REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 2528-29 OF 2020
(ARISING OUT OF SLP (CIVIL) Nos.4492-4493 of 2018)

Addissery Raghavan …Appellant

Versus

Cheruvalath Krishnadasan …Respondent

J U D G M E N T

R.F. Nariman, J.

1. Leave granted.

2. In the present case, the appellant is the tenant of two shop rooms – one on the ground floor and the other on the first floor, each admeasuring 60 square feet. The tenant is doing textile business in the room situated on the ground floor, using the first floor as a godown. The ground floor room was let to the tenant on 10.10.1991 at a monthly rent of Rs.300/- which was later enhanced to Rs.800/-. The first floor room was let to the tenant on 10.07.1998 at a monthly rent of Rs.250/- which was later enhanced to Rs.317/-.

The respondent-landlord filed eviction petitions being RCP No. 175/2013 as well as RCP No.176/2013 on 11.10.2013 in respect of the

two rooms in question. The said petitions were filed on three grounds, namely, arrears of rent, bonafide requirement for additional accommodation for the landlord's business, and material damage to the premises, under Sections 11(2)(b), 11(8) and 11(4)(ii), respectively, of the Kerala Building (Lease and Rent Control) Act, 1965 ["**Kerala Rent Control Act**"].

4. The trial court in its judgment dated 28.02.2015, held against the landlord on the first and the third ground. However, so far as bonafide requirement of additional accommodation was concerned, it was held by the trial court that the landlord is the Managing Partner of M/s Prabeesh Constructions, and that since the office of this firm was presently only in a small room in the same building, the other two rooms would be required by way of additional accommodation for installing staff members and materials. The trial court found that the Commissioner's Report in the present case did not point out that any particular rooms were vacant in the premises. Equally, the production of Exhibit B3, i.e., the Building Tax Assessment Register, which recorded that some rooms in the ownership of the landlord are vacant could not be relied upon. Further, it was held that the tenant had in his possession another room in a neighbouring building, albeit leased by his mother-in-law, and stating that, since the mother-in-law was not

examined by the tenant, the reasonable inference that could be drawn is that the aforesaid room is in possession of the tenant. Finally, on comparative hardship, the trial court held that the landlord will be able to run his establishment in a better manner, whereas the tenant is not able to establish much hardship caused to him. In this view of the matter, the eviction petitions were decreed under Section 11(8) of the Kerala Rent Control Act.

5. The Rent Control Appellate Authority, by its judgment dated 30.01.2016, reversed the judgment of the trial court. It held:

> "**12.** According to the appellant, if at all the respondent needs any rooms for the purpose of expanding his office, suitable rooms are available in his possession. It has come in evidence that in the building in which the petition schedule rooms are situated, there are as many as 36 rooms. According to the appellant, the same rooms are lying vacant in this building. The respondent would deny the contention. But in Ex.C1 report, the Commissioner only would say that majority of the rooms in the building are leased out. This shows that some of the rooms in the occupation of the petitioner are lying vacant. It is true that the Commissioner has not specified the number of rooms lying vacant. The appellant also could not point out the number of the rooms lying vacant in the possession of the petitioner."

Apart from this, it also relied upon several vacant rooms being available in several other buildings owned by the landlord. So far as Exhibit B3 is concerned, the trial court's finding was reversed, stating:

> "**16.** The lower court has blamed the appellant for not producing any documents to show that vacant rooms are

> available in the possession of the respondent. I cannot agree with the observation made by the lower court. When there is an admission by PW1 that there are vacant rooms, there is no need to produce any document. It can also be seen that the appellant has produced Ex.B3 series document Building Tax Assessment Register. It would show that some of the rooms belonging to the respondent are lying vacant. The lower court refused to rely upon Ex.B3 series, observing that though the petition schedule shop rooms are admittedly in the possession of the appellant, one of the rooms is shown as lying vacant. It is for the landlord to report about the occupation of the rooms to the Panchayat. Without doing that, he cannot blame the respondent or take advantage of the absence of entry regarding the occupation of the building in the Building Tax Assessment Register."

On these grounds, therefore, the bonafide requirement of the landlord for additional accommodation was turned down by the Appellate Authority. So far as the room leased by the mother-in-law of the tenant is concerned, and on comparative hardship, the Appellate Authority found:

> "**18.** … Even if it is conceded for a moment that the need of the respondent is bonafide, I am of the view that the hardship which would be caused to the tenant would outweigh the advantage to the landlord in case of eviction of the petition schedule shop rooms. While answering point No.1 it has been found that the respondent has constructed a building having 99 rooms on the Pantheerankavu–bypass road and all those rooms are lying vacant. Only for the reason that construction of the building is not complete, the claim of the appellant that the vacant space is available in the possession of the respondent cannot be ignored. It has also come in evidence that vacant shop rooms are available in the Shyamala Building belonging to the petitioner at the time of filing the petition. It was only after the institution of the

petition that the respondent would release his right in the building to his children as per Ext.A13 document. Here is a fight between a landlord, a person having 100 rooms at his disposal, and a tenant, who is conducting a petty textile business. So, without much hesitation, it can be found that the hardship that would be caused to the appellant would necessarily outweigh the advantage obtained by the respondent on eviction of the appellant from the petition schedule shop rooms.

19. The lower court has observed that the tenant has vacant rooms available in the locality to shift his business. It is true that there is no convincing evidence before the court to show that the vacant rooms are not available in the locality to shift the business being run in the petition schedule shop rooms. For the failure on the part of the appellant to prove that vacant rooms are not available in the locality to shift the business, it cannot be said that the hardship that would be caused to him would not outweigh the advantage that would be received by the landlord.

20. The lower court has also observed that the building belonging to one Abdul Rehman is in the occupation of the tenant. This observation has been made by the lower court relying on the inconsistency in the stand taken by the tenant. In the counter, what has been stated is that the said room in the building owned by Abdul Rehman was taken on lease by his mother-in-law. But in the evidence, the stand taken by the appellant is that it was taken on lease by one Prameela and he used to keep his textile goods in the said room when space in the petition schedule shop rooms is not sufficient especially during festival occasions. I am of the view that only for this inconsistency, the case of the respondent that the appellant is in occupation of the room in the building owned by Abdul Rehman cannot be accepted. What has been stated by the tenant when he was examined as RW1 in the lower court is that when there was huge stock which could not be kept in the petition schedule shop rooms, he used to keep the stock in the room situated in the building owned by Abdul Rehman on a temporary basis. He also would speak that like this, he used to keep the stock-in-trade in some other rooms also for there is a lack of space in the petition schedule shop room in the

> festival season. Any way from this evidence, it cannot be said that the appellant is in vacant possession of another room which is suitable for the business being conducted in the petition schedule shop rooms. So I find that the lower court is not at all justified in finding that the hardship that would be caused to the tenant would not outweigh the advantage that would be received by the landlord on getting eviction of the petition schedule premises. So I find that the order of eviction passed by the trial court under Section 11(8) is liable to be set aside."

6. In a revision petition filed by the respondent-landlord under Section 20 of the Kerala Rent Control Act, the High Court interfered with the findings of fact by the Appellate Authority by posing two questions before itself, namely:

> "(1) What is the scope and extent of enquiry under Section 11(8) of the Act? (2) Where the landlord is occupying a part of the building in which the petition schedule building is situated, whether the availability of other vacant room, in his possession, in any other building would negative his claim under Section 11(8) of the Act?"

After stating that Section 11(8) of the Kerala Rent Control Act speaks of vacant space or rooms in the same building, it was held that the Appellate Authority was wrong in considering vacant rooms in other buildings. So far as the Commissioner's Report was concerned, the High Court reiterated the findings of the trial court, stating that the Commissioner had not reported the availability of any vacant room, and that the burden is on the tenant to show that the landlord had in his possession other vacant rooms. So far as Exhibit B3, being the

Building Tax Assessment Register is concerned, it was held that the entries in the said Register cannot be taken as conclusive proof and must therefore be discarded. On comparative hardship, the High Court agreed with the trial court, holding:

> "**13.** Similarly, it has come out in evidence that the tenant has been in occupation of another room in the building owned by one Abdul Rehman. In the Rent Control Petitions, the landlord has specifically stated that he is in occupation of another shop room in the building of the said Abdul Rehman. So, if an order of eviction is passed, he will not be put to any hardship. The tenant's occupation in the building owned by Abdul Rehman has come out in evidence. In that view, we find that the Rent Control Court is justified in finding that the hardship that may be caused to the tenant, if an order of eviction is passed, would not outweigh the advantage to the landlord."

7. We have heard learned counsel appearing for the parties. The learned counsel appearing on behalf of the appellant pointed out that under Section 20 of the Kerala Rent Control Act, the High Court, in its revisional jurisdiction, cannot act as if it is a second court of first appeal by setting aside findings of fact by the Appellate Authority on reappreciation of the same. He also argued that there being no perversity on the detailed findings given by the Appellate Authority, the High Court exceeded its revisional jurisdiction in interfering with the same and wrongly substituting the findings of the trial court for those of the Appellate Authority. Learned counsel appearing on behalf of the

respondent, however, relied strongly upon the trial court's judgment and stated that the Appellate Authority perversely dealt with material facts on the record and its judgement was, therefore, correctly set aside within the revisional jurisdiction by the High Court. He relied upon the judgment in **Badrinarayan Chunilal Bhutada v. Govindram Ramgopal Mundada**, (2003) 2 SCC 320 ["**Badrinarayan**"], in particular, paragraphs 10 and 13 thereof.

8. Section 11(8) and Section 20 of the Kerala Rent Control Act are set out hereinbelow:

> "**11. Eviction of tenants**.–
> xxx xxx xxx
> (8) A landlord who is occupying only a part of a building may apply to the Rent Control Court for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his personal use.
> xxx xxx xxx
> Provided that, in the case of an application made under sub-section (8), the Rent Control Court shall reject the application if it is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord.
> xxx xxx xxx"

> "**20. Revision**.—(1) In cases, where the appellate authority empowered under Section 18 is a Subordinate Judge, the District Court, and in other cases the High Court, may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or

> proceedings, and may pass such order in reference thereto as it thinks fit.
>
> (2) The costs of and incident to all proceedings before the High Court or District Court under sub-section (1) shall be in its discretion."

9. It is important in cases like the present to first keep in mind the parameters of the revisional jurisdiction of the High Court. In **Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh**, (2014) 9 SCC 78, a reference was made to a five-Judge Bench of this Court by a reference order dated 27.08.2009, which reads as follows:

> "The learned counsel for the appellant has placed reliance on a three-Judge Bench decision of this Court in *Rukmini Amma Saradamma* v. *Kallyani Sulochana* [*Rukmini Amma Saradamma* v. *Kallyani Sulochana*, (1993) 1 SCC 499] wherein Section 20 of the Kerala Rent Control Act was in question. It was held in the said decision that though Section 20 of the said Act provided that the Revisional Court can go into the 'propriety' of the order but it does not entitle the Revisional Court to reappreciate the evidence. A similar view was taken by a two-Judge Bench of this Court in *Ubaiba* v. *Damodaran* [*Ubaiba* v. *Damodaran*, (1999) 5 SCC 645].
>
> On the other hand the learned counsel for the respondent has relied upon a decision of this Court in *Ram Dass* v. *Ishwar Chander* [*Ram Dass* v. *Ishwar Chander*, (1988) 3 SCC 131] which was also a three-Judge Bench decision. It has been held in that case that the expression 'legality and propriety' enables the High Court in revisional jurisdiction to reappraise the evidence while considering the findings of the first appellate court. A similar view was taken by another three-Judge Bench of this Court in *Moti Ram* v. *Suraj Bhan* [*Moti Ram* v. *Suraj Bhan*, AIR 1960 SC 655].
>
> From the above it is clear that there are conflicting views of coordinate three-Judge Benches of this Court as

> to the meaning, ambit and scope of the expression 'legality and propriety' and whether in revisional jurisdiction the High Court can reappreciate the evidence. Hence, we are of the view that the matter needs to be considered by a larger Bench since this question arises in a large number of cases as similar provisions conferring power of revision exists in various rent control and other legislations, e.g. Section 397 of the Code of Criminal Procedure. Accordingly, we direct that the papers be placed before the Hon'ble the Chief Justice for constituting a larger Bench."

After setting out the various revisional provisions under State Rent Control Acts including Section 20 of the Kerala Rent Control Act, this Court approved an earlier judgment of this Court construing the Kerala Rent Control Act in **Rukmini Amma Saradamma v. Kallyani Sulochana & Ors.**, (1993) 1 SCC 499, as follows:

> "**38.** *Rukmini* [*Rukmini Amma Saradamma* v. *Kallyani Sulochana*, (1993) 1 SCC 499] holds, and in our view, rightly that even the wider language of Section 20 of the Kerala Rent Control Act does not enable the High Court to act as a first or a second court of appeal. We are in full agreement with the view of the three-Judge Bench in *Rukmini* [*Rukmini Amma Saradamma* v. *Kallyani Sulochana*, (1993) 1 SCC 499] that the word "propriety" does not confer power upon the High Court to reappreciate evidence to come to a different conclusion but its consideration of evidence is confined to find out legality, regularity and propriety of the order impugned [*Kallyani Sulochana* v. *Saradamma*, 1991 SCC OnLine Ker 213 : (1991) 2 KLJ 105] before it. We approve the view of this Court in *Rukmini* [*Rukmini Amma Saradamma* v. *Kallyani Sulochana*, (1993) 1 SCC 499]."
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> xxx xxx xxx
>
> "**42.** The observation in *Ramdoss* [*Ramdoss* v. *K. Thangavelu*, (2000) 2 SCC 135] that the High Court in exercise of its revisional jurisdiction cannot act as an

> appellate court/authority and it is impermissible for the High Court to reassess the evidence in a revision petition filed under Section 25 of the Act is in accord with *Rukmini* [*Rukmini Amma Saradamma* v. *Kallyani Sulochana*, (1993) 1 SCC 499] and *Sankaranarayanan* [*D. Sankaranarayanan* v. *Punjab National Bank*, 1995 Supp (4) SCC 675]. Its observation that the High Court can interfere with incorrect finding of fact must be understood in the context where such finding is perverse, based on no evidence or misreading of the evidence or such finding has been arrived at by ignoring or overlooking the material evidence or such finding is so grossly erroneous that if allowed to stand, will occasion in miscarriage of justice. *Ramdoss* [*Ramdoss* v. *K. Thangavelu*, (2000) 2 SCC 135] does not hold that the High Court may interfere with the findings of fact because on reappreciation of the evidence its view is different from that of the first appellate court or authority. The decision of this Court in *V.M. Mohan* [*V.M. Mohan* v. *Prabha Rajan Dwarka*, (2006) 9 SCC 606] is again in line with the judgment of this Court in *Rukmini* [*Rukmini Amma Saradamma* v. *Kallyani Sulochana*, (1993) 1 SCC 499]."

So far as the judgment in **Ram Dass v. Ishwar Chander**, (1988) 3

SCC 131, is concerned, the Court limited its finding as follows:

> "**32.** Insofar as the three-Judge Bench decision of this Court in *Ram Dass* [*Ram Dass* v. *Ishwar Chander*, (1988) 3 SCC 131] is concerned, it rightly observes that revisional power is subject to well-known limitations inherent in all the revisional jurisdictions and the matter essentially turns on the language of the statute investing the jurisdiction. We do not think that there can ever be objection to the above statement. The controversy centres round the following observation in *Ram Dass* [*Ram Dass* v. *Ishwar Chander*, (1988) 3 SCC 131], "... *that jurisdiction enables the court of revision, in appropriate cases, to examine the correctness of the findings of facts also*…." It is suggested that by observing so, the three-Judge Bench in *Ram Dass* [*Ram Dass* v. *Ishwar Chander*, (1988) 3 SCC 131] has enabled the High Court to interfere with the findings of fact by reappreciating the

evidence. We do not think that the three-Judge Bench has gone to that extent in *Ram Dass* [*Ram Dass* v. *Ishwar Chander*, (1988) 3 SCC 131]. The observation in *Ram Dass* [*Ram Dass* v. *Ishwar Chander*, (1988) 3 SCC 131] that as the expression used conferring revisional jurisdiction is "legality and propriety", the High Court has wider jurisdiction obviously means that the power of revision vested in the High Court in the statute is wider than the power conferred on it under Section 115 of the Code of Civil Procedure; it is not confined to the jurisdictional error alone. However, in dealing with the findings of fact, the examination of findings of fact by the High Court is limited to satisfy itself that the decision is "according to law". This is expressly stated in *Ram Dass* [*Ram Dass* v. *Ishwar Chander*, (1988) 3 SCC 131]. Whether or not a finding of fact recorded by the subordinate court/tribunal is according to law, is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice. *Ram Dass* [*Ram Dass* v. *Ishwar Chander*, (1988) 3 SCC 131] does not lay down as a proposition of law that the revisional power of the High Court under the Rent Control Act is as wide as that of the appellate court or the appellate authority or such power is coextensive with that of the appellate authority or that the concluded finding of fact recorded by the original authority or the appellate authority can be interfered with by the High Court by reappreciating evidence because Revisional Court/authority is not in agreement with the finding of fact recorded by the court/authority below. *Ram Dass* [*Ram Dass* v. *Ishwar Chander*, (1988) 3 SCC 131] does not exposit that the revisional power conferred upon the High Court is as wide as an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the court/authority below. Rather, it emphasises that while examining the correctness of findings of fact, the Revisional Court is not the second court of first appeal. *Ram Dass* [*Ram Dass* v. *Ishwar Chander*, (1988) 3 SCC 131] does not cross the limits of

> Revisional Court as explained in *Dattonpant* [*Dattonpant Gopalvarao Devakate* v. *Vithalrao Maruthirao Janagaval*, (1975) 2 SCC 246]."

So holding, the five-Judge Bench answered the reference, thus:

> "**43.** We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

> **44.** We, thus, approve the view of this Court in *Rukmini* [*Rukmini Amma Saradamma* v. *Kallyani Sulochana*, (1993) 1 SCC 499] as noted by us. The decision of this Court in *Ram Dass* [*Ram Dass* v. *Ishwar Chander*, (1988) 3 SCC 131] must be read as explained above. The reference is answered accordingly. The civil appeals and the special leave petitions shall now be posted before the regular Benches for decision in light of the above."

10. In the facts of the present case, when the Appellate Authority relied upon the Commissioner's Report stating that there are 36 rooms in the building and that the majority of the rooms are let out, showing that some of the rooms in the occupation of the landlord are lying vacant, it cannot be said that there is any perversity in this finding of fact. Even assuming that the High Court is correct in its construction of Section 11(8) of the Kerala Rent Control Act, stating that vacant rooms in other buildings cannot be looked at, this finding of fact of the Appellate Authority puts paid to any bonafide requirement of additional accommodation of the landlord in the facts of the present case.

11. The reliance upon the Building Tax Assessment Register by the Appellate Authority, showing that some of the rooms belonging to the landlord were lying vacant, again, is a finding of fact which cannot be interfered with in the manner done by the High Court. Further, the finding that a room leased by the mother-in-law of the tenant in another building is not in the tenant's possession only because he had his mother-in-

law's permission to store goods when necessary, and especially during festival occasions, on a temporary basis, would also show that he cannot be considered to be in possession of the said room, as rightly held by the Appellate Authority. Interfering with this finding of fact, again, without any perversity or misappreciation of evidence by the Appellate Authority would clearly be outside the High Court's ken in its revisional jurisdiction. Equally, the finding of comparative hardship, which is a finding of fact not otherwise found to be perverse, cannot be upset in the manner done in the present case by the High Court.

12. Learned counsel for the respondent, however, relied upon the judgment of this Court in **Badrinarayan** (supra). This was a case which arose under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ["**Bombay Rent Act**"], Section 13(2) of which states as follows:

> "**13. When landlord may recover possession**.—
> xxx xxx xxx
> (2) No decree for eviction shall be passed on the ground specified in clause (*g*) of sub-section (1) if the court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.
>
> Where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the court shall pass the decree in respect of such part only.

xxx xxx xxx"

The finding of fact arrived at by the Appellate Authority and sustained by the High Court as to bonafide requirement of the landlord in that case was upheld by the Supreme Court. The only question that the Supreme Court was called upon to decide is the exercise of discretion under Section 13(2) of the Bombay Rent Act so far as partial eviction is concerned (*see* paragraph 5). Paragraph 10 strongly relied upon by learned counsel for the respondent is in the context of a partial eviction being ordered, in which this Court stated:

> "**10.** …It is expected of the parties to raise necessary pleadings, and the court to frame an issue based on the pleadings so as to enable parties to adduce evidence and bring on record such relevant material as would enable the court forming an opinion on the issue as to comparative hardship and consistently with such finding whether a partial eviction would meet the ends of justice. Even if no issue has been framed, the court may discharge its duty by taking into consideration such material as may be available on record."

Paragraph 13 was then relied upon, which dealt with an English judgment in **Piper v. Harvey**, (1958) 1 All ER 454, in which it was found, on the evidence adduced in that case, that the comparative hardship issue would have to be decided against the tenant. After going into the facts in that case, this Court remanded the case to the appellate court to frame two issues which related to whether a partial eviction would meet the ends of justice (*see* paragraph 16).

13. Section 11(8) of the Kerala Rent Act is materially different from Section 13(2) of the Bombay Rent Act in that it does not provide for partial eviction if comparative hardship of a landlord and a tenant are to be weighed against each other. Even otherwise, on the facts of this case, issue (3) was specifically raised, which reads as follows:

> "(3) Whether the hardship which may be caused to the respondent by granting eviction will outweigh the advantage to the petitioner?"

This issue was answered by the trial court by merely stating that the landlord will be able to run his establishment in a better manner if he gets the schedule petition rooms, which will help to lead his establishment to prosperity, as compared with the tenant, who is not able to "establish much hardship to him". This vague finding was rightly set aside by the Appellate Authority, which has been set out by us *in extenso* in paragraph 5 of this judgment. As has been stated hereinabove, without finding this to be perverse, the High Court acted outside its revisional jurisdiction in substituting the same in the manner done hereinabove.

14. For all these reasons, we allow the appeals and set aside the High Court's judgment, restoring that of the Appellate Authority.

……J.
(R.F. Nariman)

……J.
(Navin Sinha)

……J.
(B.R. Gavai)

New Delhi;
June 08, 2020.