

CASE NO.:
Appeal (civil) 2609-2610 of 2003

PETITIONER:
Arm Group Enterprises Ltd.,

RESPONDENT:
Waldorf Restaurant & Ors.

DATE OF JUDGMENT: 01/03/2003

BENCH:
Doraiswamy Raju & D.M. Dharmadhikari.

JUDGMENT:

J U D G M E N T

(Arising out of SLP(Civil) Nos. 18045-18046 Of 2000)

Dharmadhikari J.

The facts and events in more than 45 years period spent in this litigation amply demonstrate how clever parties on engineers legal advice succeed in delay delivery of justice by adopting all conceivable tactics and thus bring disrepute to the legal and judicial process.

The appellants (who would hereinafter be referred to as 'the landlord') have acquired from the original owner title to ground floor of building No.2, area 2537 Sq. Ft in Park Street, Calcutta. The previous owner of the premises in suit obtained a compromise decree of eviction on 27.4.1955 against Allenberry & Company limited (respondent No.3) who was the tenant in the suit premises. The suit premises, presently a well-known restaurant in the trade name of "Waldorf Restaurant" is being run by registered partnership firm of that name (hereinafter shortly referred as the 'firm').

The tenant Allenberry & C o. (respondent No.3) in terms of the compromise decree has vacated the suit premises but the firm (respondent No.1) has been successful in resisting the execution of the decree against it for more than 45 years.

Before pressing history of the litigation leading to the passing of the compromise decree and various attempts made by the firm to resist execution of the decree, the principal question involved in these appeals may be stated at outset. The main question involved is whether the respondent firm can claim status of sub-tenant and protection against eviction in execution of the compromise decree against the tenant under the provision of the West Bengal Premises Rent Control (temporary provisions) Act 1950 (hereinafter shortly referred to as the Act of 1950).

Short of unnecessary details of counter litigation between the parties, facts relevant for decision of the legal question before us are as under:

The suit premises presently in use for running Waldorf Restaurant originally belong to Chitpur Golabari Company Limited (respondent No.2 herein). Between the period 1.1.1939 to 31.12.1951 Allenberry & Company (respondent No.3 herein) was the contractual tenant of the original landlord.) On 12.8.1953 Allenberry & Co. hereinafter shortly referred to as the tenant) gave a formal notice to the landlord expressing its intention to surrender the tenancy and vacate the leased premises by 31.8.1953. The aforesaid notice to surrender the leased premises resulted in law in determination of the lease

under Section 106 read with Section 111 of the Transfer of Property Act. This legal position has been finally settled by the decision of this Court in the case of Calcutta Credit Corporation Ltd. vs. Happy Homes Private Limited [1968 (2) SCR 20] that was a case in respect of other portion of the same building which was also in occupation of original tenant and was part of the premises for which the lease was surrendered by the tenant.

Despite the surrender of tenancy by the tenant by a formal notice, vacant possession of the suit premises was not handed over to the landlord. The landlord, therefore, instituted suit No.1645 of 1954 on 28.5.1954 against the tenant. The said suit was decreed on 27.4.1955 in terms of a compromise reached between the landlord and tenant under which the tenant vacated the suit premises and reserved liberty to the landlord to take necessary legal steps for vacating sub-tenants who had been inducted by the tenant. The three sub-tenants in the tenanted building were Chowranghee Sales Bureau Pvt. Ltd., Happy Homes Pvt. Ltd. and Waldorf Restaurant (respondent No.1 herein).

After obtaining the compromise decree of eviction against the tenant, the landlord instituted three separate suits for eviction against the above-named three sub-tenants. Separate decrees for eviction were obtained against the two sub-tenants viz. Chowranghee Sales Pvt. Ltd. and Happy Home Pvt. Ltd. The litigation in the case of Happy Homes Pvt. Ltd. came up to this Court and the decree obtained by the landlord against HHPL was maintained by the decision (supra) reported in 1968(2) SCC 20. This Court in the case of Happy Homes Pvt. Ltd. (supra) held that after service of notice of surrender by the tenant, its continuance in the leased premises was only as a statutory tenant and not as a contractual tenant. Such statutory tenant had no right to sub-let the premises so as to confer on the sub-tenant, status of a direct tenant under the landlord in accordance with the provisions of Section 12 and 13 of the Act of 1950. At this stage, it is necessary to take note of the relevant provisions of Sections 12 & 13 of the Act of 1950.

Section 12 to be quoted with first proviso(without a to I expn. Exp.SSII..)

Section 13 to be quoted fully 1 & 2 with all explanations

Happy Homes Pvt. Ltd. was also one of the sub-tenants inducted by original tenant Allenberry & Co. after service of notice by it to surrender the tenant. The sub-tenant sought protection against eviction in execution of the compromise decree against the tenant on the ground that it has become direct tenant under the landlord in accordance with Section 13 of the Act of 1950. The above plea and contention of sub-tenant HHPL was negated by this Court by holding thus:

Pages 31-32 to be quoted red marked

Coming back to the facts of this case against the respondent firm after obtaining a decree of compromise against the tenant the landlord instituted suit for eviction on 9.6.1956. The firm contested the suit by taking a plea that before surrender of tenancy by the tenant with effect from 31.8.1953 under statutory notice, the tenant had inducted on 1.7.1953 sole proprietor En Chick Wong for running Waldorf Restaurant. Later on, the above-named sole proprietor formed a partnership with two others viz. Wong Lee Si Moi & Wulishih. The above partnership firm comprising of three partners was registered on 1.3.1954 i.e. much after the surrender of tenancy by the tenant with effect from 31.8.1953. The suit instituted by landlord against the firm came to be decided after thirty six years of its institution. Learned Single Judge of Calcutta High Court, sitting on Original Side, by judgment dated 25.8.1992 in Suit No.1546 of 1956, filed for eviction, held that subject-matter of the suit is determinable by the executing court in execution of the compromise decree and the suit was barred by provisions of Section 47 of the Code of Civil Procedure. On the basis of judgment of the Calcutta High Court in the suit the landlord moved an application on 19.6.1993 for execution of the compromise decree against the

then occupiers of the Waldorf Restaurant.

In order to scuttle attempt of the landlord to execute the decree the occupiers of the restaurant trading in the firm name filed a counter suit on 3.8.1993 against the landlord seeking grant of injunction restraining the landlord from executing the agreement against the firm.

The counter suit filed by the firm was dismissed on 21.12.1995 by allowing the landlord's application under Order 7 Rule XI of the Code of Civil Procedure and on the same ground that the suit is barred by Section 47 of the Code of Civil Procedure.

The appeal preferred by the firm to the High Court was also dismissed. The High Court also came to the conclusion that if the firm is claiming status of direct tenant under the landlord by taking recourse to the provisions of Section 13 of the Act of 1950, its remedy lay in raising appropriate execution of the decree in the executing court a suit for the purpose was held as not maintainable.

Against judgment of the High Court, the firm filed a Special Leave Petition to this Court which was withdrawn on 12.10.1988.

The decisions in two counter suits filed against each other by the original landlord and the firm have thus attained finality and settle the legal position between the contesting parties that their remedies lay before the executing court.

The firm in order to frustrate the compromise decree against it made a different attempt by filing an application on 15.3.1999 in the trial court for setting aside the compromise decree of eviction in Civil Case No.1645 of 1954. That application was dismissed by the Court on 4.8.1999.

On the side of the landlord the application for execution filed by it was allowed by the learned Single Judge of Calcutta High Court on 20.4.2000. Learned Single judge of the High Court came to the conclusion that the firm came into existence of its registration under Partnership Act only on 1.3.1954 i.e. after the surrender of tenancy by the original tenant on 31.8.1953. in the opinion of the High Court, the registered partnership firm could not be validly inducted as a sub-tenant and as alleged on 1.7.1953 the Restaurant was a proprietary concern of Eng Chick Wong. The learned Single Judge therefore came to the conclusion that the firm cannot claim status of a protected sub-tenant directly under the landlord with provisions of Section 13(2) of the Act of 1950. For better appreciation of the ratio of the decision of the learned Single Judge the relevant part of the judgment deserves to be reproduced:

"In those circumstances I would find, that there was no proof whatsoever, before this Court, that Waldorf the present partnership firm had been inducted as a sub-tenant on 1.7.1953. It would also appear to me, and not contended on behalf of Waldorf either, that the list of subtenants which had been furnished by Allenberry & Co. to the plaintiff, if disclosed, would show that it had been inducted before the tenancy of Allenberry & Co. had been terminated. The severe allegation that Waldorf, which was before this court, had been registered as a partnership firm on September 16, 1954, which would be subsequent to the termination of the tenancy, remained uncontroverted. In its order dated September 25, 1997, the appellate court in my view, had clearly adjudicated the question of direct tenancy against Waldorf and the principles of res judicata would, I am afraid prevent this question to be further urged in a Court of Law for further consideration. Waldorf, I would unhesitatingly hold, was a sub-tenant under Allenberry & Co. and made

upon the termination of the tenancy and making of the compromise decree dated April 27, 1955 in accordance with the "Terms of Settlement", the decree was indeed executable by the plaintiff against Waldorf. The plaintiff had been prosecuting more than one litigation in this Court and since there was no mala fide, on record, in the plaintiff so doing, I would conclude that the plaintiff had been prosecuting the legal proceedings diligently, and in good faith. The plaintiff was, therefore, entitled to rely on the provisions contained in Section 13(2) of the Limitation Act, and this execution application I am inclined to hold was not barred by the laws of limitation.

For those reasons there shall be an order in terms of prayers (a), (b), (c), (d), (e) and (f) of the Tabular Statement. Mr. Animesh Ghosal, an advocate of this court is appointed receiver to comply with the above directions. The receiver shall file a report of compliance with copies to the parties within a period of four weeks from the date of receipt of the xerox of the signed copy of this order. The report shall be kept in the records of this matter. The receiver shall be paid a remuneration of 500 Gm by the decree holder at the time of the service of the xerox of the signed copy of this judgment.

Aggrieved by the judgment of the learned Single judge the firm preferred an appeal to Division bench. The Division bench by judgment delivered on 4.8.2000 allowed the appeal of the firm and set aside the judgment of the learned Single Judge. After examining the entire facts and events of the long course of litigation the Division bench came to the conclusion that 'by operation of law' Eng Chick Wong either as proprietorship concern or as a partner of partnership firm became a tenant directly under Chitpur Golabari. It was further held that the landlord would be entitled to bring a suit for eviction against such protected tenant on the ground that the sub-tenancy has been created 'but for the purpose of application under Section 47 of the Code of Civil procedure would not be maintainable.'

With an attempt to understand the reasoning and conclusion of the Division bench it is necessary to reproduce the relevant part of its judgement:

"Assuming for the sake of argument that by reason of reconstitution of such firms, the original tenant went out of the said partnership firm and, thus, the possession of the present firm comprising of Charles Mantosh, HIS Wen Wong and Mata Prasad Pandey became illegal, but the same would be of no consequence inasmuch as, such action on the part of the original sub-tenant namely, the proprietorship concern of Waldorf Restaurant and/or partnership firm would at best result in creation of sub-tenancy. But there cannot be any doubt whatsoever that by operation of Law Eng Chick Wong either as proprietorship concern or as a partner of partnership firm became a tenant directly under Chitpur Goalbari. As against a tenant, the landlord inter alia is entitled to file a suit for eviction on the ground that a sub-tenancy has been created. But for the purpose, an application under section 47 of the CPC would not be maintainable so as to enable the decree holder not only to evict the defendant but also a tenant who had, by a legal fiction, become direct tenant under him. A legal fiction as is well known must be given its full effect.

In these appeals learned counsel appearing for the appellant questions the correctness of judgment of the Division Bench and supports judgment of learned Single Judge. The main contention advanced is that the firm having come into existence on its registration on 1.3.1954 i.e. after surrender of tenancy by the tenant on 31.8.1953, could not claim status of a

tenant directly under the landlord by recourse to Section 13(2) of the Act of 1950. It is submitted that admitting the entry of Eng Chick Wong in the tenanted premises on 1.7.1953 for carrying on the business of Restaurant as the sole proprietor, the firm of which the sole proprietor subsequently became a partner and which came into existence on 1.3.1954 on registration could not claim status of a sub-tenant and on surrender of tenancy of the tenant, the direct tenant under the Act of 1950. The argument advanced is that the Division bench failed to make a distinction between the status of direct tenant, claimed by the sole proprietor and the claim of the firm of which the sole proprietor subsequently became a partner. Alternatively, it is submitted that the sole proprietor to whom the tenant had sub-let the suit premises on 1.7.1953 having left India, ceased to be a partner of the firm. The firm with its totally new partners presently in occupation has absolutely no right, title or interest to resist execution of the decree obtained against the tenant. It is submitted that tenant, sub-tenant, if not protected and all occupants through them are liable to be evicted in execution of the compromise decree.

In reply to the argument advance on behalf of the appellant, learned counsel appearing for the firm laid much emphasis on the pleadings of the appellant submitted in the courts below by taking us through those pleadings it is pointed out that throughout in the long course of litigation in the counter civil suits and the execution proceedings at many places, averments have been made stating that the 'Waldorf Restaurant' was inducted as a tenant on 1.7.1953. On behalf of respondents, learned counsel argues that the above averments in the pleadings of the appellant in the courts below amount to admission that Waldorf Restaurant may be initially as a proprietor concern and later on as partnership firm, came into possession of the suit premises as a sub-lessee on 1.7.1953 prior to the surrender of tenancy by the tenant on 31.8.1953.

The conclusion of the Division bench is thus supported on the ground that the firm presently in occupation has become a direct tenant under the landlord after surrender of tenancy by the original tenant and as a protection against eviction under the Act of 1950.

It is also contended that the compromise decree obtained against the tenant who surrender the tenancy and vacated the premises is not executable against the firm as sub-tenant which has become direct tenant under Act of 1950. It is submitted that the remedy of the landlord is to institute a fresh suit on grounds, if available to them, under the provisions of West Bengal Premises Rent Control(Temporary Provisions) Act, 1950.

We have considered the arguments advanced by learned counsel appearing for the contesting parties. Before dealing with the rival contentions raised at the outset we may dispose of two pleas raised on the bar of res judicata and limitation to which reference has been made in the judgment of the High Court.

So far as the plea of res judicata is concerned, we find that since both, landlord and the firm, have filed cross suits against each other and in which the courts came to a common conclusion that the parties should litigate their rights in execution proceedings and nothing was decided on merits of rights and claims of the parties, such a plea is not available to the parties against each other.

As regards the bar of limitation, it was not seriously pressed on behalf of the firm as both the parties had instituted suits against each other. The appellants cannot be held to be lacking in bona fides and the time spent by them in the suit deserves to be condoned under Section 14 of the Limitation Act. The period spent in prosecuting civil proceedings bona fide and with due diligence is liable to be excluded in computing the period of limitation of the suit or the application. The alleged bar of res judicata and limitation, therefore, cannot be set up against the appellants in execution proceedings. On the question of limitation we seek support from the

following observations of this court in the case of Roshan Lal [1975 (4) SCC 628]

Quote p-13 of the draft

We now take up for consideration the holistic contested issue raised by the parties on the alleged claim of the firm to the status of direct tenant under the landlord on the basis of provisions of Section 13 of the Act of 1950. On this main issue we want to proceed on some settled legal premises. The provisions of Sections 12 & 13 were construed in the light of the scheme of Act of 1950 by this Court in the case of Indra Kumar Karnani vs. Atul Chandra Patitundi [1965 (3) SCR 329]. This Court in the case (supra) held that consent of landlord is not required for creating sub-tenancy by the tenant of the first degree. Consent of landlord, however, is held to be necessary where the sub-tenant defined in the Act as "tenant of the second degree," creates a sub-tenancy. In the case of creation of sub-tenancy by the "tenant of the first degree," the sub-tenant, even on termination of tenancy of the "tenant of the first degree," becomes direct tenant under the landlord and is thus protected, meaning thereby that he can be evicted only on proof of any of the grounds under the provisions of Section 12 of Act of 1950.

For better appreciation of this case in the case of Indra Kumar Karnani, (supra) we would better reproduce the relevant part of the judgment:

Page 332 of the book red marked

In the present case, the firm with totally new partners excluding the erstwhile sole proprietor is claiming status of a subtenant and on termination of tenancy of the direct tenant under the Act of 1950 it is on the above ground that the execution of compromise decree is being resisted.

Waldorf Restaurant is merely a trade name. It is not a legal person and has no independent existence of the proprietary who initially carried on business in that trade name in the suit premises as sub-tenant and later on by becoming partner of the firm in that name. The present firm comprising totally new partners has not disputed the fact that on 1.7.1953 the tenant (Allenberry & Co.) had sub-let the suit premises to Eng Chick Wong who obtained the premises for running the Waldorf Restaurant as its sole proprietor.

On these undisputed facts, the erstwhile sole proprietor of the Restaurant, Eng Chick Wong could claim status of a direct tenant under the landlord on termination of tenancy of the original tenant. The crucial question, however, before us is whether the present partnership firm in which the erstwhile proprietor or partner Eng Chick Wong is no longer a partner can claim creation of a valid sub-tenancy in its favour prior to surrender of tenancy by Allenberry & Co. As we have seen that the tenancy was surrendered on 31.8.1953 and as has been held by this Court in the case of another sub-tenant Happy Homes Pvt. Ltd. (supra) after surrender of tenancy by the tenant, sub-tenant cannot claim status of a direct tenant under the Act of 1950. In the present case we come to the conclusion that on 1.7.1953 the firm had become a sub-tenant, the present firm (respondent No.1) cannot claim status of a direct tenant under the landlord and the protection of the Act of 1950.

Learned counsel appearing for the appellant have placed before us a chart to show how the partnership of the firm went on continuously changing with retirement of partners and entry of new partners. It is not necessary to go into the various changes in the constitution of the firm by name Waldorf Restaurant. The fact, however, is not disputed that when the firm was first registered on 1.3.1954, the partnership comprised Eng Chick Wong as the erstwhile sole proprietor of the business with two other partners joining him viz. Hsi Wen Wong and Wu Li Shih. Sometime in the year 1958, the two above named partners retired and Eng Chick Wong continued as partner with a new partner Philip Wing Hui Wu. In the year 1963, again the two

above-named partners were joined by three new partners the mention of whose names is not relevant. In December 1991 Eng Chick Wong ceased to be a partner and the partnership consisted of only three other partners in the present partnership firm. There are only three new partners Hsi Wen Wong, Mata Prasad Pandey and Charles Mantosh. The appellant in the courts below sought discovery of all partnership agreements and relevant facts regarding constitution and re-constitution as also registration of the firm in the name of Waldorf Restaurant. The firm formally by its reply refused to supply copies of partnership agreement and relevant information. It took a plea that it was their internal affair and plaintiff can have no concern with it. Where the tenanted premises were sub-let to the sole proprietor of a business concern should later on with other two individually constituted partnership firm, the tenanted premises held by him in sole proprietorship would become a partnership property or not would depend upon the terms of the partnership agreement. The burden to prove that the suit premises which were sub-let to the proprietor on his forming a partnership firm became property of the firm was squarely on the firm which is contesting the execution proceedings. The firm has deliberately withheld from disclosure the agreement of partnership entered into from time to time showing the nature of partnership. During the time when the proprietor was the partner and after it when he ceased to be its partner, there is no evidence to prove that the tenanted premises on which the sole proprietor Eng Chick Wong was the sub-tenant in the year 1953 became the asset or proprietary of the firm. The claim of the firm could have been ascertained only if the partnership agreement would have been produced in support of claim of the firm.

Under Section 14 of the Partnership Act 1932, property exclusively belonging to a person, in the presence of an agreement to the contrary, does not, on the person entering into partnership with others, become a property of the partnership merely because it is used for the business of the partnership. Such property will become property of the partnership only if there is an agreement - express or implied- that the property was, under the agreement of the partnership, to be treated as the property of the partnership.

The reasoning adopted by the Division Bench is erroneous that sub-tenancy was created both for the proprietary and the partnership because the trade name for the business continued to be the same i.e. Waldorf Restaurant. The same reasoning has been supported by learned counsel for appearing for the firm which obviously is misconceived in law as we have stated above. Waldorf Restaurant as such is merely a trade name and is not legal entity independent of its proprietor when it was carrying on in that name as proprietary concern and a partnership firm when it came into existence. Prior to surrender of tenancy by Allenberry & Co. the firm had not come into existence and only sub-tenancy was created in favour of Eng Chick Wong as the sole proprietor. In the absence of the partnership agreement to which the proprietor was a party it is not ascertainable whether tenanted premises were assets brought into the business of the firm by the erstwhile sole proprietor. The Division Bench was also wrong in assuming that there could have been a sub-letting by the sole proprietor to the partnership firm and even in that case the firm will have status of a sub-tenant and protection under the act of 1950. We have already noted above that under the Act of 1950 only the "tenant of the second degree" who is inducted by the 'tenant of the first degree' can claim protection as direct tenant under the landlord. A sub-tenant of a "tenant of the second degree" does not have any such status or protection under the Act of 1950. There is no evidence and it is also case of none of the parties that the erstwhile proprietor had sub-let the premises to the present firm, the provisions of Act of 1950 do not permit creation of sub-tenancy by a sub-tenant or in other words "tenant of the second degree."

In the aforesaid situation if at all, any claim for status of direct tenant and protection under Act of 1950 could have been claimed, it would have been only by Eng Chick Wong as the sole proprietor of the business concern. In any case, after Eng Chick Wong has walked out of the tenanted premises and left India, the present partners of the firm with whom

possession of the business premises was left have no right to resist their dispossession under the decree obtained against the tenant. Along with the tenant, the sub-tenant, if he is no longer in possession the other occupants in possession through them have also to vacate and can have no semblance in the right, interest or title to resist execution of the decree.

Learned counsel appearing for the firm argued that Waldorf Restaurant has been admitted in the pleadings of the appellant in the courts below to be in occupation of the leased premises before the surrender of original lease by the original tenant Allenberry & Co. We have already negatived that argument on the ground that Waldorf Restaurant as such is not a legal person. The proprietor who initially was running the Restaurant later on became a partner of the firm but in accordance with Section 14 of the Partnership Act, it is only by agreement with other partners that he can make the leased premises as the property of partnership. In any case, such an agreement could not change relationship inter se between the landlord and tenant and would not be binding on the landlord. See the following observations in paragraphs 13-14 of the decision of this Court in the case of Arjun Kanoji Tankar vs. Santaram Kanoji Tankar [1969(3) SCC 555] Pages 560-561 of SCC red marked to be quoted

We have also taken note of the fact that the Division Bench of the High Court has wrongly assumed creation of sub-tenancy by the proprietor in favour of the partnership firm when he himself became one of the partners. Whether it was a case of sub-letting or not would also depend upon the terms of the partnership, which were withheld by the court. Mere carrying on a partnership business as partner in the leased premises does not per se amount to sub-letting unless he withdraws control on the leased premises and surrenders his individual tenancy rights in favour of the partnership firm. See helper Girdharbhai vs. Saiyed Mohd. Mirasaheb Kadri [AIR 1987 SC 1782] particularly the following observations in paragraphs 5 & 19 at pages 1784 and 1790:

Quote

Two additional grounds urged on behalf of the firm now survive for decision. It is emphatically argued that in the pleadings of the appellant before the high court in earlier litigation, there is admission that Waldorf Restaurant entered the leased premises as sub-tenant. It is argued that this admission is binding on the appellant. We have been taken through relevant parts of the pleadings. It is true that at several places in the pleadings there is mention of alleged unlawful entry of Waldorf Restaurant in the leased premises. As we have found above, Waldorf Restaurant was being run in the leased premises firstly, as sole proprietary concern in the year 1953 and subsequently as a partnership concern on surrender of tenancy from 1954.

We have also held that Waldorf Restaurant is merely a trade name and is not a legal entity. The legal entity or the legal persons are the proprietor of the partnership firm. Mere statement in the pleadings of the appellants in the course of litigation that use of the leased premises by Waldorf Restaurant was a wrongful entry cannot be an admission of the fact that the firm came into possession of the premises prior to the surrender of the lease by the tenant. There can also be no admission on a question of law which can be held to be binding on the appellant.

One additional ground urged is that the compromise decree in its terms is not executable because the tenant who entered into compromise on the date of signing of the compromise deed had vacated the premises. On a closer scrutiny of the terms of compromise which resulted in passing of the compromise decree, we do not find any merit in the submission that the decree is not executable against the sub-tenant. We have traced the history of the litigation. The tenant surrendered the lease with effect from 31.8.1953 by a notice but failed to vacate it on the due date. Landlord was therefore required to file a suit against the tenant on the basis of the notice on surrender of tenancy. During pendency of the suit the tenant entered into a compromise and in terms thereof vacated the leased premises. As against the sub-tenants, which he had inducted during subsistence of tenancy, it

granted landlord liberty to take necessary legal steps for their eviction. The landlord thereafter instituted independent suit for eviction of the sub-tenants. In that suit, the Court held that the remedy of the landlord to resort to the remedy of execution of the compromise decree, the firm as sub-tenant, also filed the counter suit seeking declaration on status under Act of 1950 and protection thereunder. In the counter suit of the sub-tenant also the Court took the same view that the rights and objections of the parties can be litigated only in execution proceedings. The decision rendered in the counter suit of the sub-tenant i.e. the firm was brought to this Court in special leave petition but it was withdrawn. The decision rendered in the counter suit as also the decision rendered in the suit filed by the landlord against the sub-tenant have attained finality. It is only after the landlord did not succeed in obtaining eviction decree in the suit filed by it that it moved an application for execution of the compromise decree. The terms of the compromise decree to the extent it reserved right to the landlord to take necessary legal steps to evict the sub-tenants is an executable decree, it cannot therefore be urged by the firm that the compromise decree on its terms is not executable.

As a result of the discussion aforesaid, we have come to the conclusion that after the tenant Allenberry & Co. surrendered the tenancy and Eng Chick Wong as the sole proprietor of the proprietary concern Waldorf Restaurant who was sub-let into the premises prior to the surrender of tenancy had already vacated the premises and left India, the present firm and its partners with whom the possession of the leased premises were left have to vacate the premises on extinguishment of the rights of the tenants and the sub-tenants the impugned judgment of the Division Bench thus deserves to be set aside and that of the learned Single Judge is restored.

Consequently, we allow these appeals and set aside the impugned judgment dated 4.8.2000 of the Division Bench of the High Court of Calcutta and restore that of the learned Single Judge dated 20.4.2000. Since respondent No. 1 has dragged on the litigation for such a long period, the appellant would also be entitled to full costs incurred in courts below and in this Court. The counsel fee shall be allowed as per rules.