PETITIONER:
BALAI CHANDRA HAZRA

Vs.

RESPONDENT:
SHEWDHARI JADAV

DATE OF JUDGMENT21/02/1978

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
BEG, M. HAMEEDULLAH (CJ)
BHAGWATI, P.N.

CITATION:
1978 AIR 1062 1978 SCR (3) 147
1978 SCC (2) 559
CITATOR INFO :
D 1988 SC1531 (185)

ACT:
West Bengal Premises Tenancy Act, 1956, S. 13 Sub-S. 3-A--Whether retroactive operation of Sub-s.3A of S. 13 offends Art. 19(1)(f) of the Constitution of India.
Letters Patent Appeal under Clause 15--Whether the Court hearing an appeal under clause 15 of the Letters Patent can grant permission to amend the pleadings at that stage, while working out the mechanics consequent to a change in law.
Powers of the Appellate Court under Clause 15 of the Letters Patent of a High Court to record findings of an appreciation of fresh additional evidence--Whether consent can confer jurisdiction to take additional evidence and appreciate it on a Court which lacks inherent jurisdiction.
Art. 136 of the Constitution of India--Intervention by the Supreme Court, when leave limited to specific grounds and appeal by certificate, scope explained.
West Bengal Premises Tenancy Act, 1956 S. 17-E--Scope of.

HEADNOTE:
The suit for eviction of defendant-appellant from the ground floor of premises No. 16/lA, Ram Ratan Bose Lane, Shyambazar, which the appellant was occupying as a tenant on a monthly rent of Rs. 37/- on the ground that the respondent required the same for his own use and occupation, ended in a decree in favour of the respondent and was confirmed in appeal by the First Appellate Court. In the Second Appeal to the High Court at Calcutta, the appellant sought permission to adduce additional evidence to the effect that the requirement of the landlord stood satisfied because he had recovered possession of four rooms on the first and second floors of the same building. The appellant also contended that the suit filed by the respondent-landlord was incompetent, it having been instituted within a period of 3 years of the acquisition of his interest as landlord in the premises by transfer and was accordingly hit by sub-section 3-A of s. 13 of the West Bengal Premises Tenancy Act, 1956, as amended by the West Bengal Premises Tenancy (Second Amendment) Act, 1969. The contentions raised by the appellant in the Second Appeal were overruled by the High

Court and the appeal was dismissed and the decree for eviction was affirmed. Upon a certificate granted by the learned Single Judge of the High Court the appellant preferred an appeal under clause-15 of the Letters Patent. When the appeal under Clause-15 of the Letters Patent was pending in the High Court, respondent-plaintiff in view of the Court's decision in B. Banerjee v. Anita Pan, [1975] 2 S.C.R. 774, sought and obtained leave to amend the plaint and consequently the appellant defendant filed additional written statement and thereafter the Court framed fresh issues arising from the amended pleadings as under:

1. Is the premises in dispute reasonably required by the plaintiff respondent for his own occupation and for the occupation of the members of his family ?
2. Is the plaintiff-respondent in possession of any reasonably suitable accommodation?

Oral and documentary evidence were permitted to be adduced and thereafter the appeal was set down for hearing. Ultimately the appeal was dismissed, affirm the decree for eviction.

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Allowing the tenant's appeal by certificate, the Court

HELD : 1. The retroactive operation of sub-section 3A of s. 13 of the West Bengal Premises Tenancy Act, 1956 does not offend Art. 19 (1) (f) on the ground of unreasonableness. [153 F]

B. Banerjee v. Anita Pan, [1975] 2 S.C.R. 774 reiterated.

2. While working out the mechanics consequent upon upholding the validity of sub-section 3-A it was open to the Court hearing the appeal under Clause-15 of the Letters Patent to grant permission to amend pleadings. [153 G]

3. Ordinarily, an appellant is not entitled in an appeal under clause-15 of the Letters Patent to be heard on points which have not been raised before the Judge from whose judgment of appeal is preferred. If in second appeal the findings of fact recorded by the first Appellate Court are taken as binding, unless fresh additional evidence is permitted to be led when again appreciation of evidence to record a finding of fact would become necessary, that position is not altered, even if amendment of pleadings is granted which puts into controversy some new facts allowed in amended pleadings and therefore, the Court hearing the second appeal after granting amendment could not take over the function of the trial court or the first Appellate Court and undertake appreciation of evidence and record findings of facts. That is not the function of the Court hearing the second appeal under s. 100 as envisaged by the Code of Civil Procedure. The provision contained in s. 103 which defines the power of the High Court to determine a question of fact while hearing second appeal makes this clear. But, this power of the Court is limited to evidence on record which again is sufficient to determine an issue of fact necessary for disposal of the appeal and which has not been determined by the lower appellate court or 'which has been wrongly determined by such Court. [154 D-G]

4. When pleadings are amended at the stage of the appeal under clause-15 Of the Letters Patent and fresh allegations of facts are thus introduced in the controversy which necessitate additional evidence being permitted, it would not be open to the Court to proceed to record evidence and to appreciate the evidence and record findings of fact, a function which even ordinarily is not undertaken by the High Court hearing the Second Appeal, much less can it be done

while hearing an appeal under Clause-15 of the Letters Patent. [154 G-H]

5. When on account of a subsequent change in law, amendment of the pleadings is granted which raises disputed questions of fact the situation would not be one governed by 0.41 R.27 of the Civil Procedure Code. At that stage it could not be said that the Appellate Court is permitting production of additional evidence, oral or documentary on the ground that the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted or the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce the judgment. Nor would the situation be one which could be covered under the expression "other substantial cause". [154 H, 155 A]

6. To avoid hardship to the plaintiff the proper thing would be to grant leave to amend the pleadings and to give an equal opportunity to the defendant to controvert if he so chooses what the plaintiff contends by amended pleadings. But once that is done immediately the question of jurisdiction of the Court hearing the appeal under clause-15 of the Letters Patent would arise and if the appeal was entertained against a judgment rendered by the High Court in Second Appeal the limitations on the power of the High Court hearing the Second Appeal will ipso facto limit and circumscribe the jurisdiction of the Appellate Bench. If the High Court while hearing the Second Appeal, where the amended pleadings substantially raise disputed questions of fact which need resolution afresh after additional evidence, could not undertake the exercise of recording evidence and appreciating it and recording findings of fact, but could appropriately remand the case to the trial Court, the Bench hearing appeal against the judgment in Second Appeal could not enlarge its jurisdiction by undertaking that forbidden exercise. [155 C-F]

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7. When a Bench of a High Court is hearing an appeal preferred upon a certificate granted under Clause-15 of the Letters Patent by a Single Judge of the High Court who by his judgment has disposed of the of the Second Appeal, the Appellate Bench would be subject to the limitation on its power and jurisdiction to appreciate or re-appreciate evidence and to record findings fact which were never raised before the trial court or the First Appellate Court as the pleadings were permitted to be amended by it and the question was raised for the first time before it, to the same extent as the High Court hearing the Second Appeal with constrains of Ss. 100 and 103 of the Code. Admitting evidence is entirely different from appreciating it and acting upon it. [155 F-G]

Indrajit Pratap Sahi v. Amar Singh and Ors., Law Reports 50 I.A. 183, Surinder Kumar and Ors. v. Gian Chand & Ors, [1958] SCR 548, held inapplicable.

8. If the Court lacks inherent jurisdiction, no amount of consent can confer jurisdiction. The failure on the part of the appellant to object to the High Court hearing an appeal under Clause-15 of the Letters Patent taking oral evidence in respect of the amended pleadings would not clothe the Bench with jurisdiction to record fresh oral evidence and proceed to appreciate the same and record findings of facts. [156 C, 157B]

Ledgard v. Bull, Law Reports, 13 I.A. 134 at p. 145 Meenakshi Naidoo v. Subramaniya Sastri, Law Reports, 14 I.A. 160; discussed and

applied.

9. When the leave is limited on certain grounds it would not be appropriate to put in a narrow and grammatical construction of the grounds as if construing a statute or some rule, regulation or order of a public authority. As far as possible the grounds should not be very strictly construed or should not be construed in such a manner as to make the special leave grant under Art. self-defeating. Attempt of the Court must be to find out what was the grievance or contention that was being put forth before the Court which appealed to the Court in granting special leave under Art. 136. [157 G. H, 158 A]

10. (a) Article 136 confers power on the Supreme Court in its discretion to grant special leave from any judgment decree, determination, sentence or order in any case or matter, passed or made by any court or tribunal in the territory 'of India. Ordinarily once special leave is granted it is against the judgment, decree etc. However, by practice Supreme Court sometimes limits the leave to certain specific points. If the leave is limited to specific points, obviously the whole case is not open before the Court hearing the appeal.
[158 A-D]

Nafe Singh & Anr. v. State of Haryana, [1971] 3 SCC 934 Jagdev Singh & Anr. v. State of Punjab, A.I.R. 1973 SC 2427; referred to.

Addagada Raghavamma & Anr. v. Addagada Chanchamma & Anr. [1964] 2 SCR 933; held not applicable.

10. (b) Once a certificate is granted this Court undoubtedly has the power as a Court of Appeal to consider the correctness of the decision appealed against from, every stand point whether on questions of fact or law. It may in Its wisdom not interfere with the concurrent findings of fact but there is no bar to its jurisdiction from interfering with the same. But when an appeal is preferred under Art. 136 and the leave is limited to the specific grounds the scope of appeal cannot be enlarged so as to extend beyond what is permissible to be urged in support of the grounds to which the leave is limited. Undoubtedly the scope of the appeal would be limited to the grounds in respect of which the leave is granted but the grounds must be broadly construed to ascertain the question raised therein and not in a narrow or pedantic manner by literal interpretation of the language used. [158 G. H, 159 A-B]

10. (c) Although an order of this Court confining special leave under Art. 136, to certain points would imply a rejection of it so far as other points are concerned, yet, this Court has a constitutional power under Art. 137 of reviewing its own orders. This power may in very exceptional cases consistently with
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rules made under Art. 145 of the Constitution be so exercised in the interest of justice as to expand the leave itself subject to due notice to the respondents concerned and fair opportunity to meet the results of an extension of grounds of appeal. [159 B-C]

10. (d) In the instant case, the appellant-tenant was substantially contending that in view of the introduction of Sub-Section 3-A of S. 13, the suit when instituted was incompetent and that on a construction of S. 17E introduced in the parent Act by S. 4 of the West Premises Tenancy (complete) Act, 1970, the decree would be unenforceable. The contention was that by amendment of pleading a suit when instituted was incompetent, should not have been rendered

competent. From that springs the question about the court's jurisdiction to deal with the suit subsequent to amendment of pleadings. If it is one compact ground it can be said that the contention raised herein, if not explicit, would certainly be implicit in the grounds limited to which special Leave was granted and, therefore, this Court can not refuse to entertain it.
[159-C-E]
11. Sub-section (3A) of S, 13 bars a suit for eviction on any of the grounds mentioned in clause& (f) and (ff) of Sub-section (1) of S. 13 for a period of three years since the acquisition of interest by landlord in the premises. The suit should, therefore, have been filed three years after the purchase of the property by the respondent. The respondent would have been then required to show as to whether he required the premises and whether he had other reasonably suitable accommodation. The enquiry would have been related to the time when the suit could have been competently instituted. After focusing attention on this point, the trial Court would appreciate evidence and record findings of fact which can be re-examined by the first Appellate Court being the final court of facts. This very opportunity was denied to the appellant by the Bench arrogating the jurisdiction to itself to record evidence and to proceed to appreciate the same and reach conclusions of fact which become final. Therefore, considerable prejudice was caused to the appellant by the procedure followed by the Court and this Court will be amply justified in interfering with it and remand the same. [159 G-H, 160 A-B]
12. (a) By S. 17E power was conferred upon the Court to set aside the decrees passed in suits brought by transferee-landlord within three years from the date of the date of transfer. When appeal is pending it would be open to the tenant to raise the contention that the suit has become incompetent; but where the appeal is not pending or an execution application is pending and the tenant is still not physically evicted, it would be open to him to take advantage of the provisions contained in S. 17E. [160 C-E]
12. (b) The provision contained in S. 17E provides an additional remedy covering classes of cases of tenants against whom decree for eviction was made but there was no pending appeal against the decree. If the tenant applies under S. 17E he could get relief on the only ground that the decree was on the ground mentioned in Clause (f) of Sub-section (1) of S. 13 and not the other grounds because relief was sought to be granted by the provisions contained in S. 17E to those tenants against whom the decree for eviction was made under 8.13(1)(f). Therefore, it could not be said that once a specific remedy under S. 17E is provided for the:benefit of tenant under a decree for eviction on the ground mentioned in S. 13 (1) (f), that is the only way and no other in which he could get relief. If so, his appeal would become incompetent. Remedy under S. 17E is an additional remedy. More particularly it appears for the benefit of these tenants against Whom decree for eviction was made under S.13(1)(f) and appeal by whom was not pending so that they could protect themselves against eviction, by landlords whose suits had become incompetent in view of the provisions contained in Sub-section (3A) of S. 13. [160 G, 161 A-C]

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1138 of

1977.
(From the Judgment and Order dt. 12-8-76 of the High Court of Judicature at Calcutta in Letters Patent No. 184 of 1974.)
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A. K. Sen and Sukumar Ghosh for the Appellant.
Niren De and D. N. Mukherjee for the Respondent.
The Judgment of the Court was delivered by
DESAI, J.-This appeal by special leave arises from a suit filed by the plaintiff respondent for eviction of defendant appellant from the ground floor of premises No. 16/lA, Ram Ratan Bose Lane, Shyambazar, which the appellant was occupying as a tenant on a monthly rent of Rs. 37/-, on the ground that the respondent required the same for his own use and occupation. The suit ended in a decree in favour of the respondent and was confirmed in appeal by the Additional District Judge. The appellant thereupon preferred Second Appeal to the High Court at Calcutta. In the second appeal the appellant sought permission to adduce additional evidence to the effect that the requirement of the landlord stood satisfied because he had recovered possession of four rooms on the first and second floors of the same building. A contention was also raised by him that the suit filed by the landlord was incompetent, it having been instituted within a period of three years of the acquisition of his interest as landlord in the premises by transfer and was accordingly hit by sub-section (3A) of section 13 of the West Bengal Premises Tenancy Act, 1956, as amended by the West Bengal Premises Tenancy (Second Amendment) Act, 1969. The contentions raised by the appellant in the second appeal were overruled by the High Court and the appeal was dismissed and the decree for eviction was affirmed. Upon a certificate granted by the learned single Judge of the High Court the appellant preferred appeal under clause 15 of the Letters Patent. When the appeal under clause 15 of the Letters Patent was pending in the High Court, respondent plaintiff sought and obtained leave to amend the plaint and consequently the appellant defendant filed additional written statement. Thereafter the court framed fresh issues arising from the amended pleadings as under :

> "1. Is the premises in dispute reasonably required by the plaintiff-respondent for his own occupation and for the occupation of the members of his family?
> 2. Is the plaintiff-respondent in possession of any reasonably suitable accommodation ?"

Oral and documentary evidence was permitted to be adduced and thereafter the appeal was set down for hearing. Ultimately the appeal was dismissed affirming the decree for eviction. Hence the present appeal by special leave.
It is an admitted position that the building of which suit promises form part was purchased by the landlord on October 1, 1963 and notice dated June 16, 1964 terminating the tenancy was served upon the tenant. The landlord filed title suit No. 198 of 1964 on August 27, 1964, against the tenant.
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By the amending Act 34 of 1969 West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as the 'parent Act') was amended. Clause (f) of sub-s. (1) of s. 13 of the parent Act was substituted by s. 4 of the Amending Act as under :-

> "(f) subject to the provisions of sub-section (3A) and section 13A, where the premises are

reasonably required by the landlord for purposes of building or rebuilding or for making thereto substantial additions or alterations, and such building or rebuilding, or additions or alterations, cannot be carried out without the premises being vacated;

(ff) subject to the provisions of sub-section (3A), where the premises are reasonably required by the landlord for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held and the landlord or such person is not in possession of any reasonably suitable accommodation;"

A new sub-s. (3A) was added after sub-s. (3) of s. 13 as under

"(3A) where a landlord has acquired his interest in the premises by transfer, no suit for the recovery of possession of the premises on any of the grounds mentioned in clause (f) or clause (ff) of sub-section (1) shall be instituted by the landlord before the expiration of a period of three years from the date of his acquisition of such interest

Provided that a suit for the recovery of the possession of the premises may be instituted on the ground mentioned in clause (f) of sub-section (1) before the expiration of the said period of three years if the controller, on the application of the landlord and after giving the tenant an opportunity of being heard, permits, by order, the institution of the suit on the ground that the building or rebuilding, or the additions or alterations, as the case may be, are necessary to make the premises safe for human habitation."

By s. 13 of the Amending Act, the amendments in the parent Act introduced by ss. 4, 7, 8 and 9 of the Amending Act were made retroactive, being applicable to suits including appeals which were pending at the date of the commencement of the Amending Act. Constitutional validity of sub-s. (3A) introduced in s. 13 was challenged before a Division Bench of the Calcutta High Court in Sailendra Nath v. S. E. Dutt.(1) The High Court voided only that part of sub-s. (3A) of s. 13 by which it was made retroactive by applying it to pending suits and appeals as being ultra vires of Art. 19(1)(f) of the Constitution on the ground of unreasonableness. The matter came before this Court and in B. Banerjee v. Anita Pan, (2) Krishna Iyer, J. speaking for the majority observed as under

(1) A.I.R. 1971 Cal. 331.

(2) [1975] 2 S.C.R. 774.

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"We see in the amendment Act no violation of Art. 19(1) (f) read with 19(5). The same High Court, in a later case Kalyani Dutt v. Promila Bala Dassi, ILR (1972) 2 Cal. 660, came to the same conclusion by what it called independently considering the question'. We discern nothing substantially different in the analysis or approach to merit review of our result. We hold s. 13 of the Amendment Act

valid and repel the vice of unreasonableness discovered in both the reported rulings of the High Court."

While upholding constitutional validity of sub-s. (3A) of s. 13, in order to work out the mechanics of the application of amending provisions to pending actions, with a view to avoiding multiplicity of litigation as well as protraction of litigation it was suggested that the plaintiff landlord may put in fresh pleadings wherever the suit is pending and the tenant should be given an opportunity to fit,-- his written statement and the Court should dispose of the matter after giving both sides the right to lead additional evidence. It was observed that it would certainly be opened to the appellate court either to take evidence directly or to call for a finding. Expeditious disposal of belated litigation will undoubtedly be a consideration with the Court in exercising this discretion. The proviso to sub-s. (3A) can also be complied with if the plaintiff gets the permission of the Rent Controller in the manner laid down therein before filing his fresh pleadings.

Pursuant to the decision rendered by this Court in B. Banerjee's case (supra), the High Court in the pending Letters Patent Appeal permitted the plaintiff to amend the plaint whereupon the defendant filed additional written statement and fresh issues were framed as hereinbefore set out and after permitting the parties to lead oral and documentary evidence the appeal was disposed of as hereinabove mentioned.

Mr. Niren De appearing for the respondent at one stage attempted to contend that to the extent sub-s. (3A) of s. 13 is made retroactive it is ultra vires article 19 (1) (f) and thus he wanted to reopen the controversy settled by this Court in B. Banerjee's case. We were not persuaded by any such submission and we accept the ratio in B. Banerjee's case that the retroactive operation of sub-s. (3A) of s. 13 does not offend article 19 (1) (f) on the ground of unreasonableness.

Mr. A. K. Sen learned counsel who appeared for the appellant vigorously contended that the Bench hearing appeal under clause 15 of the Letters Patent has no jurisdiction to take fresh evidence even if it permits amendment of the pleadings. While working out the mechanics consequent upon upholding the validity of sub-s. (3A) it was open to the Court hearing the appeal under clause 15 of the Letters Patent to grant permission to amend the pleadings. By a catena of decisions Order 6, Rule 17 of the Code of Civil Procedure has been interpreted to mean that leave to amend may be granted at any stage of the proceedings which may include appeal or even second appeal. But, urged Mr. Sen, that the jurisdiction of the Court hearing an appeal under clause 15 does not extend to

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taking and appreciating evidence and recording findings of facts on issues that may_have to be determined arising from amended pleadings. It was said that Order 41, Rules 25 and 27 are exhaustive of the powers of the appellate court to take additional evidence. Simultaneously it was pointed out that s. 100 prescribes the peripheral limits of the Court's jurisdiction while hearing a second appeal. Section 100 as it stood at the relevant time permitted a second appeal to the High Court from every decree passed in appeal by any Court subordinate to High Court on any of the_following grounds, viz., (a) the decision being contrary to law or to some usage having the force of law; (b) the decision having

failed to determine some material issue of law or usage having the force of law; (c) a substantial error or defect in the procedure provided by the Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits. It was submitted that if this is the peripheral limit of jurisdiction of a court hearing second appeal, it is just not conceivable that a Bench hearing an appeal under clause 15 of the Letters Patent upon a certificate granted by the single Judge could have a wider jurisdiction than the court hearing the second appeal.

There is a near concensus amongst the various High Courts that ordinarily an appellant is not entitled in an appeal under clause 15 to be heard on points which have not been raised before the judge'from whose judgment the appeal is preferred. Now, if in second appeal the findings of fact recorded by the first appellate court are taken as binding unless fresh additional evidence is permitted to be led when again appreciation of evidence to record a finding of fact would become necessary, that position is not altered even if amendment of pleadings is granted which puts into controversy some new facts alleged in amended pleadings and therefore the Court hearing the second appeal after granting amendment could not take over the function of the trial court or the first appellate court and undertake appre-ciation of evidence and record finding,, of facts. That is not the function envisaged by the Code of the Court hearing second appeal under s. 100. This becomes crystal clear from the provision contained in s. 103 which defines the power of the High Court to determine a question of fact while hearing second appeal. But this power of the Court is limited to evidence on record which again is sufficient to determine an issue of fact necessary for disposal of the appeal and which has not been determind by the lower appellate Court or which has been wrongly determined by such court. When pleadings are amended at the stage of the appeal under clause 15 of the Letters Patent and fresh allegations of facts are thus introduced in the controversy which necessitate additional evidence being permitted it would not be open to the Court to proceed to record evidence and to appreciate the evidence and record findings of fact, a function which even ordinarily is hot undertaken by the High Court bearing the second appeal, much less can it be done while hearing an appeal under clause 15 of the Letters Patent. When on account of a subsequent change in law, amendment of the pleadings is granted which raises disputed questions of fact, the situation would not be one governed by Order
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41, r. 27. At that stage it could not be said that the appellate court is permitting production of additional evidence, oral or documentary on the ground that the court from whose decree the appeal is preferred has refused to adduce evidence which ought to have been admitted or the appellate court requires any documents to be produced or any witness to be examined to enable it to pronounce judgment. Not would the situation be one which could be covered under the expression "other substantial cause". Once pleading are permitted to be amended which bring into focus altogether new or fresh disputed questions of fact which have to be resolved on additional evidence that would be necessary to be led, the function is one of appreciation of evidence more appropriately to be undertaken by the trial court or at the most the first appellate court but not the High Court hearing the second appeal or an appeal under clause 15 of the Letters Patent. It is not for a moment suggested that

at the stage at which leave to amend pleadings has been granted the High Court was not competent to grant it.In fact, in an identical situation in B. Banerjee's case (supra) 'this Court had in terms indicated that to avoid hardship to the plaintiff landlord the appropriate thing would be to grant leave to amend the pleading and five an equal opportunity to the defendant to controvert if lie so chooses what the plaintiff contends by amended pleading. But once that is done immediately the question of jurisdiction of the court hearing the appeal under clause 15 of the Letters Patent would arise and if the appeal was entertained against the judgment rendered by the High Court in second appeal the limitations on the power of the High Court hearing the second appeal will ipso facto limit and circumscribe the jurisdiction of the appellate Bench. If the High Court while hearing second appeal, conceding that it could have allowed amendment of pleading, where the amended pleadings substantially ;raise disputed questions of fact which need resolution afresh after additional evidence, could not undertake the exercise of recording evidence and appreciating it and recording findings of fact, but would appropriately remand the case to the trial court, the Bench hearing the appeal against the judgment in second appeal could Pot enlarge its jurisdiction by-undertaking that forbidden exercise. It would, therefore, appear that when a Bench of a High Court is hearing an appeal ;preferred upon a certificate granted under clause 15 of the Letters Patent by a single judge of the High Court who by his judgment has disposed of the second appeal the appellate bench would be subject to the limitation on its power and jurisdiction to appreciate or reappreciate evidence and to record finding of fact which were never raised before the trial court or the first appellate court as the pleadings were permitted to be amended by it and the question was raised for the first time before it, to the same extent as the High Court hearing second appeal with constraints of ss. 100 and 103 of the Code. It must be distinctly understood that admitting evidence is entirely different from appreciating it and acting upon it. The Judicial Committee of the Privy Council in Indrajit Pratap Sahi v. Amar Singh & Ors.,(1) was concerned with the ambit of jurisdiction of the appellate court to admit evidence under Order 41, r. 27. It was held that the jurisdic-

(1) Law Reports 50 I.A. 183.

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tion can be exercised at the instance of a party and the Judicial Committee has unrestricted power to admit documents where sufficient grounds have been shown for their having not been produced at the initial stage of the litigation. This view was affirmed by this Court in Surinder Kumar & Ors. v. Gian Chand & Ors.(1) But that has no relevance to the situation under discussion here.

Mr. De, however, contended that the appellant had agreed or in fact had never objected to the appellate Bench examining witnesses and recording findings of fact on appreciation of evidence and that it would not now be open to the appellant to resile from the position adopted by him and he is estopped from doing it. This contention raises the vexed question whether consent can confer jurisdiction on a court which lacks inherent jurisdiction. If the Court lacks inherent jurisdiction no amount of consent can confer jurisdiction. This is settled by a long line of decisions commencing from Ledgard v. Bull, (2) wherein the Judicial Committee was examining the question whether a District Judge could entertain a suit complaining infringement of

patent not upon institution before him but by transfer from the Court of the subordinate Judge where it was instituted. It was accepted that if the suit was instituted in the court of the District Judge, the Distt. Judge had jurisdiction to entertain it but a very narrow and limited question was examined whether the Distt. Judge could entertain it on transfer from the Court of the Subordinate Judge. It was also pointed out that the defendant who had raised a contention as to the jurisdiction of the Distt. Judge to hear the suit had given his positive consent to the transfer of the suit. Even then the Judicial, Committee held as under :

> "The District Judge was perfectly competent to entertain and try the suit, if it were competently brought, and their Lordships do not doubt that, in such a case, a defendant may be barred, by his own conduct, from objecting to irregularities in the institution of the suit. When the Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent, convert it into a proper judicial process, although they may constitute the Judge their arbiter, and be bound by his decision on the merits when these are submitted to him'.

Consent in such a situation could not be interpreted as waiver of the objection nor could it confer jurisdiction where- the Court inherently lacked jurisdiction to try the suit.

This very principle was reaffirmed in Meenakshi Naidoo V. Subramamya Sastri,(3) wherein the High Court in appeal against the order of the District-Judge had set aside the order of the Distt. Judge appointing the appellant on the Committee of the Pagode in the Madras Presidency. When the matter was before the High Court it was never

(1) [1958] S.C.R. 548.
(2) Law Reports 13 I.A. 134 at p. 145.
(3) Law Reports, 14 I.A. 160.

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contended that the appeal was incompetent and such a contention was raised before the Judicial Committee for the first time. Following the decision in Ledgard v. Bull (supra), it was held that when the Judge has no inherent jurisdiction over the subject matter of a suit, the parties cannot by their mutual consent convert it into a proper judicial process, although they may constitute the Judge their arbiter, and be bound by his decision on the merits when these are submitted to him. Therefore, the failure on the part of the appellant to object to the High Court hearing an appeal under clause 15 of the Letters Patent taking oral evidence in respect of the amended pleadings would not cloth the Bench with jurisdiction to record fresh oral evidence and proceed to Appreciate the same and record findings of facts.

Mr. De next contended that the contention now raised by the appellant is not open to him in view of the limited leave granted by this Court under Article 136 of the Constitution. While granting special leave to appeal against the judgment of the Division Bench of the High Court, this Court made an order as under :

> "Special leave is granted limited only to grounds Nos. 2 and 5 of the special leave petition."
>
> Grounds Nos. 2 and 5 are as under

"2. For that the impugned judgment of the High Court is vitiated by manifest error in law that by granting amendment of plaint on July 11, 1975 which was originality filed on June 16, 1964 within 3 years from the purchase of the suit premises by the landlord, the suit can be taken out of the mandatory prohibition laid down in sub-section (3A) of section 13 of the W.B. Premises Tenancy Act.

5. For that the impugned judgment is vitiated by a manifest error of law and the learned judges failed to take into consideration the provisions of section 17E of the W.B. Premises Tenancy Act introduced by the W.B. Premises Tenancy (Amendment) Act, 1970 to the effect that even the decrees passed in earlier suits in contravention of the provisions of sub-section (3A) of section 13 of the Act should be vacated."

A very narrow, literal and verbal interpretation of grounds Nos. and 5 may prima facie indicate that the question in terms now raised would not be covered by ground either 2 or 5.But it would not be proper to put tomorrow an interpretation on the language employed in grounds nos. 2 and 5. When leave is limited to certain grounds it would no the appropriate to put a very narrow and grammatical construction of the grounds as if we were construing a statute or some rule, regulation or order of a public authority. More often it is our experience while hearing applications for special leave that grounds set out in special leave application are overlapping and fairly often repeated, and even occasionally vague. Therefore, as far as 158 possible, the grounds should not be very strictly construed or should not be construed in such a manner as to make the special leave grant-ed under Article. 136 self-defeating. Attempt of the Court must be to find out what was the grievance or contention that was being put, forth before the Court which appealed to the Court in granting special leave under Article 136. Article 136 confers power on this Court in its discretion to grant special leave from any judgment, decree, determination, sentence or order in any case or matter, passed or made by any court or tribunal in the territory of India. Ordinarily once special leave is granted it is against the judgment, decree, etc. However, by practice this Court sometimes limits the leave to certain specific: points. If the leave is limited to specific points, obviously the whole case is not open before the Court hearing the appeal. In Nafe Singh & Anr. v. State of Haryana,(1) this Court declined to examine the question whether on evidence the case was proved to the satisfaction of the Court, because special leave was limited to the question of sentence. Similarly, in Jagdev Singh & Anr. v. State of Punjab,(-) leave was limited to the applicability of the Probation of Offienders Act and accordingly this Court did not permit enlargement of the leave observing that the scope of the leave was confined to the limitations specified in the order granting special leave and will not be enlarged for considering the correctness of the conviction for the particular offence. It was, however, urged that where a certificate is granted by the high Court under Article 133 specifying the question of law in respect of which the certificate is granted, this Court did not limit the scope of the appeal to the terms of the certificate. In Addagada Raghavamma & Anr. v. Addagada

Chenchamma & Anr.(3), while negativing a preliminary objections to the effect that the certificate granted by the High Court under Article 133(1) must govern the scope of the appeal to the Supreme Court for otherwise the said certificate would become otiose, the Court held that the terms of the certificate did not circumscribe the scope of the appeal and once a proper certificate is granted the Supreme Court undoubtedly has power as a court of appeal to, consider the correctness of the decision appealed against from everystand point whether of questions of fact or law. It was held that if the certificate is good, the provisions of Article 133 did not confine the scope of the appeal to the certificate. This decision cannot help the appellant because when a certificate is granted under Article 133 (1) as. it stood prior to the Constitution (Thirtieth Amendment) Act, 1972, an appeal lay to the Supreme Court from any judgment, decree or final' order, if the High Court certified the case falling under clauses (a), (b) or (c). Once a certificate is granted this Court undoubtedly has the power as a Court of Appeal to consider the correctness of the decision appealed against from every standpoint whether on questions of fact or law. It may in its wisdom not interfere with the concurrent findings of fact but there is no bar to its jurisdiction from interfering with the same. But when an appeal is preferred under Article 136 and the leave is limited to the specific grounds, the scope of appeal cannot be

(1) [1971] 3 S.C.C. 934.
(2) A.I.R. 1973 S.C. 2427.
(3) [1964] 2 S.C.R. 933.

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enlarged so as to extend beyond what is permissible to be urged in support of the grounds to which the leave is limited. Undoubtedly, therefore, the scope of the appeal would be limited to the grounds in respect of which the leave is granted, but having said this, it must be made distinctly clear that the grounds must be broadly construed to ascertain the real question raised therein and not in it narrow or pedantic manner by literal interpretation of the language used.

Again, it must be borne in mind that, although, an order of this Court confining special leave under article 136 to certain points would imply a rejection of it so far as other points are concerned, yet, this Court as a constitutional power under article 137 of reviewing its own order. This power may, in very exceptional cases, consistently with, rules made under article 145 of the Constitution, be so exercised, in the interests of justice, as to expand the leave itself subject to due notice to the respondents concerned that fair opportunity to meet the results of an extension of grounds of appeal.,

The appellant tenant was substantially contending that in view of the introduction of sub-section (3A) of s. 13, the suit when instituted was incompetent and that on a proper construction of s. 17E introduced in the parent Act by s. 4 of the West Bengal Premises Tenancy (Complete) Act, 1970, the decree would be unenforceable. The contention was that by amendment of pleading a suit when instituted was incompetent, should not have been rendered competent. From that springs the question about the court's jurisdiction to deal with the suit subsequent to amendment of pleadings. If it is one compact ground it can be said that the contention raised herein, if not explicit, would certainly be implicit in the grounds limited to which special leave was granted and, therefore, we cannot refuse to entertain it.

It was lastly urged that ultimately whether the High Court should appreciate the evidence and record findings of fact or remand it to, the trial Court is a matter within the discretion of the High Court and that if the High Court has exercised the discretion one way, this Court should not interfere with the same. It was further said that rules of procedure are not made for the, purpose of hindering justice but for advancing substantial justice. It was, further said that the appellant tenant was given full opportunity to produce his evidence and had the benefit of. appreciation of evidence by a Bench of two judges of the High Court and that it would be paying undue and undeserved respect to the rules of procedure to remand the matter at this stage. Once the amendment is allowed, the basic approach to the suit would undergo a change. Sub-section (3A) of s. 13 bars a suit for eviction on any of the grounds mentioned in clauses (f) and (ff) of sub-s. (1) of s. 13 for a period of three years since the acquisition of interest by landlord in the premises. The suit should, therefore, have been filed three years after the purchase of property by the respondent. The respondent would have been then required to show as to whether he required the premises and whether he had other reasonably suitable accommodation. The enquiry would have been related to the time when the suit could have been competently instituted. After focusing attention on this
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point, the trial court would appreciate evidence, and record findings of fact which can be reexamined by the first appellate court being the final court of facts. This very opportunity was denied to, the appellant by the Bench arrogating the jurisdiction to itself to record evidence and to proceed to appreciate the same and reach conclusions of fact which become final. Therefore, considerable prejudice was caused to the appellant by the procedure followed by the court and this Court will be amply justified in interfering with the same. Ile remand, there fore, is inevitable.

Before concluding the judgment, we must advert to one contention raised by Mr. De for the respondent. It was urged that the appellant tenant leaving failed to take advantage of s. 17E introduced-by the West Bengal Premises Tenancy Amendment (Complete) Act, 1970, it is not open to him to challenge the decree of eviction passed against him. By s. 17E power was conferred upon the court to set aside certain decrees passed in suits brought by transferee landlords within three years of the date of transfer. In fast this was the necessary corollary of the introduction of sub-s. (3A) in s. 13 and making it 'retroactive. There may be tenants against whom decree- for eviction was made at the instance of transferee landlords whose suits would be otherwise incompetent in view of sub-s. (3A.) of s. 13. Now, it may be that even though the decree for eviction was passed by the Court, the tenant may have continued in possession because some proceedings may be pending or for some other reason. In such a situation, upon an application made by the tenant within a period of 60 days, from the date of commencement of the Amending Act, the Court was required to set aside the decree for eviction. When appeal is pending it would Pe open to the tenant to raise the contention that the suit has become incompetent, but where the appeal is not pending or an execution application is-pending and the tenant is still not physically evicted, it would be open to him to take advantage of the provisions contained in s. 17E. The present appellant appears to have made an application purporting to be under S. 17E on 25th April 1970 in the Court of Additional Munsif at Sealdah. On

this application notice was ordered to be issued to the other side. Notice of the application appears to have been refused by the respondent looking to the order sheet of the learned Munsif dated 9th September 1970. This was treated as proper service and the present appellant was directed to take steps to produce certain unpunched court-fee stamps. The appellant appears to have failed to take necessary steps and the application was rejected for want of prosecution. It was contended that once the appellant applied under S. 17E for setting aside the decree of eviction, the decree has become binding and it is not open to him to question the correctness of the decree. There is no merit- in this connection because the appeal in which the decree was questioned was still pending. The provision contained in S. 17E provides an additional remedy covering classes of cases of tenants against whom decree for eviction was made but there was no pending appeal against the decree. If the submission of Mr. De is accepted, the provisions contained in S. 17E would be rendered nugatory. We specifically asked Mr. De a question as to what would
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be the position where a decree for eviction is made on two grounds, one under s. 13(1) (f) and the other under other provisions of s. 13 and the appeal of the tenant is pending. Would the appeal become incompetent if the-.tenant does not apply under s. 17E ? If the tenant applies under s. 17E he can get relief on the only ground that the decree was on the ground mentioned in clause (f) of sub-s. (1) of s. 13 and not the other grounds because relief was sought to be granted by the provisions contained in s. 17E to those tenants against whom decree for eviction was made under s. 13(1) (f). Would the appeal in such a situation become incompetent in part and remain competent for the other part ? Therefore, it could not be said that once a specific remedy under s. 17E is provided for the benefit of tenants under a decree for eviction on the ground mentioned in s. 13(1) (f), that is the only way and no other in which he could get relief. If so, his appeal would become incompetent. Remedy under s. 17E is an additional remedy. More particularly it appears for the benefit of those tenants against whom decree for eviction was made under s. 13 (1) (f) and appeal by whom was not pending so that they could protect themselves against eviction by landlords whose suits had become incompetent in view of the provisions contained in sub-s. (3A) of s. 13.

Accordingly, this appeal is allowed and the decree for eviction made by all the Courts against the appellant is set aside and the suit is remanded to the trial court to proceed further from the stage after amendments of pleadings were granted by the High Court and the relevant issues were framed pursuant to the amended pleadings. In the circumstances of this case there shall be no order as to costs of appeal in this Court.

S.R. Appeal allowed : Case remanded.
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