere 'accommodation' but actually be a humming factory or business with a goodwill as business, with a prosperous reputation and a name among the business community and customers. Its value is *qua* business, although it has a habitation or building to accommodate it. The personality of the thing let out is a going concern or enterprise, not a lifeless edifice. The legislature, quite conceivably, thought that a marginal, yet substantial, class of buildings, with minimal equipments may still be good businesses and did not require protection as in the case of ordinary building tenancies. So, to dispel confusion from this region and to

A exclude what seemingly might be leases only of buildings but in truth might be leases of business, the legislature introduced the exclusionary proviso.

While rulings and text books bearing on statutory construction have assigned many functions for provisos, we have to be selective, having regard to the text and context of a statute. Nothing is B gained by extensive references to luminous classics or supportive case law. Having explained the approach we make to the specific 'proviso' situation in s. 2(a) of the Act, what strikes us as meaningful here is that the legislature by the amending Act clarified what was implicit earlier and expressly carved out what otherwise might be mistakenly covered by the main definition. The proviso does not, in this case, expand, by implication, the protected area of building C tenancies to embrace 'business' leases.

We may mention in fairness to counsel that the following, among other decisions, were cited at the bar bearing on the uses of provisos in statutes : *Commissioner of Income-tax* v. *Indo-Mercantile Bank Ltd.*(1); *M/s. Ram Narain Sons Ltd. v. Asst. Commissioner of Sales Tax*(2); *Thompson* v. *Dibdin* (3); *Rex* v. *Dibdin* (4) and *Tahsildar* D *Singh* v. *State of U.P.*(5). The law is trite. A proviso must be limited to the subject matter of the enacting clause. It is a settled rule of construction that a proviso must *prima facie* be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. 'Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context' (1912 E A.C. 544). If the rule of construction is that *prima facie* a proviso should be limited in its operation to the subject matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole F section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

> "The proper course is to apply the broad general rule of construction which is that a section or enactment must be construed as a whole each portion throwing light if need be on the rest.

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> The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail."

(Maxwell on Interpretation of Statutes, 10th Edn. P. 162)

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(1) [1959] Supp. 2 S. C. R. 256, 266. (2) [1955] 2 S. C. R. 483, 493.
(3) [1912] A. C. 533, 541. (4) [1910] Pro. Div. 57, 101, 125.
(5) [1969] Supp. 2 S. C. R. 875, 893.

We now move on to 'dominant intent' as the governing rule. In our view, the dominant intent is found in leading decision of this Court. Indeed, some State Legislatures, accepting the position that where the dominant intention of the lease is the enjoyment of a cinema, as distinguished from the building, have deliberately amended the definition by suitable changes (e.g. Kerala and Andhra Pradesh) while other Legislatures, on the opposite policy decision, have expressly excluded the rent control enactment (e.g., the latter Act).

In *Uttam Chand* v. *S. M. Lalwani*(1) this Court had to consider an analogous position under the Madhya Pradesh Accommodation Control Act where also the term 'accommodation' was defined substantially in the same language. The Court was considering the grant of the lease of a Dal Mill *vis a vis* 'accommodation', as defined in that Act. Gajendragadkar, CJ., elucidated the legal concept which reinforces our stand, if we may say so with respect. The learned Chief Justice observed :

> "What then was the dominant intention of the parties when they entered into the present transaction)? We have already set out the material terms of the lease and it seems to us plain that the dominant intenion of he appellant in accepting the lease from the respondent was to use the building as a Dal Mill. It is true that the document purports to be a lease in respect of the Dal Mill building, but the said description is not decisive of the matter because even if the intention of the parties was to let out the Mill to the appellant, the building would still have to be described as the Dal Mill building. It is not a case where the subject matter of the lease is the building and along with the leased building incidentally passes the fixture of the machinery in regard to the Mill, in truth, it is the Mill which is the subject matter of the lease, and it was because the Mill was intended to be let out that the building had inevitably to be let out along with the Mill. The fact that the appellant contends that the machinery which was transferred to him under the lease was found to be not very serviceable and that he had to bring in his own machinery, would not alter the character of the transaction. This is not a lease under which the appellant entered into possession for the purpose of residing in the building at all; this is a case where the appellant entered into the lease for the purpose of running the Dal Mill which was located in the building. It is obvious that a Mill of this kind will have to be located in some building or another, and so, the mere fact that the lease purports to be in respect of the building will not make it a base in respect of an accommodation as defined by s. 3(a)(y)(3). The fixtures described in the schedule to the lease are in no sense intended for the more beneficial enjoyment of the building. The fixtures are the primary object which the lease was intended to cover and the building in which the fixtures are located comes in incidentally. That

(1) A. I. R. 1965 S.C. 716.

A is why we think the High Court was right in coming to the conclusion that the rent which the appellant had agreed to pay to the respondent under the document in question cannot be said to be rent payable for any accommodation to which the Act applies."

The ratio of that case is that the Court must apply the test of dominant B intention of the parties to determine the character of the lease i.e., what was the primary purpose of the parties in executing the document? The mere fact that the demise deals with a building does not bring it within the ambit of accommodation. In the case before us the fixtures are not for the more beneficial enjoyment of the building. On the contrary, the possession of the building is made over as an integral part of, and incidental to, the making over of the cinema apparatus C and costly appliances. In the language of the learned Chief Justice in *Uttam Chand* case (supra), the 'fixtures are the primary object which the lease was intended to cover and the building in which the fixtures are located comes in incidentally'.

The following decisions were relied on, or referred to, by counsel for the appellant: *Raje Chetty* v. *Jagannathadas*(1); *Mohd. Jaffer* D *Ali* v. *S. R. Rao*(2); *Govindan* v. *Kunhilekshmi Amma*(3).

Rajamannar, C.J., speaking for the Division Bench in *Raja Chetty's* case (supra) dealt with the case of a lease of a cinema theatre in Madras in relation to the rent control law as it obtained in that State then. In that connection, the learned Chief Justice observed :

E "We have come to the conclusion that the lessors' application in this case is not maintainable on other grounds as well. In our opinion the lease in question is not governed by the provisions of Madras Act, XV of 1946. That Act regulates only the letting of residential and non-residential buildings. In s. 2, building has been defined as to include the garden, grounds and out-houses appurtenant to the build- F ing and furniture supplied by the landlord for use in such building. In the case before us, there is no lease of a mere building or a building with compound and furniture of the sort covered by the definition. The lease is of land and building together with fixtures, fittings, cinematographic talkie equipments, machinery and other articles. The lessors, evidently aware of the composite nature of the G demise, have prayed in their petition for eviction of the lessees from the land and buildings only. On behalf of the respondent, Mr. K. V. Ramachandra Iyer relied strongly on the provision in the deed which splits up the monthly rent and hire of Rs. 3,200/- into Rs. 1600 being rent for the ground and superstructure Rs. 800/- being hire of furniture and Rs. 800/-, being hire of talkie equipments and machinery, H fittings and lessors' fixtures. We have no hesitation in

(1) A. I. R. 1950 Mad. 284. (2) A. I. R. 1971 A. P. 156 (F. B.).

(3) A. I. R. 1966 Ker. 244 (F. B.)

holding that this splitting is purely notional and nominal and intended probably for purposes relating to the municipal assessment and other extraneous considerations. When we asked Mr. Ramachandra Iyer what would happen, in this case when there is an eviction of the lessees from the land building, to the machinery and equipments etc., and whether there was any provision in the deed relating to them, he confessed that there was no specific provision in the deed. Obviously they cannot be governed by Madras Act XV of 1946 and so he said they must be governed by the general law of contract. He also conceded that if the lessees paid Rs. 1600/- but defaulted in the payment of the balance which is due as hire, the lessors have no right to ask for eviction under the Rent Control Act. We think that the attempted division of the lease and separation of rights in regard to two classes of property is in the highest degree artificial, never contemplated by the parties. Here is a lease of a talkie house with everything that is necessary to run cinema shows. To split up such a composite lease as this into separate contracts of lease and hire is to destroy it altogether. Mr. Ramachandra Iyer argued that the furniture which was covered by the lease fell within the definition of s. 2 of the Act. We do not agree. The observations of the learned Judges in App. No. 590 of 1945 (Patanjali Sastri and Bell JJ.) in dealing with the plant, machinery and other moveables which were demised along with a factory are very apposite in this connection :

'No doubt in one sense the buildings comprised in the lease deed contain articles supplied by the londlord; but we cannot agree that what was so supplied can be considered in any modern sense as being furniture.'

Though in that case the learned Judges were dealing with the lease of factory called the West Coast Match Co., which consisted af land and buildings including a bungalow used for residential purposes together with plant, machinery and moveables contained therein, we think the principle of that decision would apply equally to the case before us in which there is a lease not merely of a building but of a cinema theatre with all necessary equipment far the exhibition of Films."

It is true that in *Jaffer Ali's* Case and in *Govindan's* case (supra) (the Andhra and Kerala decisions referred to above) cinema theatres have been held to fall within the definition of building, under the relevant rent control law of those States. A bare reading of the two cases would show that certain amendments had been made to the parent statutes whereby the definition was expanded and its wide range was made to include all tenancies relating to all structures, even though accessories, furniture and fittings for use *in the house* were

A also made over. There is no doubt that the word 'fittings' may take in a projector or other apparatus used for a cinema but it is one thing to say that apparatus is fixed in a building and it is another to say that such fixture or apparatus is for the beneficial enjoyment of the building. Therefore it depends on the words used reflecting the legislative policy of each State Legislature. Indeed in *Venkayya* B v. *Venkata Subba Rao*(1) a Division Bench of the Andhra Pradesh High Court considered whether the lease of a fixture comprising buildings and machinery came within the sweep of the rent control law. The court held that the lease of a running factory, comprising costly machinery intended to be used for manufacture, did not fall within the definition. The question, in each case, the learned Judges pointed out, would be what is the dominant part of the demise and what the C main purpose for which the building was let out is. In *Amritlal N. Shah* v. *Annapurnamma*(2) the same court held that the lease of a cinema did not come within the purview of Madras Act 25 of 1949. Definitional ramifications need not detain us nor decisions turning on them.

Shri Tarkunde pressed upon us the decision in *Karsandas* v. D *Karanji*(3) and *Karnani Properties Ltd.* v. *Miss Augustine*(4). One of them did refer to a cinema theatre with fittings and generators. Certain Calcutta decisions, *Kali Prosad* v. *Jagadish Pada*(5) and *D. S. Jain* v. *Meghamale Roy*(6) were also cited before us. In all these cases, the decision turned on the precise language used. We do not see any need to discuss these and the other decisions cited before us because we have explained why the conclusion we have reached is in E consonance with the sense, purpose and language of the Act. For the same reason we content ourselves with merely mentioning that in *Harisingh* v. *Ratanlal*(7) a Division Bench of the Madhya Pradesh High Court held that a fully equipped cinema theatre let out for showing films on a commercial basis, being of a running cinema theatre, fell out of the scope of accommodation on the score that costly fittings, fixtures and equipment could, in no sense, be regarded and meant F for the beneficial enjoyment of the building in which the cinema theatre was housed. The primary object and the definitional language used determine the issue.

Respondent's counsel did try to approximate the definition in the Act to that found in the enactments with reference to which decisions in his favour had been rendered. G We do not agree. To hair-split is an unhappy interpretative exercise. Here the plain intendment is to encompass leases of building only (inclusive of what renders them more congenial) but not of businesses accommodated in buildings nor of premises let out with the predominant purpose of running a business. A lease of a lucrative theatre with expensive cinema equipment, which latter pressed the

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(1) A. I. R. 1957 A. P. 619.
(2) A. I. R. 1959 A. P. 9.
(3) A. I. R. 1953 Sau. 113.
(4) A. I. R. 1959 S. C. 309.
(5) A. I. R. 1953 Cal. 149.
(6) 68 C. W. N. 1136.
(7) [1969] Jab. L. J. 639.

lessee to go into the transaction, cannot reasonably be reduced into a mere tenancy of a building together with fittings which but make the user more comfortable.

For these reasons we hold that the lease sued on does not fall within the scope of the definition of 'accommodation'. The appellant is, therefore, entitled to a decree for eviction, in allowance of his appeal.

The further question is as to whether the new Act which came into force in July 1972 applies to the present proceedings does not arise, although Shri R. K. Garg, for the appellant, relied upon express exclusion of cinemas by the new enactment. He also relied upon the ruling of this Court in *Qudratullah* v. *Bareilly Municipality*(1). We are not considering this argument or the counter-submissions made by Shri Tarkunde in this connection because the old Act itself does not cover the suit lease.

The short surviving point that remains is about the mesne profits. It is admitted by the respondent that he has been making a net income of Rs. 2,000/-. Adding Rs. 1,400/- which is the net rent under the lease, mesne profits at Rs. 3,400/- have been claimed by the appellant. It may not be quite correct to read into the admission a 'net income', although Shri Garg would have us do so. It may be more appropriate to direct the trial court to fix the mesne profits to be decreed from the date of the suit.

In the circumstances of the case we direct that on account of the uncertain position of the law and devergent decisions of courts, the parties do pay and bear their respective costs throughout.

A long-standing running cinema with outstanding contracts with film distributors cannot be uprooted overnight without considerable financial and business trauma to the affected party. It is but fair that we grant one year's time for the respondent to vacate the premises.

P.B.R. *Appeal allowed.*

(1) A. I. R. 1974 S.C. 396.