MAHARASHTRA CIVIL JUDGEMENTS

2025(1)MCJ1

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

[Before Dr Dhananjaya Y Chandrachud; J B Pardiwala; Manoj Misra]

Civil Appeal; Arising Out Of Slp (C) No 12234 of 2024; 15562 of 2024

dated 07/11/2024

Goqii Technologies Private Limited

Versus

Sokrati Technologies Private Limited

PRIMA FACIE REVIEW FOR ARBITRATION

Arbitration and Conciliation Act, 1996 Sec. 11 - Insolvency and Bankruptcy Code, 2016 Sec. 9, Sec. 8, Sec. 11 - Prima Facie Review for Arbitration - Appellant sought appointment of arbitrator for dispute arising from MSA with respondent regarding digital marketing services, alleging overcharges and poor ROI supported by independent audit - Respondent opposed, citing absence of dispute under Sec. 8 of IBC, claiming appellant's arbitration invocation was a tactic to avoid payment - High Court dismissed appellant's petition, finding no prima facie dispute - Supreme Court held High Court exceeded its limited jurisdiction under Sec. 11 of Arbitration Act by examining factual matrix and dismissing claim - Court reiterated role of referral court is confined to determining existence of arbitration agreement, while merits must be left to arbitrator - Appeal allowed, arbitrator appointed to resolve dispute

Law Point: Referral court's role under Sec. 11 of Arbitration Act limited to prima facie confirmation of arbitration agreement; merit determination left to arbitrator

Acts Referred:

Arbitration and Conciliation Act, 1996 Sec. 11

Insolvency and Bankruptcy Code, 2016 Sec. 9, Sec. 8, Sec. 11

JUDGEMENT

J. B. Pardiwala, J.- [1] Leave granted.

[2] This appeal arises from the final judgment and order dated 30.04.2024 ("**impugned judgment**") passed by the High Court of Judicature at Bombay in Commercial Arbitration Application No. 6 of 2024. The High Court dismissed the application preferred by Goqii Technologies Private Limited ("**the appellant**") under Section 11 of the Arbitration and Conciliation Act, 1996 ("**the Act, 1996**") seeking

appointment of an arbitrator to adjudicate disputes and claims in terms of Clause 18.12 of the Master Services Agreement (**"MSA"**) executed between the appellant and Sokrati Technologies Private Limited (**"the respondent"**).

A. FACTUAL MATRIX

[3] The appellant, a technology-based wellness venture inter alia providing life style consultancy services, executed the MSA with the respondent, an entity engaged in digital marketing services, and a subsidiary of Dentsu International Limited, to manage its digital advertising campaigns. The MSA was subsequently extended on 29.04.2022 for a period of three years, with certain amendments.

[4] Between August 2021 and April 2022, the appellant paid a sum of Rs 5,53,26,690/- to the respondent for the services rendered by it. It is the case of the appellant that for the subsequent 10 invoices raised between 12.05.2022 and 07.10.2022, the appellant was in the process of initiating and making payments when, in September 2022, certain media reports alleged malpractices in the advertising industry implicating major players. It was later discovered by the appellant that the Economic Offences Wing, Mumbai had lodged a complaint (EOW CR No. 08 of 2022) against Dentsu International Limited, the parent company of the respondent, and its senior officials alleging serious irregularities and malpractices in their service.

[5] In light of the aforesaid developments, the appellant engaged an independent auditor in November 2022 to prepare a report on the activities of the respondent from April 2021 to 31.12.2022. The auditor submitted its report in February 2023. The conclusion given by the auditor is extracted hereinbelow:

> **"CONCLUSION**
>
> The average ROI for the campaigns analyzed has been abysmally low at 0.35x compared to industry benchmark of 3x to 4x. We estimate an overcharge of Rs 4,48,53,580. The audit identified significant areas of concern within the media plan, including but not limited to:
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> • Media buying cost of inventory, from different publishers at various points during the engagements have been found to be significantly more than the industry benchmarks.
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> • Traffic was poor and exposed to the wrong audience.
>
> • Number of times the ad was shown (Frequency) has been increased as the reach numbers were being achieved, this only shows that the targeting of the customer/audience has been poor.
>
> • The clicks generated were fraudulent.
>
> • The leads garnered were junk.

> •` Cost of acquisition was higher than the category competition. We also recommend further detailed investigation across all the media campaigns by Sokrati."

[6] On 22.02.2023, the respondent served a demand notice on the appellant under Section 8 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") seeking Rs 6,25,67,060/- towards the outstanding invoices. In response, on 04.03.2023, the appellant rejected the demand, citing the audit findings, and invoked arbitration under Clause 18.12 of the MSA. The appellant also filed a counter claim, demanding a refund of Rs 5,53,26,690/- with 18% interest per annum and an additional Rs 6 crore by way of damages towards the alleged misrepresentations by the respondent.

[7] Subsequently, upon failure of the respondent to comply with the arbitration notice, the appellant filed Commercial Arbitration Application No. 06 of 2024 before the High Court, seeking appointment of a sole arbitrator to adjudicate the disputes between the parties. However, on 05.10.2023, while the application was pending, the respondent filed Company Petition (IB) No. 27 of 2024 under Section 9 of the IBC before the National Company Law Tribunal, Mumbai (NCLT, Mumbai) for initiating the corporate insolvency resolution process of the appellant.

[8] The High Court vide the impugned judgment, dismissed the application seeking the appointment of an arbitrator, observing that it lacked in merit and substance. The High Court noted that the independent audit report revealed significant concerns regarding the performance of the digital marketing campaigns executed by the respondent. The High Court was of the view that although the report highlighted poor returns on investment and inconsistent metrics, yet it did not support the assertions made by the appellant regarding fraudulent practices of the respondent. Further, the High Court observed that the appellant failed to demonstrate any substantial discrepancies in the report that would justify withholding payment for the invoices raised. It observed that while further investigation was suggested in the report, the appellant's attempt to invoke arbitration based on non-existent disputes constituted a manifestly dishonest claim and therefore dismissed the application. The relevant observations from the impugned judgment are extracted hereinbelow:

> "19. It can be well understood that upon the further investigation, being directed to be carried out as indicated in the report, if it is concluded that the services were not rendered at all or they were deficient and the invoices do not deserve to be cleared, the demand of the money due and payable could have been resisted, but without any justification, by projecting the report of the independent auditor to be its shield to avoid the payment, the attempt on part of the applicant can only be described as 'dishonest'.
>
> A manifestly dishonest claim or a contest, which is sought to be raised to a lawful demand of the money due and payable under the MSA, particularly, when, while availing the services, at no point of time, any deficiency in

services is pointed out, but only by way of defence to the invoices raised, an independent agency's report is being projected, as a support to canvass the deficiency in service, by attributing fraudulent acts to the respondent which, in fact, is not the finding of the independent auditor.

Nonetheless, it is open for the applicant to follow the pursuit of detail investigation across all the media campaigns by Sokrati, as suggested in the report, however, without doing so, in order to avoid its liability for the claims under the invoices, the assertion of an arbitrable dispute, is an attempt to defeat the proceedings, which may be instituted on behalf of Sokrati before the Company Law Tribunal under the IBC.

Drawing guidance from the observations of the Apex Court in case of NTPC Ltd (supra) that the limited scrutiny through the eye of the needle is necessary and compelling, as it is the duty of the referral code to protect the parties from being forced to arbitrate, when the matter is demonstrably non- arbitrable. I am convinced that an attempt is made to create a dispute when there exist none at this stage. It is not just for the sake of invoking the arbitration clause, because the agreement between the parties provide so, the parties shall resort to arbitration, premised on the basis of a purported dispute, which infact, do not exist.

For the aforesaid reason, I am not inclined to consider the request of appointing an Arbitrator in exercise of power conferred on this Court, merely because the arbitration has been invoked by the applicant and it intend to take a nonexistent dispute for arbitration. Being unconvinced with the submissions of Mr. Kanade, the application seeking appointment of Arbitrator is dismissed being found without any merit and substance."

[9] Aggrieved by the aforesaid order refusing to appoint an arbitrator for adjudicating the disputes between the parties, the appellant has come up before this Court with the present appeal.

B. SUBMISSION ON BEHALF OF THE APPELLANT

[10] Mr. H.D. Thanvi, the learned counsel appearing for the appellant, submitted that the scope of interference by a referral court acting in exercise of its jurisdiction under Section 11 of the Act, 1996 is limited. At this stage, the court is required to conduct a preliminary inquiry for the purpose of ascertaining whether a prima facie case exists for referring the dispute to arbitration. Contrary to this narrow scope, in the present case the High Court proceeded to erroneously undertake a full review of the contested facts, thereby exceeding in its jurisdiction at this stage.

[11] He further submitted that the High Court failed to take into account the nature of the services rendered by the respondent, along with the technical details contained in the Audit Report, which require subject-matter expertise for accurate determination

of the disputes. Given the technical complexity of the issues involved, the High Court ought to have referred the parties to arbitration.

[12] He submitted that the finding of the High Court as regards the alleged dishonesty of the appellant rests on the erroneous assumption that the appellant had not raised any dispute prior to issuing the demand notice dated 22.02.2023. It was contended that this finding overlooks the sequence of events and also the undisputed fact that the Audit Report was provided to the appellant only in February 2023, i.e., the same month in which the Demand Notice was issued. Consequently, the appellant had no prior opportunity to raise the disputes, as they only came to light upon receiving the Audit Report in February 2023. The appellant argued that even otherwise, it had sent multiple emails to the respondent raising various objections regarding the invoices issued to the appellant prior to the issuance of the Audit Report.

C. SUBMISSION ON BEHALF OF THE RESPONDENT

[13] Ms. Shweta Bharti, the learned counsel appearing for the respondent, on the other hand, submitted that it is settled law that before referring the parties to arbitration, the High Court must reach to a prima facie satisfaction that a genuine dispute exists between the parties. Furthermore, the mere inclusion of an arbitration clause in a contract or agreement does not render a matter automatically arbitrable and a prima facie case establishing the existence of a dispute must first be made. The Court must apply a prima facie test to weed out and dismiss claims that are ex facie meritless, frivolous, or dishonest. She submitted that seen thus the dispute raised in the present petition is nothing more than an afterthought.The counsel placed reliance on the decision of this Court in **Indian Oil Corporation vs. NCC Ltd**, 2023 2 SCC 539B&T AG v. Ministry of Defence,2023 SCCOnLineSC 657and Sushma Shiv Kumar Daga & Anr. vs. Madhur Kumar Ramkrishnaji Bajaj & Ors,2023 SCCOnLineSC 1683to fortify her submission.

[14] She further submitted that the appellant is not entitled to any damages or refund for the alleged overcharges on the services rendered by the respondent as the appellant had previously not raised any concerns or identified deficiencies while utilizing these services. Furthermore, the claim now raised by the appellant is unfounded, vague, and lacks supporting documentation.

[15] She submitted that the appellant has filed the present petition with a mala fide intent and has approached this Court with unclean hands, being fully aware of the ongoing legal proceedings before the NCLT, Mumbai. The petition of the appellant is an attempt to create duplicative legal proceedings aimed at evading liability for admitted dues and disrupting the CIRP process.

D. ANALYSIS

[16] Having heard the learned counsels appearing for the parties and having gone through the materials on record, the short question that falls for our consideration is

whether the High Court committed any error in dismissing the appellant's application under Section 11 of the Act, 1996.

[17] In a recent pronouncement, relying on the Constitution Bench judgment of this Court in **In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899**, [2023 INSC 1066] this Court in **SBI General Insurance Co. Ltd. vs. Krish Spinning**, 2024 INSC 532, summarised the law on the scope and standard of judicial scrutiny that an application under Section 11(6) of the Act, 1996 can be subjected to. The relevant parts are produced herein below:

> "114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra).
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> **xxx xxx xxx**
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> 125. We are also of the view that ex-facie frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the arbitral tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral court. If the referral court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material."

[18] The scope of inquiry under Section 11 of the Act, 1996 is limited to ascertaining the prima facie existence of an arbitration agreement. In the present case, the High Court exceeded this limited scope by undertaking a detailed examination of the factual matrix. The High Court erroneously proceeded to assess the auditor's report in detail and dismissed the arbitration application. In our view, such an approach does not give effect to the legislative intent behind the 2015 amendment to the Act, 1996 which limited the judicial scrutiny at the stage of Section 11 solely to the prima facie determination of the existence of an arbitration agreement.

[19] As observed in **Krish Spinning** (supra), frivolity in litigation too is an aspect which the referral court should not decide at the stage of Section 11 as the arbitrator is equally, if not more, competent to adjudicate the same.

[20] Before we conclude, we must clarify that the limited jurisdiction of the referral Courts under Section 11 must not be misused by parties in order to force other parties to the arbitration agreement to participate in a time-consuming and costly arbitration process. This is possible in instances, including but not limited to, where the claimant canvasses the adjudication of non-existent and mala fide claims through arbitration. With a view to balance the limited scope of judicial interference of the referral Courts with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration. Having said that, it is clarified that the aforesaid is not to be construed as a determination of the merits of the matter before us, which the Arbitral Tribunal will rightfully be equipped to determine.

E. CONCLUSION

[21] The existence of the arbitration agreement in Clause 18.12 of the MSA has not been disputed by the respondent. The question whether there exists a valid dispute to be referred to arbitration can be addressed by the Arbitral Tribunal as a preliminary issue.

[22] As a result, the appeal filed by the appellant is allowed and the impugned order passed by the High Court of Bombay is hereby set aside.

[23] We appoint Mr. S.J. Vazifdar, former Chief Justice of the Punjab & Haryana High Court, as the sole arbitrator to adjudicate the disputes between the parties.

[24] All legal contentions, including objections, if any, available to the respondent, are kept open to be taken up before the learned Arbitrator.

[25] Pending application(s), if any, shall stand disposed of.

2025(1)MCJ7

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Mangesh S Patil; Prafulla S Khubalkar]

Writ Petition No 13391 of 2024 **dated 09/12/2024**

Parshuram Shahaji Boyane

Versus

State of Maharashtra

CASTE CERTIFICATE VALIDATION

Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation

of Issuance and Verification Of) Caste Certificate Act, 2000 Sec. 7 - Caste Certificate Validation - Writ petition challenged Scrutiny Committee's decision invalidating petitioner's Koli Mahadev Scheduled Tribe certificate - Court noted common vigilance enquiry relied on same evidence for petitioner and others, including real brother, who were granted validity certificates in earlier proceedings - Directed issuance of validity certificate to petitioner subject to re-examination of validity holders by Scrutiny Committee - Petition Allowed

Law Point: Uniform evidence considered in caste validation must ensure consistent decisions; invalidation for one cannot stand when others on identical grounds are validated.

Acts Referred:

Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification Of) Caste Certificate Act, 2000 Sec. 7

Counsel:

S M Vibhute, S R Wakale

JUDGEMENT

[1] Heard both the sides finally.

[2] The petitioner is challenging the judgment and order of respondent No.2 / Scrutiny Committee in a proceeding u/s 7 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, refusing to validate his Koli Mahadev Scheduled Tribe Certificate.

[3] It is being pointed out that the common vigilance enquiry was made in respect of 5 individuals including the petitioner and his brother Shirish Boyane. Though the Committee chose to pass separate orders, invalidation of claim of Shirish Boyane was a subject matter of challenge before this Court in WP No.11605/2023. By the order dated 15.09.2023, the order of the Scrutiny Committee was quashed and set aside and it was directed to issue a certificate of validity to Shirish subject to usual conditions.

[4] Similarly, one Pooja Somnath Boyane and Dnyaneshwari Somnath Boyane from the same common vigilance enquiry, facing similar invalidation, were held entitled to have validity certificates, by the common order passed in WP No.12977/2021 and connected writ petition dated 03.08.2023.

[5] Since it would be the same evidence, which was the subject matter of scrutiny in case of each of these individuals, undertaken by the Scrutiny Committee, when the petitioner's real brother Shirish has been held entitled to have a certificate of validity,

apart from the other aforementioned individuals, we need not undertake a fresh scrutiny of the same evidence.

[6] In the light of the above, we allow the writ petition, quash and set aside the impugned order and direct the Committee to issue a certificate of validity to the petitioner of Koli Mahadev Scheduled Tribe, which shall be subject to the final outcome of the matters, which the Committee has decided to re-open in respect of validity holders.

[7] The petitioner shall not be entitled to claim equities

2025(1)MCJ9

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Amit Borkar]

Writ Petition No 10926 of 2014 **dated 06/12/2024**

Sharadchandra Ramkrishna Deshmukh Since Deceased; Shailaja Sharadchandra Deshmukh; Anita Pushkarraj Deshpande

Versus

Kuldeep Builders; Amol Giridharlal Karava; Atul Ashok Purandare; Amul Giridharlal Karwa; Amol Pandurang Patilamit Borkar

EXECUTION DISPUTE IN DECREE

Code of Civil Procedure, 1908 Or. 21R. 1, Or. 21R. 19 - Execution Dispute in Decree - Decree-holder challenged Executing Court's calculation deducting Rs. 17,00,000 payable to judgment-debtor from principal amount before interest computation and restricting interest to counter-claim date - Decree awarded interest till realization on specified amounts and directed mutual adjustment of liabilities - Executing Court's interpretation of Order XXI Rule 19 exceeded intent by overriding explicit decree terms - High Court held adjustment to occur after calculating accrued interest on principal till realization - Directed recalculation of payable amount following decree provisions and ensuring interest computation till realization - Impugned order set aside - Order Quashed

Law Point: Adjustment under Order XXI Rule 19 of CPC must not alter express terms of a decree and interest on decretal amount should be computed as specified in decree until realization.

Acts Referred:

Code of Civil Procedure, 1908 Or. 21R. 1, Or. 21R. 19

Counsel:

Vijay D Patil, Yogesh Patil, Amey Deshpande, Ajit V Mandlik

JUDGEMENT

Amit Borkar, J.- [1] By this writ petition under Article 227 of the Constitution of India, the petitioner, being the decree-holder, challenges the judgment and order dated 24th September 2014 passed by the Executing Court. The Executing Court, while adjudicating the amount payable by the judgment-debtor, calculated interest awarded under the decree only up to the date of the counter-claim, i.e., 10th January 2001, and deducted the amount of Rs. 17,00,000/- payable by the decree-holder to the judgment-debtor from the principal amount.

[2] The facts and circumstances relevant for adjudication of the issue involved are as under:

The Petitioner, as a decree-holder, initiated Special Civil Suit No. 419 of 2000 in the Court of Civil Judge Senior Division, Pune, seeking declaratory relief and permanent injunction. The suit arose from a development agreement between the parties, where disputes emerged over payments, construction work, and mutual obligations. After a detailed examination of the pleadings, evidence, and arguments, the Trial Court delivered its judgment on 31st March 2005, partly decreeing the suit. The operative part of the decree was as follows:

"1. The suit is hereby partly decreed as under:

2. Defendants shall pay an amount of Rs.44,0,750/- (Rs. Forty four lakh seven Hundred Fifty only) to the plaintiff along with interest at ther ate of Rs.18% per annum only on the principle amount Rs.38,00,000/- (Rs. Thirty Eight Lax only) from 12.2.2000 to till its realisation towards the consideration amount of development agreement.

3. Defendant shall pay an amount of Rs.15,00,000/- (Rs. Fifteen Lac only) to the plaintiff along with interest at the rate of Rs.18% per annum from the date of suit i.e. 17th April 2000 to till its realisation towards the amount for completing remaining construction work.

4. Defendant shall pay amount of Rs.5,84,000/- (Rs. Five Lac Eighty Four Thousand only) to the plaintiff along with interest at the rate of Rs.18% per annum from the date of the suit to till its realisation.

5. Charge of the decree is created on the North West and North East wing of the suit property and an property bearing CTS NO.557, Sadashiv Peth, Pune described in Schedule of Exh. 5 Rest claim of the plaintiff stands rejected.

6. Plaintiff shall pay an amount of Rs.17,00,000/- (Rs. Seventeen Lac only) to the defendants. Plaintiff and defendants can adjust this amount against the amount payable by the defendant to the plaintiff.

7. Rest claim of the defendants stands rejected

8. Defendant shall pay the suit and bear his own.

9. Decree be drawn up accordingly."

[3] During the execution proceedings, the judgment-debtor filed an application quantifying the net amount payable as Rs. 1,41,04,970, asserting that Rs. 17,00,000/- payable by the decree-holder to the judgment-debtor must be deducted from the principal amount before calculating interest and that the interest on the decretal amount should be calculated only up to the date of the counter-claim, i.e., 10th January 2001.

[4] The decree-holder contested this calculation, arguing that the deductions and limitations proposed by the judgment-debtor are contrary to the express terms of the decree. It was submitted that the decree mandates interest at 18% per annum "till realization" and does not restrict its computation to any earlier date. Furthermore, the decree's language does not direct that the amount of Rs. 17,00,000/- be deducted from the principal before calculating interest. Instead, it provides for adjustment after the determination of the total amounts payable by both parties.

[5] The Executing Court, by its impugned order, upheld the judgment-debtor's contention. It relied on Order XXI Rule 19 of the Code of Civil Procedure, 1908, which provides for adjustment of reciprocal liabilities during execution proceedings. The Court concluded that Rs. 17,00,000/- payable by the decree-holder to the judgment-debtor must be deducted from the principal amount of Rs. 38,00,000/- before applying the interest rate of 18% per annum. It further held that the interest on the decretal amount is restricted to the date of the counter-claim, i.e., 10th January 2001, despite the decree explicitly stating "till realization."

[6] Mr. Patil submitted that the Executing Court committed a grave error of law in restricting the calculation of interest on the decretal amount up to the date of counter-claim, i.e., 10th January 2001. He contended that the reliance on the judgment in **Om Prakash Gupta v. Ranbir B. Goyal**, 2002 AIR(SC) 665, was misplaced, as that decision pertained to the crystallization of rights of parties on the date of filing the suit in the context of specific performance, which is distinguishable from the facts of the present case. The decree in question explicitly awards interest "till realization," leaving no room for curtailment to a prior date. He further argued that the decree stipulates the adjustment of Rs. 17 lakh between the decree-holder and the judgment-debtor without any direction to deduct it from the principal amount before calculating interest. The sequence of calculations as envisaged by the decree must be respected. He relied on the judgment of the Supreme Court in **V. Kala Bharathi & Ors. v. Oriental Insurance Co. Ltd., Branch Chittoor**, 2014 5 SCC 577, which affirmed that interest awarded by the court must be calculated in strict adherence to the decree until actual realization unless expressly provided otherwise.

[7] Mr. Patil emphasized that the Executing Court cannot rewrite or modify the terms of the decree during execution. He submitted that the role of the executing court

is limited to enforcing the terms of the decree as they stand, and it lacks jurisdiction to adjudicate matters that alter or override the express provisions of the decree.

[8] Mr. Deshpande, on the other hand, supported the Executing Court's interpretation, submitting that the reliance on Order XXI Rule 19 of the Code of Civil Procedure, 1908, was justified. He argued that the rule permits the adjustment of reciprocal claims to prevent unnecessary multiplicity of proceedings and enables an equitable resolution of liabilities. According to him, the deduction of Rs. 17 lakh from the principal amount before calculating interest aligns with this equitable principle. He also contended that the Executing Court correctly restricted the calculation of interest up to the date of counter-claim, i.e., 10th January 2001, as the counter-claim marked a significant turning point in the litigation, effectively crystallizing the rights and liabilities of the parties. He argued that such a limitation avoids undue accrual of interest, which would otherwise result in an unjust financial burden on the judgment-debtor, particularly when the decree-holder was also liable to pay Rs. 17 lakh.

[9] Mr. Deshpande submitted that adjustments made during execution should aim for fairness and expediency, particularly where the mutual liabilities of parties are undisputed. He contended that the approach adopted by the Executing Court achieves this purpose without causing prejudice to either party.

[10] After hearing learned advocates for the parties, it is necessary to set out relevant provisions of Code of Civil Procedure, 1908 which are as under:

"ORDER XXI

Execution of Decrees and Orders

Payment under Decree

1. Modes of paying money under decree.-(1) All money, payable under a decree shall be paid as follows, namely:-

(a) by deposit into the court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs.

(2) Where any payments is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.

(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:-

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.

19. Execution in case of cross-claims under same decree.- Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then-

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree."

[11] On a meticulous reading of Order XXI Rule 19, it becomes evident that the provision governs the execution of cross-claims within the same decree. It emphasizes that when two parties owe monetary sums to each other under a decree, and these sums are unequal, the execution can be taken out only for the excess amount, with satisfaction recorded for the smaller amount. This rule aims to avoid multiplicity of execution proceedings and ensure fairness in recovery. It provides a mechanism for adjustment of mutual liabilities between the decree-holder and the judgment-debtor. The provision stipulates that where decrees are set off, the Court must ascertain the net amount payable and pass orders accordingly. The intent of this rule is to ensure that

decrees involving mutual obligations are executed equitably without requiring separate execution proceedings for each decree.

[12] In the present case, the Executing Court applied this provision to deduct the amount of Rs. 17,00,000/- payable by the decree-holder to the judgment-debtor from the principal amount of the claim decreed in favor of the decree-holder. This interpretation raises a crucial question about whether the deduction should precede the calculation of interest on the principal amount or follow it, in light of the specific terms of the decree and the established principles of execution law.

[13] The decree explicitly awards interest at the rate of 18% per annum on the principal amounts of Rs. 38,00,000/-, Rs. 15,00,000/-, and Rs. 5,84,000/- "from the date of suit to till its realisation." It also provides that the amount of Rs. 17,00,000/- payable by the decree-holder to the judgment-debtor "can be adjusted" against the amounts payable by the defendant to the plaintiff. The language of the decree, therefore, emphasizes interest accrual on the principal amount until the date of realization. The term "adjustment" implies a mutual set-off mechanism, but it does not inherently suggest that the amount payable by the decree-holder must be deducted before interest is calculated. This distinction is critical because premature deduction of Rs. 17,00,000/- from the principal amount may alter the effective calculation of interest and potentially prejudice the decree-holder's entitlement under the decree.

[14] The Executing Court's interpretation of Order XXI Rule 19 to adjust Rs. 17,00,000/- against the principal amount before interest calculation appears to stretch the provision beyond its intent. The rule aims to facilitate efficient execution by setting off reciprocal liabilities, but it does not override explicit terms of the decree. In the absence of specific directions within the decree mandating such a sequence, the adjustment should occur after determining the total amount payable under the decree, including accrued interest. The satisfaction under Order XXI Rule 19 must be entered on the date of the decree itself.

[15] The decree-holder contended that the Executing Court erred in restricting the calculation of interest to the date of the counter-claim, i.e., 10th January 2001. Such a finding contravenes the express provisions of Order XXI Rule 1 and Order XXI Rule 19(b) of the Code of Civil Procedure, 1908. Order XXI Rule 1 mandates the appropriation of payments towards interest and costs first, while Order XXI Rule 19(b) clarifies that interest is an integral part of the decretal amount unless otherwise stipulated. Interest awarded in the decree must be calculated as specified, and the executing court cannot restrict the period for which interest is payable unless the decree explicitly so provides. In the present case, the decree clearly awards interest "till realization," making any restriction on the period of interest untenable. It follows from the above analysis that the Executing Court was required to calculate interest in strict adherence to Clauses 2, 3, and 4 of the decree until realization. In cases where the judgment-debtor deposits an amount towards satisfaction of the decree, the

deposited amount must first be appropriated towards accrued interest, as per Order XXI Rule 1, and the remaining amount should be adjusted against the principal. The decree-holder is entitled to recover the balance amount, with interest calculated on such reduced principal, until full realization.

[16] In light of the foregoing discussion, the impugned judgment and order dated 24th September 2014, passed by the IInd Joint Civil Judge Senior Division, Pune, below Exhibit-208 in the application dated 17th July 2011, is hereby quashed and set aside.

[17] The Executing Court is directed to recalculate the amount payable by the judgment-debtor in accordance with the observations made herein. The recalculation must strictly follow the provisions of Clauses 2, 3, and 4 of the decree, along with the adjustments mandated by Order XXI Rule 19 of the CPC, and ensure interest is computed until the realization of the full decretal amount.

[18] Given that Execution Petition No. 184 of 2005 has been pending for nearly two decades, the Executing Court is directed to dispose of the petition within a period of six months from the date of this judgment

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2025(1)MCJ15

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before S G Mehare; Shailesh P Brahme]

Writ Petition No 2650 of 2019 **dated 02/12/2024**

Shejal Bahuuddeshiya Shikshan Sanstha

Versus

State of Maharashtra; Vice Chancellor, Dr Babasaheb Ambedkar Marathwada University

REJECTION OF L.O.I

Maharashtra Public Universities Act, 2016 Sec. 109, Sec. 107, Sec. 31, Sec. 37 - Rejection of L.O.I - Petitioner sought issuance of Letter of Intent (L.O.I.) for opening a new college for academic year 2019-2020 citing positive recommendation from university - Respondent-State cited deficiencies in compliance with norms, including land documents and financial details, and rejected proposal - High Court upheld rejection emphasizing State's discretion under Sec. 109 of Act, 2016 and expiry of relevant perspective and annual plans - Found delay in State's response irrelevant as rejection reasons were communicated in 2019 - Petition dismissed with liberty to pursue remedies against university for non-communication

Law Point: State discretion to issue L.O.I. under Maharashtra Public Universities Act prevails over university recommendations; claims must comply with statutory plans and timelines.

Acts Referred:

Maharashtra Public Universities Act, 2016 Sec. 109, Sec. 107, Sec. 31, Sec. 37

Counsel:

V D Salunke, P S Patil, R O Awasarmol

JUDGEMENT

Shailesh P. Brahme, J.- [1] Rule. Rule is made returnable forthwith. With the consent of parties heard both sides finally at the admission stage.

[2] Petitioner is a minority educational institution aspiring to open a new college, has approached this Court seeking direction for grant of permission to open a new college at village Babargaon, Tq. Gangapur, Dist. Aurangabad from the academic year 2019-2020 and seeking quashment of action refusing to grant permission to open the college.

[3] The petition is filed on 12.02.2019. By order dated 06.03.2019 notices were issued for final disposal, returnable on 03.04.2019. The respondent No. 2 - university did not file reply despite opportunities were given to it. The respondent No. 1 also sought many adjournments for filing reply. Ultimately, on 09.02.2021 reply was filed. At the outset, it is necessary to disclose that we are considering the prayer of the petitioner to open a new college which was made for academic year 2019-2020, when academic year 2024-2025 is in progress.

[4] It is the case of the petitioner that it is a minority institution. In annual plan of 2019-2020 the location of Babargaon, Tq. Gangapur, Dist. Aurangabad was incorporated for allotting the proposed new college as per the approval of Management Council dated 07.08.2018. The respondent No. 1 issued Government Resolution dated 15.09.2017 calling upon the proposals for opening the new colleges. Petitioner submitted proposal on 29.09.2018 along with necessary documents by paying requisite fees. It was scrutinized by the respondent No. 2 - university. The deficiencies were reported, which were cured by the petitioner. Ultimately vide letter dated 29.11.2018, the respondent No. 2 - university recommended the proposal of the petitioner for issuing Letter of Intent (hereinafter referred as to the "L.O.I.").

[5] Despite positive recommendation from the university, the petitioner was not issued with L.O.I. The respondent No. 1 issued Government Resolution dated 31.01.2019 granting L.O.I. to various institutions. The petitioner was not included in it. The petitioner was not informed the reasons for rejection of the proposal by either of the respondents. Hence petitioner is before us.

[6] Learned counsel Mr. V. D. Salunke, appearing for the petitioner submits that despite positive recommendation, the respondent No. 1 did not issue L.O.I. The petitioner was the only claimant for the location in question and proposal was complete in all respects. Hence denial of L.O.I. by the respondent No. 1 is arbitrary and discriminatory. It is submitted that impugned action is against the Government Resolution dated 15.09.2017 especially Clause Nos. 3.11 to 3.14. The petitioner had removed all the deficiencies and thereafter respondent No. 2 - university had recommended the proposal. Hence, there was no reason for the respondent No. 1 to deny L. O. I.

[7] Learned counsel further submits that the petitioner is entitled to get L.O.I. before 15.06.2019. In the absence of any fault on the part of the petitioner, impugned action is perverse and arbitrary. It is vehemently submitted that the proposal of the petitioner for 2019-2020 is not enervated by efflux of time and still L.O.I. can be granted in the present academic year. Learned counsel would submit that petitioner paid huge fees. The respondents intentionally delayed filing of affidavit in reply for three years and came up with after thought theory of rejection of the proposal citing grounds first time in the reply, which amounts to fraud.

[8] Learned counsel submits that the plea of the respondent No. 1 that the proposal was rejected and communicated to the university vide letter dated 07.02.2019, is after thought. He relies on the judgment of the Supreme Court in the matter of **Mohindersing Gill and another Vs. The Chief Election Commissioner, New Delhi and others**, 1978 1 SCC 405.

[9] Per contra, learned Additional Government Pleader repels the submissions of the petitioner by relying on affidavit in reply. It is stated in para No. 6 of the reply that the proposal was found to be deficient for four reasons. The respondent No. 1 duly communicated the reasons for rejection of proposal vide letter dated 07.02.2019 to the respondent No. 2 and instructed to communicate those to the petitioner. Petitioner's proposal for the academic year 2019-2020 cannot be considered now in the academic year 2024-2025. It is further submitted that the respondent No. 1 has discretion to reject the proposal, albeit, being positively recommended by the university.

[10] Learned counsel for the respondent No. 2 - university neither supported the petitioner, nor the respondent No. 1.

[11] We have considered rival submissions of the parties.

[12] The petitioner had submitted proposal on 29.09.2018 in pursuance of the Government Resolution dated 15.09.2017 for the location at Babargaon, Tq. Gangapur, Dist. Aurangabad. After exchange of communication in between petitioner and the respondent No. 2 in respect of deficiencies in the proposal, vide letter dated 29.11.2018 the proposal was positively recommended by the respondent - university to the respondent No. 1. The respondent No. 1 found shortfalls in the proposal and hence

L.O.I. was not issued. The respondent No. 1 claims that vide letter dated 07.02.2019 the reasons for rejection were communicated to the respondent No. 2.

[13] It is the discretion of the respondent No. 1 as per Section 109(3)(d) of the Maharashtra Public Universities Act, 2016 (hereafter referred as to the "Act of 2016" for the sake of brevity and convenience). If in the opinion of the State Government the management seeking L.O.I. is not fit and proper, then it is empowered to refuse to issue L.O.I. In view of this statutory power, we are unable to accept the submission of the petitioner that once there is a positive recommendation from the university, the respondent No. 1/State has no option, but to issue L.O.I.

[14] The proposal of the petitioner was rejected by the respondent No. 1 considering norms laid down by the Government Resolution dated 15.09.2017. In paragraph No. 6 of the reply following reasons are cited:

i) As per norms 13 of schedule B of GR dated 15.09.2017 the relevant paper of registered lease deed were not enclosed. Only Index-II (suchi No. 2) was enclosed. The required area is 1H=20R however, it seems that the area shown on Index NO. 2 is 1H=19R. The documents and area are not as per norms 13.

ii) As per norms 14 of the schedule B of the said GR map of proposed college has to be annexed. The map is annexed but said map does not show that it is of the name of proposed college.

iii) Norm 15 of schedule B of said GR required details information about the finances, source of finance, details of teaching staff and non-teaching staff as well as provisions of finance made for the same. In the present matter short information is given however detail information is required.

iv) As per norm 16 of schedule B of the said GR details about the previous experience, in Education field or social field and other details are required. The petitioner institute give short information however detail information is required.

[15] By letter dated 07.02.2019, the respondent No. 1 had duly communicated the above reasons to the respondent No. 2 with specific instruction to apprise the reasons to the petitioner immediately. The letter was accompanied by the list of institutions whose proposals were rejected and the petitioner was at Sr. No. 11. The respondent No. 1 cannot be held liable for not communicating the reasons of rejection. Promptly the reasons were communicated to the university.

[16] We have already recorded that the respondent No. 1 has discretion either to accept or to reject the recommendation. Though the proposal of the petitioner was solitory for location in question, it would not bind the respondent No. 1 to issue L.O.I. When there were shortfalls, it was not mandatory for the respondent No. 1 to issue L.O.I. prior to 15.06.2019. No benefit can be given to the petitioner by implication of clause 3.14 of the G. R. dated 15.09.2017. After issuance of G.R. dated 31.01.2019 when petitioner learnt that it was not issued with L.O.I., no attempt was made by

approaching the respondent - university to know the reasons. As per Clause No. 3.11 of the G.R., the respondent No. 2 should have intimated the reasons of rejection to the petitioner. The respondent No.2 has not given any explanation. It did not file affidavit in reply.

[17] It is vehemently contended by the learned counsel for the petitioner that reasons assigned for rejecting its proposal are after thought and patently false. The conduct of the respondent No. 1 is castigated for filing affidavit in reply belatedly. Just because affidavit in reply was filed after about three years would not be a ground to doubt genuineness or validity of the reasons for rejection of the proposal. The reasons were communicated by the respondent No. 1 to the respondent No. 2 - university vide letter dated 07.02.2019.

[18] Petitioner has placed reliance on the judgment of the Supreme Court in the matter of **Mohindersing Gill and another Vs. The Chief Election Commissioner, New Delhi and others** (supra). The rejection of the proposal is communicated by letter dated 07.02.2019 by the respondent No. 1. Same reasons are incorporated in affidavit in reply dated 09.02.2021 filed by the respondent No. 1. It is not the case that the reasons for rejection are for the first time supplied by affidavit and that too before the High Court. Already those reasons existed and communicated to the respondent - university and those are reiterated by way of affidavit. For this reason the judgment cited above does not assist the petitioner.

[19] With his usual vehemence, learned counsel Mr. V. D. Salunke tried to persuade us that the proposal cannot be enervated by efflux of time. Admittedly, vide G.R. dated 15.09.2017 proposals were invited for issuing L.O.I. for 2019- 2020. The G.R. is followed by annual plan of 2019-2020. The management council approved the location on 07.08.2018. Annual plan was fallout of perspective plan of five years from 2014 to 2019. When we are considering the petition in the academic year 2024-2025, neither the relevant perspective plan, nor the annual plan are in force.

[20] As per Section 107 of the Act of 2016 comprehensive perspective plan could be for five years. There is every possibility of commencement of next perspective plan. Similar is the case with the annual plan. One does not know that the location in question for which the petitioner aspired to open a college subsisted in the present perspective plan as well as annual plan applicable for 2024-2025. Therefore, the petitioner's claim cannot be considered for the present academic year.

[21] The claim of any educational institution to open a college at a particular location cannot be accepted randomly. There is statutory framework provided by Sections 107 and 109 of the Act of 2016. For opening of the new colleges comprehensive plan would be prepared as per Section 107 of the Act. For preparing the perspective plan various factors are taken into consideration prescribed by Sub Section 1 to 6 of Sec. 107 of the Act. It is technical as well as expertise exercise. The Board of Deans U/Sec. 37(1)(b)(i) of the Act of 2016 prepares the perspective plan.

Then it is recommended by the Management Council to the Academic Council U/Sec. 31(7). Thereafter Academic Council approves it U/Sec. 37(1)(q). The perspective plan prepared by the university is placed before the Commission U//Sec. 37(1)(o) for approval. After such approval it becomes enforceable.

[22] Thereafter the annual plan is prepared in consonance with perspective plan as per Sub Section 5 of Section 107 of the Act of 2016. A particular location which was selected in an erstwhile perspective plan or annual plan may not subsist in a successive plan. It is to be demonstrated that the same location subsisted in successive plan, which is not the plea of the petitioner in the present case. This procedure has been dealt with by the coordinate bench vide **judgment dated 26 August 2024** in the matter of **Nisargdeep Shikshan Prasarak Mandal, Aurangabad Vs. The State of Maharashtra and others in Writ Petition No. 2093 of 2024.**

[23] It is relevant to notice that the L.O.I. granted to the institution is valid upto 31st January of the next following year as per Sec. 109(3)(e) of the Act of 2016 and final approval is granted upto 15th June of the year in which such a new college is proposed to be started. Considering the timeline stipulated in the statute, in the present matter L.O.I. was valid upto 31.01.2020, if it was to be granted. There is a statutory provision enabling the Court to award L.O.I. within the timeline provided above. Therefore, the submission of the learned counsel for the petitioner that L.O.I. can be granted has no merit.

[24] It reveals from the record that the respondent No. 2 has disclosed the reasons for rejection of petitioner's proposal in February 2019 itself. If the petitioner was not further communicated the reasons, it would be the respondent No. 2 who is responsible. The respondent No. 2 has not chosen to file affidavit in reply and is a silent spectator. The petitioner at the most can sue the respondent No. 2 for its inaction, if permissible in law. But no relief can be claimed against the respondent No. 1.

[25] For the reasons stated above, present petition sans merit. It is dismissed. Rule is discharged. There shall be no order as to costs

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2025(1)MCJ20

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Sandeep V Marne]

Civil Revision Application; Interim Application No 210 of 2022; 3223 of 2022, 3222 of 2022 **dated 02/12/2024**

Uma Ramji Tiwari

Versus

Ashok Manilal Dubey (Deceased)

EVICTION FOR RENT DEFAULT

Code of Civil Procedure, 1908 Or. 20R 12, Sec. 115 - Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 Sec. 12, Sec. 13 - Transfer of Property Act, 1882 Sec. 108 - Maharashtra Rent Control Act, 1999 Sec. 16, Sec. 11, Sec. 7 - Eviction for Rent Default - Tenant challenged eviction decree sustained by lower courts on grounds of default in rent payment and acquisition of alternate accommodation - Court observed tenant failed to deposit arrears, interest, and costs as per Sec. 12(3) Bombay Rent Act despite multiple opportunities - Found no valid reason to interfere with factual findings on demand notice service or statutory compliance - Decree upheld, with alternate accommodation ground rendered unnecessary for decision - Tenant granted time to vacate premises while barred from creating third-party rights - Revision Dismissed

Law Point: Tenants failing to meet statutory requirements for rent deposit under Sec. 12(3) Bombay Rent Act lose protection against eviction; compliance must include arrears, interest, and costs.

Acts Referred:

Code of Civil Procedure, 1908 Or. 20R 12, Sec. 115

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 Sec. 12, Sec. 13

Transfer of Property Act, 1882 Sec. 108

Maharashtra Rent Control Act, 1999 Sec. 16, Sec. 11, Sec. 7

Counsel:

Puneet Chaturvedi, Shreyans T Baid, Vinay Ashok Dwivedi (Respondent In Person)

JUDGEMENT

Sandeep V Marne, J.- [1] The revisionary jurisdiction of this Court is invoked to set up a challenged to the judgment and decree dated 24 March 2022 passed by Appellate Bench of the Small Causes Court dismissing Applicant's Appeal No. 93 of 2019 and confirming the eviction decree dated 11 March 2019 passed by the Learned Judge of the Small Causes Court in R.A.E. & R. Suit No. 113/355 of 1994.

[2] I have heard Mr. Chaturvedi, the learned counsel appearing for the Applicant and Vinay Ashok Dwivedi-Respondent No.1a in person. I have considered the submissions canvassed by them and have also gone through the findings recorded by the Trial and the Appellate Courts as well as the documents and evidence placed on record.

[3] It appears that the suit was initially filed by the Respondents/Plaintiffs seeking recovery of possession of the suit premises on the ground of non-user, change of user, default in payment of rent, unauthorized additions and alterations, acquisition of suitable alternate accommodation and commission of acts contrary to Section 108(o) of the Transfer of Property Act, 1882. The Trial Court accepted the grounds of non-

user, change of user, default in payment of rent, unauthorized additions and alterations and acquisition of suitable alternate accommodation. The Trial Court however rejected the ground of commission of acts contrary to provisions of Section 108(o) of the Transfer of Property Act, 1882 read with Section 13(1)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 **(Bombay Rent Act)**. The Trial Court directed the Applicant/Defendant to hand over possession of the suit premises to the Plaintiff with further direction for conduct of enquiry into mesne profit under Order 20 Rule 12 of the Civil Procedure Code.

[4] The Applicant/Defendant challenged eviction decree dated 11 March 2019 before the Appellate Bench of the Small Causes Court. She has partly succeeded in her Appeal as the Appellate Bench of the Small Causes Court has rejected the grounds of non-user, change of user and unauthorized additions and alterations. The eviction decree is ultimately sustained by the Appellate Court on twin grounds of default in payment of rent and acquisition of suitable alternate accommodation. Applicant/Defendant has challenged the decree passed by the Appellate Bench directing her eviction on the grounds of default in payment of rent and acquisition of suitable alternate accommodation in the present Revision Application.

[5] So far as the ground of default in payment of rent is concerned, it appears that demand notice as required under Section 12(2) of the Bombay Rent Act was served on the Defendant, demanding the arrears of rent from March 1993 onwards. It appears that the cheque was handed over to the Plaintiffs/Landlords dated 21 September 1993 of Rs.1620/- towards arrears of rent. The cheque was however dishonored. Mr. Chaturvedi has submitted that the said cheque was never drawn by the Applicant/Defendant and that therefore the inference of default in payment of rent cannot be drawn in the present case. He would also dispute service of the demand notice on the Defendant-Tenant. However, both the Courts have concurrently recorded a finding of fact that the Demand Notice dated 10 August 1993 has been served on the Defendant-Tenant. I do not find any valid reason to interfere in the said finding of fact by instituting a fresh enquiry into the aspect of service of the demand notice by reappreciating the evidence.

[6] The Defendant thus failed to avail the first opportunity of making good the default after service of the demand notice. Under provisions of Sub-Section (3) of Section 12, the Defendant had second opportunity of making good the default by depositing in the Court before first day of hearing of the suit, the entire arrears of rent 'then due' together with interest at the rate of 9% per annum as well as costs of the suit. If the entire amount as contemplated under Section 12(3) of the Bombay Rent Act was to be deposited in the Court on or before first date of hearing of the suit, the decree for eviction on the ground of default in payment of rent could be obviated. By now it is well settled position of law that the first date of hearing of the suit as contemplated under Section 12(3) of the Bombay Rent Act is the date on which issues are framed by

the Court. In the present case, though the suit was instituted in the year 1994 the issues were belatedly framed on 13 November 2003. Before framing of issues, Defendant took out Interim Notice No. 1026 of 2002 on 3 July 2002 for seeking permission to deposit the arrears of rent. The Small Causes Court passed following on order on 30 September 2002 on Interim Notice No. 1026 of 2002:

The Plaintiff is duly served as per the bailiff's report dated 9.7.2002 but are absent, no reply filed. In view of the grounds in the application the following order.

ORDER

Notice made absolute.

Defendant is allowed to deposit in this court arrears of rent amounting to Rs. 11,300/- from March 1993 till July 2002 on or before 29.10.2002.

Defendant is further directed to go on depositing rent at the rate of Rs.100/- per month from August 2002 till Sept. 2002 on or before 29.10.2002.

Defendant is further directed to go on depositing Rs.100/- per month from 1.10.2002 on or before 10th day each succeeding month. Plaintiffs are at liberty to withdraw the amount as and when deposited by the Defendant.

The above order is without prejudice to the rights and contentions of the parties.

No order as to costs.

[7] According to Mr. Chaturvedi, the entire amount directed by the Court by Order dated 30 September 2002 was deposited by the Defendant-Tenant and she was regular in deposit of rent of Rs.100/- throughout pendency of the proceedings.

[8] However, what is missed out by Mr. Chaturvedi is the position that the deposit made by Defendant-Tenant in pursuance of order dated 30 September 2002 did not conform to the requirement under Section 12(3) of the Bombay Rent Act which provides thus:

12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if , on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine per cent. per annum; and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court.

Provided that, the relief provided under this sub-section shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against such tenant.

(4) Pending the disposal of any such suit, the Court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increase due to him as the Court thinks fit.

Explanation I - In any case where there is a dispute as to the amount of standard rent of permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under sub-section (3) of section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court.

Explanation II - For the purposes of sub-section (2), reference to "standard rent" and "permitted increase" shall include reference to "interim standard rent" and "interim permitted increase" specified under sub-section (3) or (4) of section 11.Explanation III.- For the purposes of this section where, a tenant has deducted any amount from the rent due to the landlord under section 173C of the Bombay Municipal Corporation Act for recovery or any water tax or charges paid by him to the Commissioner, the tenant shall be deemed to have paid the rent to the extent of deductions so made by him.

[9] Thus, what was required to be deposited by the Defendant-Tenant before the date of framing of issues is the entire amount of rent then due, interest at the rate of 9% thereon as well as costs of the suit. There is purpose why the statute has made in mandatory to the defaulter tenant to deposit not just the entire arrears of rent, but also interest as well as costs of the suit. Rent control legislation confers protection from rent escalation and eviction for a tenant. The tenant who continues to pay standard rent and permitted increases to the landlord enjoys protection from eviction unless one of the grounds specified in Section 13 of the Bombay Rent Act is made out by the landlord. Thus, the minimum that is expected from a tenant, who enjoys protection from rent escalation and eviction, is to pay to the landlord standard rent and permitted increases. The Bombay Rent Act has provided twin safeguards to ensure that a decree for eviction is not passed against a tenant, who has defaulted in payment of rent. The Act first enjoins duty on the landlord to serve a notice at contemplated under Sub-section (2) of

Section 12 on the tenant demanding the entire arrears of rent and wait for a period of one month for the tenant to make good the default before filing of the eviction suit. This is the first opportunity provided to the tenant to make good the default in payment of rent within a period of one month of receipt of the demand notice. However, if the tenant fails to pay to the landlord the arrears of rent within a period of one month from the date of receipt of demand notice, the Act provides one more opportunity to the defaulter tenant to frustrate landlord's suit for eviction. The defaulter tenant, who forces the landlord to incur expenditure in filing a suit, is statutorily required to deposit in the Court not only the entire arrears of rent then due, but also interest as well as costs of the suit to obviate an eviction decree. This is the broad statutory objective behind making compulsory deposit of interest as well costs of the suit when the tenant fails to avail first opportunity of paying the arrears of rent within one month of receipt of demand notice. Therefore, the tenant who merely deposits the entire arrears of rent without interest or costs of suit cannot obviate a decree for eviction.

[10] In the present case, Defendant was not paying rent to the landlord since March 1993. The rent payable in March 1993 has ultimately been deposited by the Defendant in the Court on 30 September 2002, i.e after 11 long years. The rent ultimately represents return on investment made on land and building for the landlord. True it is that on account of provisions of rent control legislation freezing the standard rent and putting an embargo on the landlord to enhance the rent, the amount of standard rent no longer represents even remotely the real return on investment of the landlord. However, the minimum that is required is that the tenant pays atleast the paltry sum of standard rent regularly without any delay. Therefore, where a tenant who (i) does not pay rent regularly, and (ii) who does not make good the default after receipt of demand notice, and (iii) decides to await filing of suit and avails second opportunity for obviating the eviction decree under provisions of Section 12(3) of the Bombay Rent Act, it is incumbent that such tenant deposits in the Court, not just the amount of arrears, but also 9% interest and costs of suit. Thus, when Defendant had not paid rent for the month of March 1993 and was depositing the same in the Court in the year 2002, the lease that was required that the Defendant-Tenant deposited the rent for the month of March 1993 alongwith interest for over 11 long years. In the present case, however Defendant neither applied to the Court for deposit of interest nor deposited interest on arrears of rent for a period of 11 long years. She took calculated risk of not paying to the landlord arrears of rent since March 1993 and thereafter further took further risk of not even depositing the same for 8 long years after filing of the suit. The suit was filed in the year 1994. The Defendant-Tenant took the benefit of non-framing of issues by the Court till 13 November 2003 and filed application for deposit of rent only on 3 July 2002. True it is that the Defendant-Tenant cannot really be blamed for doing so, as the law granted her opportunity to deposit the arrears of rent up to the date of framing of the issues. However, the law also required her to deposit the arrears of rent alongwith 9% interest and costs of the suit. In the present case, since the arrears of rent were not deposited

alongwith interest at the rate of 9% per annum as statutorily required under provisions of Section 12(3) of the Bombay Rent Act, the Court was left with no other discretion but to pass a decree for eviction against the Defendant.

[11] Apart from non-deposit of interest, the Defendant also did not pay to the landlord costs of the suit which again is a mandatory requirement for obviating a decree for eviction under Section 12(3) of the Bombay Rent Act. Mr. Chaturvedi has relied upon direction in the order dated 30 September 2002 that 'no order as to costs' in support of this contention that the Court itself directed that the Defendant need not pay any costs to the Plaintiff, I am unable to agree. The Court did not impose costs in Interim Notice No. 1026 0f 2022. The Court neither directed nor could have directed non-payment of costs of the suit to the Plaintiff as statutorily required under Section 12(3) of the Bombay Rent Act.

[12] Apart from failure to deposit interest and costs of the suit, deposit of Rs.100/- per month in pursuance of order dated 30 September 2002 did not represent deposit of entire amounts 'then due'. Under provisions of Section 12(3) of the Bombay Rent Act what the tenant is required to deposit in the Court is the amount of arrears of rent 'then due'. As on 30 September 2002, Maharashtra Rent Control Act, 1999 had come into force on 30 March 2000. Under provisions of Section 7(14)(b) of the MRC Act, the standard rent got increased by 5% as on 31 March 2000, and the rent accordingly became Rs.105/-. Thereafter, under provisions of Section 11 of the MRC Act, the rent was required to be increased by 4% per annum every year after 31 March 2000. The Defendant-Tenant did not deposit in the Court even correct principal amount of standard rent which was due as on 30 September 2002.

[13] Thus, there is complete failure on the part of the Defendant-Tenant in depositing i) correct principal amount of arrears of rent ii) interest at the rate of 9% from March 1993 till September 2002 and iii) costs of the suit. In the light of failure on the part of the Defendant-Tenant to deposit the entire amount as required under Section 12(3) of the Bombay Rent Act, the Trial Court was left with no other option but decree the suit by ordering eviction of the Defendant-Tenant.

[14] In my view, therefore, the Trial Court has rightly decreed the suit on the ground of default in payment of rent and the decree has correctly been upheld by the Appellate Bench of the Small Causes Court. No interference is warranted in exercise of revisionary jurisdiction by this Court under Section 115 of the Code of Civil Procedure in the concurrent decrees on the ground of default in payment of rent.

[15] So far as the ground of acquisition of suitable alternate premises is concerned, it appears that the suit was amended on 4 September 2009 after coming into effect of provisions of MRC Act on 31 March 2000. Under Section 16 of the MRC Act, the ground of acquisition of suitable alternate accommodation is no longer available for the landlord to seek eviction of a tenant. It therefore becomes questionable as to whether it was open for the Plaintiff to seek decree for eviction

against the Defendant on the ground of acquisition of suitable alternate accommodation by amending the suit on 4 December 2009. Respondents No. 1(a) in person would justify the decree on the ground of acquisition of suitable alternate accommodation as the same was acquired before coming into force of MRC Act. Be that as it may. However, since the decree is being sustained on the ground of default in payment of rent, it is not really necessary to delve deeper into this aspect.

[16] Considering the overall conspectus of the case, I am of the view that no palpable error can be traced in the concurrent decrees passed by the Trail Court and the Appellate Courts ordering eviction of the Defendant-Tenant on the ground of default in payment of rent. Civil Revision Application is devoid of merits and is accordingly **dismissed.** In view of dismissal of Civil Revision Application, Interim Applications do not survive and the same are also disposed of.

[17] After the order is pronounced Mr. Chaturvedi would pray for continuation of interim order passed by this Court on 17 May 2022 for a period of twelve weeks. The request is opposed by Respondent No.1a on the ground that the interim protection has not been continued by this Court after 30 January 2024. Considering the facts and circumstances of the present case, the Applicant-Tenant is granted time upto 28 February 2025 to vacate the possession of the suit premises, subject to the condition of not creating any third-party rights in respect thereof

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2025(1)MCJ27

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Amit Borkar]

Writ Petition No 2315 of 2015 **dated 29/11/2024**

Deepak Manaklal Katariay

Versus

Ahsok Motilal Katariya; Competent Authority; Suresh Chaturbhuj Kela

ARBITRATION JURISDICTION

Code of Civil Procedure, 1908 Or. 14R. 2, Sec. 11 - Evidence Act, 1872 Sec. 115 - Arbitration Act, 1940 Sec. 20 - Arbitration and Conciliation Act, 1996 Sec. 85, Sec. 2, Sec. 21, Sec. 9 - Arbitration Jurisdiction - Petitioner filed application under Arbitration Act, 1940 seeking enforcement of arbitration agreement executed in 1995 - Trial Court held it lacked jurisdiction under Section 20 of Act - Petitioner argued respondents were barred by estoppel from denying applicability of 1940 Act due to prior admissions before higher courts - Respondents contended arbitration proceedings had not commenced under 1940 Act before its repeal by 1996 Act - Trial Court conflated jurisdiction and maintainability, leading to dismissal of application - High Court observed maintainability relates to procedural compliance while jurisdiction pertains to

legal authority - Found Trial Court misunderstood distinction between jurisdiction and maintainability - Quashed impugned order and restored application for adjudication on merits - Petition Allowed

Law Point: Jurisdiction pertains to legal authority to adjudicate, while maintainability addresses procedural compliance-Trial Court's error in conflating two concepts warranted quashing of its order.

Acts Referred:

Code of Civil Procedure, 1908 Or. 14R. 2, Sec. 11

Evidence Act, 1872 Sec. 115

Arbitration Act, 1940 Sec. 20

Arbitration and Conciliation Act, 1996 Sec. 85, Sec. 2, Sec. 21, Sec. 9

Counsel:

Shriram S Kulkarni, Aniruddha A Garge

JUDGEMENT

Amit Borkar, J.- [1] The petitioner is challenging the order dated 10th November 2014 passed by the 3rd Joint Civil Judge Senior Division, Nashik, in Civil Miscellaneous Application No. 321 of 2000 filed under Section 20 of the Arbitration Act, 1940, wherein it was held that the Court had no jurisdiction to entertain the application.

[2] The relevant facts for adjudication are as follows. According to the petitioner, on 28th May 1995, an arbitration agreement was executed between the petitioner and respondent No. 1 concerning movable and immovable properties described in the application. The arbitration agreement was purportedly governed by the Arbitration Act, 1940. A dispute arose between the parties in 1994, leading to the appointment of an Arbitrator. The Arbitrator submitted a draft arbitration award on 17th February 1997, which was accepted by the petitioner but refused by respondent No. 1. Consequently, no final arbitration award materialized between the parties, which became the crux of the subsequent litigation.

[3] On 17th March 1998, the petitioner filed Civil Miscellaneous Application No. 54 of 1998 in the Court of Civil Judge, Senior Division, Nashik, under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim injunction against respondent No. 1. The Trial Court granted a temporary injunction on 7th April 1998.

[4] Respondent No. 1 challenged the injunction order by filing Civil Miscellaneous Application No. 244 of 1998 before the 2nd Additional District Judge, Nashik. By judgment and order dated 20th October 1999, the District Judge set aside the injunction, holding that the Civil Judge, Senior Division, was not a "Court" within the meaning of Section 2(e) of the Arbitration and Conciliation Act, 1996.

[5] The petitioner challenged the District Judge's order in Writ Petition No. 663 of 1999 before this Court. By order dated 4th April 2000, this Court confirmed the Appellate Court's findings but permitted the petitioner to withdraw the Section 9 application with liberty to pursue appropriate remedies. The Supreme Court dismissed the petitioner's Special Leave Petition No. 12388 of 2000 on 6th November 2000. Subsequently, the petitioner withdrew Civil Miscellaneous Application No. 54 of 1998 with liberty to file a fresh application, which was allowed by the Trial Court on 13th December 2000.

[6] On 14th December 2000, the petitioner filed Civil Miscellaneous Application No. 321 of 2000 under Section 20 of the Arbitration Act, 1940, before the Civil Judge, Senior Division, Nashik. Respondent No. 1 filed an application seeking the framing of a preliminary issue regarding the Court's jurisdiction. By the impugned order dated 10th November 2014, the Trial Court held that it lacked jurisdiction to entertain the application.

[7] Mr. Kulkarni, learned Advocate representing the petitioner, contended that the respondents are barred by the principle of estoppel from raising objections regarding the applicability of the Arbitration Act, 1940. He pointed out that in earlier proceedings, including before the Supreme Court, the respondents had specifically pleaded that the purported arbitration agreement dated 28th May 1995 and the subsequent dispute were governed by the provisions of the Arbitration Act, 1940. Referring to paragraph 6(i) of the reply filed by the respondents before the Supreme Court, he submitted that the respondents unequivocally acknowledged that the arbitration agreement and reference pertained to the Arbitration Act, 1940. He argued that the doctrine of estoppel, as enshrined in Section 115 of the Indian Evidence Act, 1872, precludes a party from denying or going back on their prior statements, especially when such statements were relied upon by the petitioner to initiate proceedings under the old Act.

[8] Further, Mr. Kulkarni submitted that the Trial Court erred in conflating the issues of maintainability and jurisdiction. He asserted that maintainability pertains to procedural compliance, whereas jurisdiction involves the Court's legal authority to adjudicate. The Trial Court, he argued, failed to address the petitioner's submissions in light of the respondents' own admissions and prematurely concluded on jurisdiction without analyzing the broader context of Section 20 of the Arbitration Act, 1940. In conclusion, Mr. Kulkarni argued that the impugned order deserves to be quashed as it overlooked material facts, misapplied the law, and failed to consider the binding nature of prior statements made by the respondents in judicial proceedings.

[9] Per contra, Mr. Garge, learned Advocate representing respondent No. 1, supported the impugned order by emphasizing the transition in the statutory regime governing arbitration. He argued that the Arbitration and Conciliation Act, 1996, explicitly repealed the Arbitration Act, 1940, through Section 85(1). The savings

clause under Section 85(2)(a) provides that the provisions of the 1940 Act would only apply to arbitration proceedings that had commenced before the enactment of the 1996 Act, i.e., before 22nd August 1996. Mr. Garge contended that the phrase "commencement of arbitration proceedings" must be interpreted in light of Section 21 of the Arbitration and Conciliation Act, 1996, which states that proceedings commence when the respondent receives a request for arbitration from the claimant. He argued that since no arbitration proceedings had commenced under the 1940 Act before its repeal, the petitioner cannot invoke its provisions.

[10] Mr. Garge further argued that the Trial Court correctly framed and decided the preliminary issue of jurisdiction under Order XIV Rule 2 of the Code of Civil Procedure, 1908, as it pertains to the foundational competence of the Court to entertain the matter. According to him, the Trial Court's findings align with the legislative intent and jurisprudence under the 1996 Act, which prioritizes procedural clarity and eliminates dual regimes for arbitration.

[11] Having heard the learned Advocates for the respective parties and upon considering the record, it is evident that the Trial Court conflated the concepts of jurisdiction and maintainability. The terms "jurisdiction" and "maintainability" are often mistakenly used interchangeably, yet they hold distinct legal connotations. A precise understanding of the distinction is crucial for judicial adjudication. Jurisdiction refers to the power and authority of a court or tribunal to adjudicate a dispute and render a binding decision. It is derived from the Latin words "juris" (law) and "dico" (I speak), which collectively signify "speaking by the law." The concept extends to the legal power to entertain, inquire into facts, apply the law, and issue enforceable judgments. Jurisdiction can be classified into three distinct categories:

Subject Matter Jurisdiction - The court's power to deal with a specific type of case based on statutory provisions.

Territorial Jurisdiction - The geographic area within which a court can exercise its authority.

Pecuniary Jurisdiction - The monetary limits of a court's power to hear a case.

[12] Jurisdiction derives its authority from statutes, and its absence renders the court incompetent to decide the matter. Jurisdiction does not depend on the correctness of the decision; a court may decide rightly or wrongly, yet its jurisdiction remains unaffected. It is foundational to the legitimacy of judicial proceedings, as it embodies the legal capacity to entertain a suit and adjudicate on the merits.

[13] Maintainability pertains to whether a legal proceeding is competent to be entertained, factoring in procedural and substantive requirements. Maintainability relates to whether the suit is procedurally valid and not inherently barred. A case dismissed for lack of maintainability does not necessarily negate the existence of jurisdiction, as it may only reflect procedural infirmities. Unlike jurisdiction,

maintainability addresses preliminary objections arising from procedural non-compliance or statutory bars rather than the inherent authority of the court. Examples of factors affecting maintainability include:

(i) Bar under Statutes: Prohibitions on the initiation of proceedings due to legislative provisions (e.g., res judicata under Section 11 of CPC).

(ii) Limitation Period: Filing of proceedings after the prescribed period under the Limitation Act, 1963.

(iii) Locus Standi: The legal standing of the petitioner to institute proceedings.

[14] Jurisdiction derives its authority from statutes conferring power on the court. Maintainability arises from procedural and statutory compliance requirements for initiating proceedings. Lack of jurisdiction results in the nullity of proceedings, as the court inherently lacks authority to adjudicate. Non-compliance with maintainability bars leads to dismissal without deciding the merits of the case but does not affect the court's inherent power.

[15] Thus, while jurisdiction focuses on the court's authority, maintainability examines the legal validity of the proceedings.

[16] A perusal of the impugned order reveals that the Trial Court framed the issue of jurisdiction. However, while recording its findings, it concluded that the proceeding was not maintainable due to the inapplicability of Section 20 of the Arbitration Act, 1940. This approach demonstrates a fundamental misunderstanding of the distinction between jurisdiction and maintainability.

[17] The respondents' stand before the Supreme Court, as extracted below, further complicates the matter:

> "6(i) ..... The alleged or purported agreement of the arbitration entering into reference is of 1995 and therefore the application, if any, could have been made only under the Arbitration Act of 1940....."

[18] The respondents themselves admitted that the arbitration agreement and reference pertained to the provisions of the Arbitration Act, 1940. This admission assumes significance because Section 85(2)(a) of the Arbitration and Conciliation Act, 1996 saves proceedings that commenced under the 1940 Act prior to its repeal. The Trial Court's failure to properly consider this aspect underscores a flawed application of the legal principles.

[19] The petitioner's application under Section 20 of the Arbitration Act, 1940 was filed to enforce an arbitration agreement entered before the repeal of the 1940 Act. It is pertinent to note that Section 20 allows parties to seek court intervention for filing an arbitration agreement in court and for the appointment of an arbitrator. The jurisdiction of the Civil Judge, Senior Division, to entertain such an application is derived under Section 2(c) of the Act which defines court as a Civil Court having jurisdiction to

decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit.

[20] The Trial Court improperly conflated the provisions of Section 20 with maintainability. Jurisdiction must be determined based on the pleadings in the application. The petitioner's averments regarding the arbitration agreement and the alleged consent by respondent No. 1 to appoint the arbitrator establish a prima facie case for jurisdiction under the 1940 Act. The issue of whether respondent No. 1 consented to the arbitrator's appointment or the draft award is a matter for substantive adjudication and does not affect the Court's jurisdiction to entertain the application.

[21] The Trial Court, while concluding that it lacked jurisdiction, proceeded to consider the maintainability of the petitioner's claim under Section 20 of the Arbitration Act, 1940. This consideration was beyond the scope of the Trial Court's authority, as a finding of lack of jurisdiction precludes further deliberation on the merits or maintainability of the case.

[22] In view of the above analysis, the Trial Court's order reflects a fundamental misapplication of legal principles. Consequently, the following order is passed:

(a) The impugned order dated 10th November 2014 passed by the 3rd Joint Civil Judge, Senior Division, Nashik in Civil Miscellaneous Application No. 321 of 2000 is quashed and set aside.

(b) Civil Miscellaneous Application No. 321 of 2000 is restored to the file of the Civil Judge, Senior Division, Nashik. The Trial Court shall adjudicate the application on merits, including the issue of maintainability, strictly in accordance with law.

[23] The writ petition stands disposed of in the above terms. No order as to costs

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2025(1)MCJ32

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Abhay Ahuja]

Interim Application; Commercial Execution Application No 2213 of 2023; 37 of 2023 **dated 27/11/2024**

Bajaj Auto Limited

Versus

Executive Motors Pvt Ltd; Arun Chanda A and Ors

EXECUTION OF ARBITRAL AWARD

Code of Civil Procedure, 1908 Or. 21R. 41 - Execution of Arbitral Award - Applicant sought execution of arbitral award directing payment of Rs.2.91 crore with interest - Respondents filed disclosure affidavits under Court's direction but Applicant alleged discrepancies and sought oral examination of Directors - Court held that Order XXI Rule 41 CPC permits oral examination of company Directors for ascertaining means of

satisfying decree - Found Respondents' disclosures inadequate and ordered oral examination of a Director with relevant records and documents - Observed that such examination does not constitute piercing corporate veil but ensures enforcement of award - Interim Application Allowed

Law Point: Order XXI Rule 41 CPC allows oral examination of company Directors to ascertain assets for decree satisfaction-Adequacy of disclosure is subject to judicial assessment.

Acts Referred:

Code of Civil Procedure, 1908 Or. 21R. 41

Counsel:

Karl Tamboly, Swati Sutar, Dhru & Co, Aseem Naphade, Ramiz Shaikh, Rishi Bindra, Asadali Mazgoanwala, Tanvi Shah

JUDGEMENT

Abhay Ahuja, J.- [1] Pursuant to earlier orders of this Court, today when the matter is called out Mr. Tamboly, learned counsel appearing for the Applicant submits that the Interim Application seeks execution of arbitral Award dated 17th June 2021 whereby the Arbitral Tribunal directed the original Respondent- Judgment Debtor to pay the amount of Rs.2,91,84,812/- together with interest at the rate of 10% on the outstanding principal amount of Rs.2,63,78,178/- from 1st March 2020 till payment. The original Respondent had filed a Counter Claim for Rs.4,85,77,976/- and costs which was dismissed by the Arbitral Tribunal. Admittedly, there has been no challenge to the Award or to the dismissal of the Counter Claim. Since no payment was received by the Applicant, the Applicant has filed the Execution Application seeking execution of the Award under Order XXI Rule 41 of the Code of Civil Procedure, 1908 [CPC]. An Interim Application in the Execution Application has also been filed as noted above.

[2] From time to time this Court has passed various orders including order dated 13th December 2021 directing the original Respondent to make disclosure, pursuant to which the original Respondent has filed disclosure affidavit on 29th December 2021. Thereafter again pursuant to orders of this Court the Chartered Accountant of the original Respondent has also filed an affidavit dated 28th February 2023.

[3] Mr. Tamboly, learned counsel for the Applicant has submitted that the disclosure affidavit as well as affidavit of the Chartered Accountant is fraught with discrepancies and inadequacies and has sought to submit before this Court that the accounts filed by the original Respondent who is the Judgment Debtor are not only forged but also fabricated and the account of each year is mere copy-paste of the other year. Mr. Tamboly has submitted that with respect to discrepancies, it is sought to be explained by the Chartered Accountant that the same are mere inadvertent typographical errors. Mr. Tamboly has submitted that in fact the balance-sheet of 2020 has been signed

in the year 2021. That therefore this Court direct oral examination of the Directors of the Judgment Debtor - Company under Order XXI Rule 41 of the CPC so that the information with respect to the means of satisfying the decree can be ascertained.

[4] On the other hand Mr. Naphade, learned Counsel appearing for Judgment Debtor - Company as well as for two of its Directors would submit that the Applicant has to make out a case for seeking oral examination under Order XXI Rule 41 of CPC and mere non-payment of money would not be sufficient. Mr. Naphade would submit that the disclosures pursuant to the order of this Court have already been made and that therefore this Court cannot go after the Directors when the decree has been passed against the Company as then a case would have to be made out to lift the corporate veil. Mr. Naphade would submit that even the Chartered Accountant's affidavit has been filed pursuant to orders of this Court and if necessary this Court may direct the Chartered Accountant to remain present in the Court for oral examination as he has already been examined once by this Court.

[5] I have heard the learned Counsel and considered their submissions. It is not in dispute that the Award under execution has not been challenged and the payment under the said Award has also not been made. It is therefore clear that the decree for payment of money is yet to be satisfied.

[6] Order XXI Rule 41 of the CPC reads as under:

(1) Where a decree is for the payment of money the decree-holder may apply to the Court for an order that-

(a) The judgment-debtor, or

(b) where the judgment-debtor is a corporation, any officer thereof, or

(c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

[7] Under order XXI Rule 41 (2) it is provided that:

(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

[8] It is therefore clear that even if the disclosure affidavit has been filed, this Court can orally examine a Judgment Debtor or any other person as provided in sub-rule (1) of Rule 41 of Order XXI of the CPC. In the case of a Company, it is the Board

of Directors which manages the Company. A Company is a juristic person and it acts through its Directors who are collectively referred to as the Board of Directors. Whatever decisions are taken regarding running the affairs of the Company, they are taken by the Board of Directors. Therefore, if the Judgment Debtor is a Company, this Court, in view of the provisions of Rule 41, would be well within its powers to direct a Director of the Company to attend the Court for oral examination. That would not mean that this Court is piercing the corporate veil and seeking to enforce a Judgment against the Directors of the Company. Therefore, in my view Mr. Naphade's submission is misplaced and therefore rejected.

[9] Considering that the decree is yet to be satisfied and although disclosure affidavit has been filed, the same does not appear to be adequate or sufficient to give an indication with respect to the debts owed to the Judgment Debtor or other property or means of satisfying the decree, I am of the view that Mr. Arun Chanda, one of the Directors of the Company, be directed to attend this Court on 19th December 2024 at 4:00 p.m. with information with respect to the other properties of the Judgment Debtor and the means of satisfying the decree alongwith all the books and documents in support thereof.

[10] Registry accordingly to issue appropriate notice to Mr. Arun Chanda. Mr. Naphade, learned counsel appearing for Mr. Arun Chanda waives notice and assures that Mr. Arun Chanda will remain present in this Court for oral examination alongwith appropriate information.

[11] List on **19 th December 2024** at 4:00 p.m

2025(1)MCJ35

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Sandeep V Marne]

Civil Revision Application No 470 of 2022 **dated 27/11/2024**

Sangita Ravindra Sathe

Versus

Ramakant Tulshiram Salunke

EVICTION SUIT

Code of Civil Procedure, 1908 Sec. 115 - Maharashtra Rent Control Act, 1999 Sec. 15 - Eviction Suit - Revision sought against concurrent findings of eviction decree on grounds of rent default and bonafide requirement - Trial and Appellate Courts found Defendant failed to deposit rent as mandated under Section 15(3) MRC Act, including interest and costs, and irregularly deposited rent during suit pendency - Bonafide requirement of Plaintiff established for family accommodation due to insufficient living space - Comparative hardship favored Plaintiff - High Court held Section 15 of

MRC Act requires strict compliance-No discretion to waive default - Time granted for vacating premises subject to conditions - Revision Dismissed

Law Point: Strict compliance with Section 15(3) of MRC Act required for avoiding eviction-Failure to deposit rent regularly or comply with interest/costs mandates eviction.

Acts Referred:

Code of Civil Procedure, 1908 Sec. 115

Maharashtra Rent Control Act, 1999 Sec. 15

Counsel:

Amar Ashok Gharte, Aishwarya Rajesh Dangle, Mandar Soman, Ishaan Kapse, Swaroop M Karade

JUDGEMENT

Sandeep V Marne, J.- [1] Revisionary jurisdiction of this Court is invoked under provisions of Section 115 of the Code of Civil Procedure, 1908 for setting up a challenge to the judgment and decree dated 28 September 2022 passed by District Judge-1, Solapur dismissing Regular Civil Appeal No. 25 of 2020 and confirming the eviction decree passed by the Trial Court on 19 November 2019 in Regular Civil Suit No. 1930 of 2012.

[2] I have heard Mr. Gharte, the learned counsel appearing for the Revision Applicant and Mr. Soman, the learned counsel appearing for Respondents-Plaintiffs. I have gone through the findings recorded by the Trial and Appellate Courts and have also considered various documents placed on record.

[3] After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the suit has been decreed by the Trial Court on twin grounds of default in payment of rent and bonafide requirement of the Plaintiff. The ground of nuisance came to be rejected by the Trial Court. The findings recorded by the Trial Court on the issues of default in payment of rent and bonafide requirement have been confirmed by the Appellate Court.

[4] So far as the ground of default in payment of rent is concerned, the same is governed by provisions of Section 15 of the Maharashtra Rent Control Act, 1999 **(MRC Act),** which provides thus:

RELIEF AGAINST FORFEITURE

15 No ejectment ordinarily to he made if tenant pays or is ready and willing to pay standard rent and permitted increases.

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the, standard rent and permitted increases, if any, and observes and performs the other, conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.

(4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit.

[5] Thus, for avoiding the decree for eviction, it was incumbent for Defendant to first pay to the Plaintiff the arrears of rent demanded in the Notice served in accordance with provisions of Section 15(2) of the MRC Act. It appears that Plaintiffs served notice dated 28 February 2012 on the Defendant alleging non-payment of rent from 1 July 2011 to 31 January 2012 at the rate of Rs.1,000/- per month (total amount of Rs.7,000/-). The Defendant admittedly did not make good the default while responding to the notice on 4 April 2012. After receipt of the suit summons, Defendant filed application at Exhibit 11 seeking deposit of amount of Rs.19,168/- towards arrears of rent together with interest at the rate of 9%. The amount of Rs. 19,168/- comprised of Rs.17,000/- towards arrears of rent from 1 July 2011 to December 2012 and Rs.2,168/- towards interest at the rate of 9% per annum. The arrears of rent from 1 July 2011 to December 2012 was actually Rs.18,000/- and not Rs.17,000/-. Thus, the entire arrears of rent upto December 2012 are admittedly not deposited. Furthermore, while provisions of Section 15(3) require deposit of interest at the rate of 15% per annum, Defendant deposited interest at the rate of 9% per annum. Thirdly Defendant did not deposit costs of the suit. Thus, there is no compliance with the provisions of Section 15(3) of the MRC Act. In **Laxman Vs. Dr. Vijay Bhojraj Khachane**, 2023 2 BCR 825 , this Court has taken a view that what needs to be deposited is whole rent and failure to deposit interest would also entail passing of decree for eviction. This Court held thus:

17. Thus, in **Yusufbhai Noormohammed Jodhpurwala** (supra) the total arrears of rent at the rate of 70/- per month was Rs. 7,070/- and the amount of rent deposited in the court was Rs. 6,860/-. The deposited rent was short by Rs. 270/-. The Supreme Court has held that the High Court in that case erred in interpreting the provisions of

Section 12 (3)(b) purposively on the basis of readiness and willingness on the apart of the tenant to pay rent and such interpretation was erroneous. The Apex Court has held that the provisions of Section 12 (3)(b) are mandatory in nature and must be strictly complied with. Thus, from the judgment of the Apex Court in Yusufbhai Noormohammed Jodhpurwala (supra) **it is clear that what is required under the provisions of Section 12 (3) of the Act is to deposit 'whole rent' and not part of it. Mere readiness and willingness on the part of the tenant to deposit rent by making part deposit would not satisfy the requirements of Section 12(3) of the act.**

18. In **Balaji Pratapji Pandya** (supra) this Court was dealing with a situation where the provisions of Section 15 (3) of the Maharashtra Rent Act requires deposit of amount of arrears along with interest at the rate of 15%, whereas the tenant had deposited such arrears with interest at the rate of 9%. This Court held in para 17 of the judgment as under:

> "17. In the present case also, the condition enumerated in section 15(3) of the Maharashtra Rent Act are not strictly complied with. The deposit of the amount of arrears of rent is not with per annum interest @ 15% so also it is not within 90 days from the service of suit summons. Provisions of section 15(3) of the Maharashtra Rent Act are mandatory. The protection under section 15(3) of the Maharashtra Rent Act is available to tenant only if the tenant scrupulously adheres to the provisions of section 15(3) of the Rent Act. The Court has no jurisdiction to extend the time prescribed in the said section. The tenant herein has failed to deposit the rent within 90 days from the date of service of notice so also has failed to deposit the said amount with interest @ 15% per annum. The amount deposited after lapse of 90 days from the date of service of summons is also not with interest @ 15% per annum but is deposited only with interest @ 9% per annum. Both the ingredients of section 15(3) are not complied."
>
> 19. **Thus, even failure to deposit amount of interest at the rate provided for in the Act can lead to a decree of eviction.**
>
> (emphasis added)

[6] Section 15(3) of MRC Act requires the tenant to deposit the rent regularly during pendency of the suit. After making first deposit on 21 January 2013 of Rs.19,168/-, the Defendant did not deposit the rent for the month of January 2013. She deposited amount of Rs.12,000/- representing rent from January 2013 till December 2013 at one go on 21 November 2013. Thus, the rent for the month of January 2013 was deposited after delay of 11 months in November 2013. The same story continued in respect of subsequent months, where the Defendant went on making lumpsum deposits at intervals of six or twelve months. If the deposit receipt of 15 February 2021 is perused, it appears that the rent in respect of 15 months from March 2020 to May

2021 was deposited at one go on 15 February 2021. The Apex Court has held in **Mranalini B. Shah and Anr. V/s. Bapalal Mohanlal Shah**, 1980 4 SCC 251 , **Mohan Laxman Hede V/s. Noormohamed Adam Shaikh**, 1988 2 SCC 481 that the word 'regularly' appearing in provisions of Section 15(3) of the MRC Act does not mean deposit of rent by mathematical precision. However, this is not a case, which involves stray default on the part of the Defendant. All throughout the pendency of the suit, the Defendant was irregular in depositing the rent. The Legislative intent behind provisions of Section 15(3) is to ensure that the tenant makes good the default in payment of rent upon receipt of suit summons and thereafter continues to deposit the rent regularly during pendency of suit. Ultimately, the amount of rent represents return on investment for the landlord. On account of statutory freezing of rent, the same no longer comes remotely close to the real return on investment. However, if the tenant does not even pay that paltry sum towards rent regularly, the least that the tenant must suffer is a decree for eviction. The rent in the present case is meagre sum of Rs. 1000, but that sum of Rs.1000/- payable in March 2020 is actually deposited by the Defendant-tenant after 15 months on 15 February 2021. The pretext of delay in deposit on account of COVID-19 pandemic cannot be accepted in the present case, as the Defendant was otherwise irregular in making deposit since 2013. There is a purpose for use of the word 'regularly' in sub-section (3) of Section 15 of the MRC Act. The provision is aimed at ensuring that the tenant who had defaulted in payment of rent in the past, atleast deposits/pays the rent regularly during pendency of the proceedings. Section 15 actually provides for protection against eviction, but mandates that the tenant must pay the rent and observe terms and conditions of tenancy. With a view to further protect tenants from unscrupulous landlords, who create artificial ground of default in payment of rent, the Legislature has provided twin opportunities to the tenant to avoid decree for eviction on the ground of default viz. (i) by paying the demanded amount in the Notice served under Section 15(2) and (ii) by depositing in the Court amount of arrears in Court within 90 days of service of suit summons together with interest @ 15% and costs of the suit. If either of the two opportunities are availed by the tenant, landlord's action for eviction can be frustrated. However, during adjudication of landlord's action for eviction, the tenant must ensure that the rent is also paid/deposited every month during pendency of proceedings. Any default in making regular payment/deposit of rent during pendency of proceedings can also entail decree for eviction.

[7] Thus, there is clear failure on the part of the Defendant to comply with provisions of Section 15(3) of the MRC Act. Mr. Gharte would attempt to urge that the Defendant is an illiterate lady and has made deposits as per the advice given to her by her advocate. In my view, Section 15 requires strict compliance. Under Section 15(3), the tenant who has defaulted in payment of rent is granted second opportunity of making good the default in payment of rent for avoiding decree for eviction. In the present case, after receipt of the notice dated 28 February 2012 demanding arrears of

rent of Rs.7,000/- Defendant failed to avail the first opportunity by paying the amount of Rs.7000/- to the landlord and invited filing of a suit. After the suit was filed, she failed to avail the second opportunity by not making deposit of entire amount of rent then due, together with 15 % interest and costs of the suit as provided for under Section 15(3) of the Act. She was also not regular in deposit of rent throughout pendency of the suit. In my view, therefore, regardless of the reason for default on the part of the Defendant-Tenant, the Court is not invested with any discretion for refusing to pass eviction decree while considering circumstances under which the Defendant-Tenant fails to deposit the rent regularly. The Trial and Appellate Courts have rightly accepted the ground of default in payment of rent.

[8] So far as the ground of bonafide requirement of the Plaintiff is concerned, he came up with a case that he was residing in a flat admeasuring 410 sq.ft. comprising of 1BHK and that the said space was insufficient and inconvenient for family of 7 persons. True it is that the Trial Court, at some places, have erroneously assumed that the Plaintiff was residing in a tenanted place by ignoring a specific admission on the part of the Plaintiff that the flat in which he resides is owned by him. However, Plaintiff never contented in the plaint that he was residing in tenanted house. What he pleaded was about insufficiency and inconvenience for family of 7 persons to accommodate themselves in one BHK flat admeasuring only 410 sq.ft. It is not the case of the Defendant that in addition to the said flat, Plaintiff has any other place for his residence. In my view, therefore, bonafide requirement of the Plaintiff is clearly established in the present case.

[9] So far as the issue of comparative hardship is concerned, it is borne out from evidence that the mother of the Defendant no longer resides with her and that her son also resides at Pune. The Appellate Court has recorded a finding of fact that the Defendant is residing alone in the suit premises. Thus, the issue of comparative hardship clearly goes in favour of Plaintiff and against the Defendant.

[10] In my view, therefore, there is no palpable error in accepting the ground of bonafide requirement by the Trial and the Appellate Courts.

[11] The conspectus of the above discussion is that no interference is warranted in the concurrent findings of the fact recorded by the Trial and Appellate Courts in exercise of revisionary jurisdiction by this Court under provisions of Section 115 of the Code. Civil Revision Application is devoid of merits and the same is accordingly **dismissed** with no order as to costs.

[12] Considering the facts and circumstances of the present case, Defendant shall have time up 31 March 2025 to vacate the possession of the suit premises, subject to the condition of payment of rent and non-creation of any third-party rights in the suit premises

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2025(1)MCJ41

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Ravindra V Ghuge; Ashwin D Bhobe]

Writ Petition No 6346 of 2018 **dated 22/11/2024**

Girija Sasidharan

Versus

State of Maharashtra; Director of Technical Education; All India Council For Technical Education; Principal, Bhausaheb Vartak Polytechnic; Vidyavardhini

SUPERANNUATION AGE DISCREPANCY

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 Sec. 4 - Superannuation Age Discrepancy - Petitioner prematurely retired at 58 years from post of Lecturer in Polytechnic College - Claimed superannuation age was 60 years as per AICTE Regulations conflicting with MEPS Act and Rules - Petitioner filed writ challenging retirement - Identical cases recognized 60 years as retirement age citing AICTE's statutory authority overriding MEPS provisions - Supreme Court upheld High Court's interpretation - Management claimed financial burden due to non-grant status of institution - Court balanced equities granting 50% back wages to Petitioner - Directions for compliance issued - Petition partly allowed

Law Point: In cases of conflict between AICTE Regulations and MEPS Rules regarding age of superannuation, AICTE Regulations prevail due to statutory authority, and equitable relief may balance financial considerations of non-grant institutions.

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 Sec. 4

Counsel:

Rajesh Kanojia, Res Juris, Ashwini A Purav, Shaikh Nasir Masih, Kavhale Nagnath B (Principal Present In-Person)

JUDGEMENT

Ravindra V. Ghuge, J.- [1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

[2] This Petition was admitted by order dated 12th October, 2018. Interim relief was refused.

[3] The Petitioner has put forth prayer clause (a) and (a)-1, as under:-

"(a) That this Hon'ble Court be pleased to issue a Writ of mandamus or Writ in the nature of mandamus or nay other Writ, order or direction the impugned

decision communicated vide letter dated 31 . 05.2018 thereby retiring the petitioner from services, be quashed and set aside.

(a1) That this Hon'ble Court be pleased to pass necessary orders directing the respondent Nos. 4 & 5 to pay the salary of the petitioner from 31.05.2018 to 31.05.2020 along with, arrears, accrued benefits and other entitlements."

[4] The Petitioner joined employment on the post of Lecturer in Construction Technology Department in the Vidyavardhini Polytechnic College, vide letter of appointment dated 30th August, 1986. She was communicated vide an order dated 31st May, 2018 by the said Polytechnic College, which is known as Vidyavardhini Bhausaheb Vartak Polytechnic that she would retire in the evening, as she had completed 58 years of age. The Petitioner rushed to this Court on 11th Day, on 11th June, 2018 for assailing her retirement on the ground that her superannuation would occur on completion of 60 years of age.

[5] In identical set of facts involving the same Bhausaheb Vartak Polytechnic College, with reference to identically situated employees, this Court delivered a judgment on 29rd October, 2021 in Writ Petition 3125 of 2020 and 3617 of 2020 **(Lalit Rajendra Gajana vs. Vidyavardhini and Ors).** It was concluded that these Petitioners are entitled to perform their duties till the age of 60 years and it is only thereafter that they would superannuate. The conclusions drawn by this Court in paragraph Nos. 80 to 85, read as under:-

80. A Division Bench of this Court in case of S.G. Kanetkar and others vs. State of Maharashtra in Writ Petition no.1759 of 2004 delivered on 7th June, 2011 adverted to the judgment in case of Dilip Kulkarni vs. State of Maharashtra in Writ Petition No.6030 of 2008. A Government Resolution reducing the age of retirement of the employees from 60 years to 58 years was impugned. Similar order was passed on 26th November, 2012 in Writ Petition No.308 of 2010 in case of Niranjan N. Parekh vs. State of Maharashtra & others.

81. Hon'ble Supreme Court in case of Pramod vs. State of Maharashtra in Civil Appeal No.14735 of 2015 has held that the regulation of AICTE being statutory, unless these have been superseded or annulled by the competent authority, the age of superannuation of the appellant therein stood extended upto 65 years. In our view, there is no substance in the submission of the learned counsel for the respondent nos.4 and 5 that the retirement age of the teachers came to be reduced in the polytechnic institutions on or after 16th July, 1981 and/or that the polytechnic institutions are governed by Rule 17 of the MEPS Rules which provides retirement age of the teachers as 58 years. In view of conflict between the provisions of the MEPS Act read with MEPS Rules and AICTE Regulations, the age of superannuation prescribed under the said Regulation would prevail and not the said Rule 17 of the MEPS Rules.

82. There is no substance in the submission of the learned counsel for the respondent nos.4 and 5 that the petitioner cannot be granted the benefits of the proviso to section 4(1) of the MEPS Act, 1990 as has been held to be clarificatory or declaratory. Under section 10 of the AICTE Act, the AICTE is empowered to lay the service conditions of the staff which would include the age of superannuation. Insofar as the judgment of the Hon'ble Supreme Court in case of Jagdish Sharma (supra) relied upon by the learned counsel for the respondent nos.4 and 5 is concerned, in our view, the said judgment does not deal with the issue of conflict between the State Act and the Central Act and thus would not advance the case of the respondent nos.4 and 5.

83. Insofar as the judgment of the Hon'ble Supreme Court in case of Modern Dental College (supra), relied upon by the learned counsel for the respondent nos.4 and 5 is concerned, the judgment would not even apply to the facts of this case remotely. There is no substance in the submission of the learned counsel for the respondent nos.4 and 5 that the MEPS (Amendment) Act, 1990 do es not apply to polytechnic institutions. There is no substance in the submission of the learned counsel for the respondent nos.4 and 5 that Rule 17 of the MEPS Rules is not beyond the legislative competence. Be that as it may, in view of the conflict between the MEPS Rules, AICTE Regulations, AICTE Regulations would prevail.

84. In our view Article 254 of the Constitution of India is attracted even if two items fall under two different lists. Proviso to Article 254 (2) of Constitution of India will apply in the facts of this case. The judgment delivered by the Full Bench of this Court in case of Chandrakant Karkhanis would clearly support the case of the petitioner.

85. In our view, the age of superannuation of the petitioners in each of these petitions would be 60 years and not 58 years. We, accordingly pass the following order:-

(a) Writ Petition No. 3125 of 2020 is made absolute in terms of prayer clauses (a) to (d). Rule is made absolute accordingly.

(b) Writ Petition No. 3617 of 2020 is made absolute in terms of prayer clauses (B) and (C). Rule is made absolute accordingly.

(c) In view of the disposal of the Writ Petition No. 3617 of 2020, Interim Application (St) No.93900 of 2020 does not survive and is accordingly disposed of.

(d) There shall be no order as to costs.

(e) The parties to act on the authenticated copy of this judgment.

[6] The learned Advocate representing the management of the Bhausaheb Vartak School relied upon **Chairman, U.P. Jal Nikam & Anr. vs. Jaswant Singh & Anr.**, 2007 AIR(SC) 924 and a judgment delivered by this Court dated **7 th February, 2024 passed in Writ Petition No.11004 of 2022 (Dr. Arun R Damale vs. Vidyavardhani and Ors).**

[7] The learned Advocate for the Management submits that the law in such matters is that only in-service employees who challenge their proposed premature superannuation, can approach this Court, before they are superannuated. All those who approach the Court after such premature superannuation, are non-suited since they are not in employment.

[8] We find the said submission to be fallacious. Neither in **Chairman, UP Jal Nigam** (supra) nor in **Dr. Arun R. Damle** (supra), the Hon'ble Supreme Court or this Court has laid down the law that those employees who are prematurely superannuated, are non-suited only because they have approached the Court after such premature superannuation.

[9] The facts in **Chairman, U.P. Jal Nigam** (supra) are that the litigants waited for a long time and after receiving all the benefits and with the passage of time, woke up and approached the Court for raising a grievance. On the ground of delay, the matter was not entertained by the Hon'ble Supreme Court. In **Dr. Arjun R. Damle** (supra), the Petitioner was superannuated on 30th November, 2020. He received all the retirement benefits. He expressed his gratitude by conveying the same to the Management for giving him an opportunity to work and chose not to contest the age of retirement. After a passage of more than two years, he approached this Court. This Court did not entertain the Petition purely on the ground of delay and laches.

[10] The facts in the case in hands, are completely different. The Petitioner was prematurely superannuated on 31st May, 2018. She rushed to this Court on 11th June, 2018 by lodging the Petition on the 11th day. In identical set of facts of identically situated colleague employees, this Court has delivered a judgment on 29th October, 2021 in **Lalit Rajendra Gajanan** (supra) thereby, accepting the claims of the Petitioners. Paragraph Nos. 80 to 85 are reproduced above. The management approached the Hon'ble Supreme Court in Special Leave to Appeal (C) Nos. 4635-4636/2022. By order dated 4th April, 2022, the Hon'ble Supreme Court (Three Judges Bench) did not see any reason to interfere and the Special Leave Petition has been dismissed.

[11] In view of the above, **this Writ Petition is partly allowed** in terms of the directions issued by this Court in **Lalit Rajendra Gajanan** (supra), paragraph Nos. 80 to 85 reproduced above.

[12] In **Lalit Rajendra Gajanan** (supra), the Petitioners were granted interim relief and were continued in employment. In the present case, the Petitioner was refused interim relief on 12th October, 2018, however, the matter was admitted by the said order.

[13] In so far as, wages for this period of two years is concerned, the learned Advocate of the Petitioner submits on instructions from the Petitioner present in Court

that she is willing to accept the last drawn pay scale as was being paid by the Management, since the institution was operated on 'no grants basis.'

[14] The learned Advocate for the Management submits that the institution is operated on no grants basis. It would be an onerous financial burden on the institution, if 100% back wages are granted. The gratuity has already been paid after computing it by keeping in view the retirement of the Petitioner at age of 58 years. He therefore, prays that 100% back wages should not be granted.

[15] While granting back wages, this Court has to balance the equities. The Petitioner has been subjected to involuntary unemployment. Nevertheless, the management does not receive salary grants from the State Government and has to fund by itself. In this backdrop, 100% back wages would create a burden on the Management. We, therefore, found it to be equitable and justiciable to propose 60% back wages which the Management shall calculate on the basis of the last drawn wages (the average of the last three months salaries of the Petitioner prior to her premature superannuation on 31st May, 2018) and pay the said amount, within a period of 60 days from today.

[16] At this juncture, the Authorised Representative (Principal), has requested the learned Advocate for the Management to make a request to the Court that the back wages may be reduced to 50% instead of 60%, so that the litigation can be brought to an end.

[17] Considering the age of the Petitioner and the fact that the litigation should be brought to an end with equitable relief, noting that the Management is making the offer of 50% back wages which will give a quietus to the litigation, we are accepting the request of the Management and we are granting 50% back wages to the Petitioner to be paid within a period of 60 days, since the Management makes a request for 15 more days time for making the payment.

[18] In so far as the gratuity is concerned, the Authorised Representative (Principal) present in the Court instructs the learned Advocate to state that the maximum (ceiling) amount of the gratuity has already been paid to the Petitioner in 2018 itself. Hence, no further orders are required.

[19] Rule is make partly absolute in the above terms

2025(1)MCJ45

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Devendra Kumar Upadhyaya; Amit Borkar]

Public Interest Litigation No 49 of 2021 **dated 19/11/2024**

Sandeep Pandurang Patil S/o Pandurang Sitaram Patil

Versus

State of Maharashtra; Maharashtra Real Estate Regulatory Authority; Joint District Registrar, Class; Municipal Commissioner; M/s Sai Builders and Developers

REGULATORY OVERSIGHT

Real Estate (Regulation and Development) Act, 2016 Sec. 34, Sec. 32, Sec. 35, Sec. 7, Sec. 5, Sec. 31, Sec. 11, Sec. 4, Sec. 3 - Maharashtra Municipal Corporations Act, 1949 Sec. 267, Sec. 260, Sec. 268 - Regulatory Oversight - Public Interest Litigation sought enforcement of safeguards under RERA Act to prevent fraudulent project registrations - Highlighted lack of coordination among authorities and misuse of forged certificates - Court upheld RERA's actions including revoking 64 project registrations, freezing accounts, and integrating real-time verification systems - Directed state and municipal authorities to fully integrate digital platforms with MahaRERA for prompt verification - Reiterated promoter's obligation to submit authenticated documents under RERA - Ordered removal of occupants from illegal structures and their demolition - PIL disposed of with directions for transparency and strict compliance - Petition Disposed

Law Point: Real estate project registrations under RERA require strict document verification - Integrated digital systems and proactive measures prevent fraud and ensure consumer protection.

Acts Referred:

Real Estate (Regulation and Development) Act, 2016 Sec. 34, Sec. 32, Sec. 35, Sec. 7, Sec. 5, Sec. 31, Sec. 11, Sec. 4, Sec. 3

Maharashtra Municipal Corporations Act, 1949 Sec. 267, Sec. 260, Sec. 268

Counsel:

P I Bhujbal, A K Saxena, Rajat V Dighe, A S Rao, O A Chandurkar, G R Raghuwanshi

JUDGEMENT

Amit Borkar, J.- [1] The petitioner, invoking jurisdiction of this Court under Article 226 of the Constitution of India, seeks a writ of mandamus to enforce statutory compliance and establish accountability among the State of Maharashtra, Maharashtra Real Estate Regulatory Authority (MahaRERA), and local planning authorities. The petitioner contends that under Sections 32 and 34 of the RERA Act, MahaRERA is vested with powers to facilitate an effective regulatory mechanism, which includes devising methods to ensure the verification of documents submitted by developers. Furthermore, the petitioner argues that the lack of coordination between MahaRERA and local authorities contravenes the fundamental objectives of the RERA Act, particularly the protection of home buyers from fraudulent real estate practices. The petitioner, therefore, seeks the Court's intervention to direct respondents to adopt a rational policy framework to prevent registration of illegal buildings and to verify the authenticity of documentation submitted for project registration.

[2] The petitioner emphasizes that Sections 3, 4, and 5 of the RERA Act require developers to obtain a valid registration certificate by submitting genuine project

details, including approvals from competent authorities. The Government Resolution dated 3rd May 2018 serves as a legal mandate under the Maharashtra Municipal Corporation Act, 1949, and the Maharashtra Regional and Town Planning Act, 1966, requiring local authorities to maintain and disclose public record of legal and illegal constructions. This is crucial for safeguarding potential buyers, in line with the objectives of the RERA Act. Additionally, the Government Resolution dated 20th September 2019 restricts the registration of projects that lack RERA certification or a completion certificate, reaffirming the intent to prohibit registration of projects developed without requisite approvals. These measures reflect a legislative and administrative commitment to protect public interest, and the petitioner argues that the respondents must implement them to prevent malpractices in the real estate sector.

[3] The petitioner submits that the project by respondent No.5, allegedly registered on 15th October 2020 based on a forged commencement certificate, illustrate a larger issue of developers exploiting regulatory loopholes. The petitioner points to widespread unauthorized construction in approximately 27 villages within Kalyan and Ambarnath Talukas, suggesting that developers circumvent compliance requirements by creating forged documents. The petitioner argues that under Section 7 of the RERA Act, MahaRERA possesses the authority to revoke registrations obtained through fraudulent means, and thus a coordinated mechanism is essential to detect and deter such malpractice. The petitioner further requests this Court to issue guidelines for a framework that ensures prompt verification of essential documents, such as commencement and occupation certificates, to maintain transparency and prevent wrongful project registrations.

[4] In response to the Court's notice, MahaRERA states in its affidavit that it has exercised its powers under Section 7(1) of the RERA Act, which authorizes the Authority to revoke project registration in cases of fraudulent documentation. The Authority's decision to revoke the project registration of respondent No.5 on 8th September 2021 aligns with Section 7(4)(c), which empowers MahaRERA to freeze accounts related to non-compliant projects, preventing further transactions that could affect innocent purchasers. MahaRERA further submits that it has urged the Government of Maharashtra to establish a centralized digital platform as mandated under Section 34(f) of the RERA Act, facilitating inter-agency verification of milestone approvals like commencement and occupation certificates. The authority contends that such a platform would allow both MahaRERA and the public to cross-verify the authenticity of documents, thereby upholding the RERA Act's objectives.

[5] In its affidavit, MahaRERA states that it has coordinated with the Urban Development Department to implement a mechanism whereby all statutory documents issued by planning authorities are uploaded immediately on their respective websites. This measure aligns with Section 35 of the RERA Act, which empowers the authority to call for information and conduct inquiries to prevent malpractices in real estate

dealings. The Deputy Inspector General of Registration and Deputy Controller of Stamps have been directed not to register documents pertaining to respondent No.5's project, per the Government Resolution dated 20th September 2019. MahaRERA also received a list of 65 fraudulent commencement certificates from the Assistant Town Planner, which were used by other developers. In light of this, MahaRERA has initiated proceedings to cancel registrations for 64 projects under Section 7(1) of the RERA Act, reinforcing its commitment to curb fraudulent practices. Furthermore, MahaRERA's website integration with the Municipal Corporation of Greater Mumbai enables real-time document verification within Mumbai's jurisdiction, and similar integrations with other municipal bodies are underway to ensure uniform compliance across the State of Maharashtra.

[6] The affidavit indicates that the Government of Maharashtra, through its Urban Development Department, issued a Government Resolution dated 23rd February 2023 mandating all Municipal Corporations, Municipalities, and urban local bodies to complete the integration of their respective websites with the website of respondent No.2 (MahaRERA) by 31st March 2023. This integration is intended to create a unified platform for verifying the legitimacy of commencement certificates and occupation certificates, essential for protecting homebuyers under the provisions of the RERA Act. Furthermore, respondent No.2 issued a directive on 15th May 2023, effective from 19th June 2023, mandating that registration proposals under the RERA Act will only be processed after confirmation of the commencement certificate's authenticity. This process, authorized under Sections 34(b) and 35 of the RERA Act, empowers respondent No.2 to take action against fraudulent submissions, as evidenced by the revocation of registrations for four real estate projects based on forged commencement certificates. These measures reflect the regulatory framework designed to safeguard the interests of homebuyers, ensuring compliance with the RERA Act's mandate.

[7] Respondent No.1 has submitted an affidavit detailing the steps undertaken for the integration of Maharashtra's Building Plan Management System with MahaRERA's platform. The affidavit emphasises that the integration will streamline the verification process and bring transparency to real estate registrations. While it is stated that 454 local bodies have begun displaying commencement certificate and occupation certificate details on the system, approximately 26 planning authorities have yet to comply with this directive. This delay potentially prevents effective regulatory supervision and the RERA Act's objectives, particularly Sections 32 and 34, which emphasize transparency and accountability in the real estate sector. Respondent No.1 assures the Court that the integration is progressing and anticipates completion within two months, thereby enabling respondent No.2 access to verify developers' claims regarding commencement and occupation certificates.

[8] In its affidavit, respondent No.4 states that it has proactively communicated with the Inspector General of Registration and Controller of Stamps, Maharashtra, on 9th April and 20th April 2021, requesting verification of the sanctioned plans uploaded on its website to prevent misuse. Additionally, a toll-free number has been made available for public inquiries regarding sanctioned plans, thereby enhancing transparency as mandated by Section 11 of the RERA Act. Respondent No.4 further asserts that for the 65 projects whose registrations respondent No.2 revoked under the RERA Act due to fraudulent commencement certificates, notices under Section 260 of the Maharashtra Municipal Corporation Act, 1949 (MMC Act) were issued to initiate enforcement actions. The affidavit reveals that first information reports (FIRs) were filed for 57 projects, in compliance with Section 260 and Section 267 of the MMC Act, to enforce action against unauthorized structures. Of these, six structures were fully demolished, four were partially demolished, while 48 remain fully occupied. The Municipal Commissioner, exercising powers under Section 268(5) of the MMC Act, directed police authorities to facilitate the removal of occupants from these structures, which would allow the municipal corporation to proceed with demolition. This action highlights the stringent enforcement mechanism available under the MMC Act and underscores the need for ongoing coordination among planning authorities to safeguard against unauthorized construction.

[9] Mr. Bhujbal, learned counsel for the petitioner, argued that the current measures undertaken by the respondents are insufficient to address the petitioner's grievances adequately. He emphasized that a comprehensive verification process for commencement certificates, occupation certificates, and sanctioned plans must be implemented statewide. He submitted that the Enforcement Directorate has already taken cognizance of the matter, initiating proceedings against respondent No.5 under an ECIR (Enforcement Case Information Report), indicating a serious need for further regulatory scrutiny. He argued that it is essential for this Court to issue appropriate directions aligned with the prayers sought to uphold accountability of developers toward consumers. He stressed that Sections 31 and 35 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act), empower RERA to act proactively in cases of fraud and delays in complaint resolutions, emphasising the need for a robust framework to prevent fraudulent practices within the real estate sector.

[10] On behalf of respondent No.4, Mr. Dighe, instructed by Mr. Rao, and Mr. Saxena, learned counsel for respondent No.2, contended that the steps outlined in the respondents' affidavit-in-reply sufficiently address the reliefs sought by the petitioner. They argued that significant progress has been made in implementing a coordinated verification system, as evidenced by Order No.45 of 2023, which mandates the integration of respondent No.2's website with those of Municipal Corporations, Municipal Councils, and local bodies throughout Maharashtra. This measure, they asserted, establishes a system for verifying the authenticity of commencement certificates, in alignment with Section 4 of the RERA Act, which mandates submission

of an authenticated commencement certificate for project registration. Given the steps taken towards compliance, respondents' counsel urged the Court to consider disposing of the petition based on these statements, while also emphasizing the continued implementation of the integration and verification process as an effective remedy for the petitioner's concerns.

[11] We have carefully examined the petition, the respondents' affidavits, and the arguments of counsel. The petitioner seeks directions to establish a comprehensive policy for coordination among respondents and local authorities, aimed at preventing fraudulent registration of real estate projects under the RERA Act on the basis of forged documents, including commencement certificates and sanctioned plans. It is pertinent to note the legislative intent behind the Real Estate (Regulation and Development) Act, 2016. The RERA Act, introduced in 2013 and enacted in 2016, was born out of the need for regulatory measures in a sector that had seen substantial growth but lacked adequate consumer protections. As stated in the Act's Statement of Objects and Reasons of the Act, the primary objective is to safeguard home buyers and promote transparency in real estate transactions. This regulatory framework was envisioned to address consumer grievances by establishing accountability mechanisms for developers, minimizing fraud, and reducing delays. Section 3 of the RERA Act mandates prior registration of real estate projects with RERA, prohibiting any advertisement or sale without proper registration, thus reflecting the legislature's intent to curtail unscrupulous practices in the real estate sector.

[12] Section 4 of the RERA Act requires the promoter to apply for registration in a prescribed manner, with accompanying documents as per subsection (2), which includes an authenticated copy of approvals and the commencement certificate from the competent authority {Section 4(2)(c)}. Additionally, the promoter must submit the sanctioned plan, layout plan, and project specifications {Section 4(2)(d)}. These requirements ensure that RERA is furnished with reliable and authenticated documentation. Section 7 further empowers RERA to revoke registration on grounds of default or violation of regulatory provisions. This framework aligns with the aim to safeguard consumer interests by holding developers accountable. It underlines the necessity for RERA to verify the authenticity of documents proactively, a measure that, in the context of this case, could prevent instances of forgery and fraudulent submissions. Respondent No.2's revocation of project registrations for four projects on the grounds of fraudulent commencement certificates demonstrates the application of these provisions in practice.

[13] Chapter V of the RERA Act establishes the Real Estate Regulatory Authority and vests it with broad powers to regulate the real estate sector. Section 13(2) empowers RERA to promote transparency and efficiency within the industry and to make recommendations to the appropriate government for the protection of allottees, promoters, and real estate agents. Section 35 further authorizes RERA to call for

information, conduct investigations, and address complaints or initiate actions suo motu if deemed necessary. These statutory powers are crucial for ensuring accountability, deterring fraudulent practices, and safeguarding the interest of stakeholders. In exercising these powers, RERA can institute rigorous verification processes and recommend systemic reforms to mitigate the risk of fraud in real estate transactions.

[14] Section 4(1) requires the promoter to submit an 'authenticated copy' of the commencement certificate from the competent authority at the time of applying for registration. The term "authenticated" implies a level of verification beyond merely accepting documents on their face value. Therefore, it is imperative that RERA insists on verifiable, legally authenticated documents to substantiate the claims made by the promoter. Given advances in digital governance, RERA could enhance its coordination with local Municipal Councils, Municipal Corporations, and Urban Development Planning Authorities, creating direct access to their databases for immediate document verification. This integration would enable RERA to conduct real-time verification of commencement and occupation certificates, thereby preventing forgery and protecting consumers' interests in line with the RERA Act's objectives. Establishing such a system would reflect the legislative intent to strengthen regulatory supervision, reduce fraud, and foster trust in the real estate sector.

[15] The affidavit-in-reply filed by respondent No.2 outlines significant steps to ensure transparency and prompt availability of statutory documents. This includes a directive to the Secretary (Housing), Government of Maharashtra, and local planning authorities to upload all statutory certificates- including commencement certificates, occupation certificates, and sanctioned plans-immediately upon issuance on their respective websites. Further, any changes, additions, alterations, or modifications must be uploaded promptly to reflect the latest status of each project. The affidavit highlights that the website of respondent No.2 has already been integrated with the Municipal Corporation of Greater Bombay's portal. Additionally, integration with other Municipal Corporations, Municipalities, and Urban Local Bodies across Maharashtra is said to be underway. Notably, Order No.45 of 2023, dated 15th May 2023, mandates that from 19th June 2023 onwards, project registration applications will only be processed after the submitted commencement certificates are verified for authenticity. However, this procedure applies exclusively to authorities that have completed integration with respondent No.2's website, reinforcing the policy of stringent verification and compliance before project registration.

[16] Respondent No.1, in its affidavit-in-reply, has stated that integration of the Building Plan Management System (BPMS) of Maharashtra with MahaRERA's website is underway. Currently, 454 local bodies have begun displaying details related to commencement and occupation certificates on the BPMS website, allowing respondent No.2 to access and verify the authenticity of these documents against the

claims made by developers. This digital integration aligns with Sections 4(2)(c) and 4(2)(d) of the RERA Act, which mandate promoters to submit authenticated copies of commencement and occupation certificates as part of the project registration process. The measures detailed in the affidavits by respondent Nos.1 and 2 demonstrate substantial compliance with the reliefs sought by the petitioner, enhancing transparency and minimizing the risk of fraudulent submissions.

[17] The petitioner also seeks a prohibition against respondent No.5 from registering properties constructed on Plot bearing Survey No.47, Hissa No.19, Village Adivali-Dhokali, Taluka Ambernath, District Thane. This relief has been addressed by respondent No.2's revocation of respondent No.5's registration under the RERA Act on 8th September 2021. Additionally, the Bank Manager of Ambernath Jain Hind Co-Op Bank Ltd., Kalyan East, has been directed to freeze respondent No.5's bank account until further orders, effectively curtailing its ability to transact within the contested project. Further, the Deputy Inspector General of Registration and Deputy Controller of Stamps, Konkan Division, Thane, has directed the Joint Sub Registrar's office in Ambernath not to register any sale agreements related to respondent No.5's real estate project, providing a robust response to the petitioner's allegations against respondent No.5's conduct.

[18] Regarding the petitioner's request for scrutiny of real estate projects in 27 villages in Kalyan, this relief is addressed by the revocation of registrations for 64 projects, as ordered on 3rd and 21st November 2022. These revocations followed the Assistant Town Planner's communication confirming that the 65 commencement certificates listed in its letter dated 17th August 2022 were not issued by its office. This action reflects respondent authorities' adherence to their statutory duties under Section 7 of the RERA Act, empowering RERA to revoke project registrations where fraudulent or forged documentation is involved, thereby protecting consumer interests and deterring unauthorized real estate activities.

[19] Counsel for the petitioner argued for the re-scrutiny of all registration certificates issued by the RERA Authority across Maharashtra, claiming that such scrutiny is warranted given the issues raised. However, in our view, the relief sought in prayer clause (b) appears to seek a broad, speculative inquiry into the integrity of all real estate project registrations across the State. Established legal principles dictate that a petitioner must present prima facie evidence substantiating claims of forgery or fraud specific to identified projects. The Supreme Court has consistently held that courts should refrain from ordering generalized inquiries lacking substantive factual basis, as they fall outside the scope of judicial review. To mandate such re-scrutiny in the absence of concrete, specific instances of alleged forgery would not only overreach judicial authority but also risk encumbering regulatory bodies with speculative investigations that lack substantive grounding. Consequently, the petitioner must

provide factual material related to specific projects to substantiate such claims and avoid a sweeping and unsubstantiated mandate for statewide re-scrutiny.

[20] The legal position is well settled that, under Article 226 of the Constitution, courts should not engage in speculative or roving inquiries. In **A. Hamsaveni & Ors. v. State of Tamil Nadu**, 1994 6 SCC 51 the Supreme Court held that a petitioner must independently establish a prima facie case, and that court proceedings should not be used as a means to conduct speculative investigations. Similarly, in **N.K. Singh v. Union of India**, 1994 6 SCC 98 the Court emphasized that a speculative inquiry is neither warranted nor justified under judicial review, particularly when private rights are at issue. The principle was reiterated in Ratan Chandra Sammanta v. Union of India,1993 Supp4 SCC 15 where it was held that a writ should only be issued when the petitioner has an established right, and that speculative inquiries unsupported by evidence are impermissible. Additionally, Gulabchand Bapalal Modi v. Municipality of Ahmedabad,1971 AIR(SCC) 2100 reinforced that mandamus cannot be issued in cases where there is no established legal right. Accordingly, without substantive material to substantiate allegations of widespread forgery or fraud, this Court is not inclined to grant the petitioner's request for a generalized scrutiny across Maharashtra's RERA registrations.

[21] Given the nature of the issues raised by the petitioner concerning the potential for forged commencement certificates, any aggrieved party retains the right to approach respondent No.2 through appropriate legal proceedings as permitted under the RERA Act, 2016, to seek cancellation of a project's registration. Sections 7 and 11 of the RERA Act empower respondent No.2 (MahaRERA) to revoke or suspend registrations if prima facie evidence of fraud, misrepresentation, or use of forged documents in obtaining commencement certificates is established. This Court emphasizes that the statutory framework of the RERA Act provides sufficient remedies for affected parties to initiate proceedings for redressal upon submission of credible material indicating the use of forged certificates.

[22] With a view to safeguard the interests of homebuyers and ensure transparency in real estate project registrations, this Court issues the following directions:

(1) Respondent No.1 shall ensure rigorous compliance with the Government Resolution dated 23rd February 2023, issued by the Urban Development Department. This resolution mandates standardized procedures for the issuance and publication of commencement and occupation certificates, ensuring transparent access to information for stakeholders. Compliance shall be monitored periodically to uphold the integrity of project documentation.

(2) All Municipal Corporations, Municipalities, and Urban Local Authorities in the State of Maharashtra shall link their respective websites with the MahaRERA portal within three months from the date of this judgment. Such integration is

imperative for establishing a streamlined process for verifying the authenticity of certificates submitted in real estate registrations, as envisaged under Section 4 of the RERA Act.

(3) Until full integration is achieved, all Municipal Corporations, Municipalities, and Urban Local Authorities must ensure that commencement and occupation certificates are uploaded on their respective websites within 48 hours of issuance, to maintain interim transparency and public access.

(4) Effective from 19th June 2023, respondent No.2 (MahaRERA) shall verify the authenticity of all commencement certificates submitted by promoters during project registration. Only upon verification should registrations be granted, in compliance with Order No.45 of 2023, dated 15th May 2023. This verification process aligns with Sections 4 and 5 of the RERA Act, ensuring that only projects with genuine and verified documentation are registered.

(5) Respondent No.1 shall complete the integration of the Building Plan Management System (BPMS) with MahaRERA's online system within three months from the date of this judgment. This integration will enable respondent No.2 to cross-verify certificates against records in BPMS, mitigating the risk of fraudulent submissions and enhancing regulatory oversight.

(6) Respondent No.2 shall carry out the demolition of illegal structures as specified in paragraph 5 of the affidavit dated 20th August 2024 in accordance with law. The concerned police station is directed to provide all necessary assistance to Municipal Corporation officials in removing occupants, as requested by authorized officers, to ensure that demolition process is conducted without hindrance. The entire demolition procedure shall be completed within three months from the date of this judgment.

[23] The PIL petition is hereby disposed of in accordance with the aforementioned terms, with liberty granted to any aggrieved party to seek appropriate legal recourse as outlined in this judgment.

[24] All pending interlocutory application(s), if any, stands disposed of

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2025(1)MCJ54

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Sandeep V Marne]

Civil Revision Application No 602 of 2024 **dated 19/11/2024**

Hindustan Petroleum Corporation Limited

Versus

Anil Mansukhlal Doshi; Dinesh Mansukhlal Doshi; Himanshu Mansukhlal Doshi

LEASE RENEWAL DISPUTE

Code of Civil Procedure, 1908 Or. 20 R 12, Sec. 115 - Caltex (Acquisition of Shares of Caltex Oil Refining (India) Ltd. and Undertakings In India of Caltex (India) Ltd.) Act, 1977 Sec. 7 - Lease Renewal Dispute - Lease executed in 1964 granted rights to Caltex India for 20 years with provisions for two extensions of 10 years each - Government nationalized Caltex under Caltex Act, 1977, transferring its undertakings to Hindustan Petroleum Corporation Limited (HPCL) - Lease extended up to 2003 based on contractual and statutory rights - Plaintiffs issued notices claiming possession post-expiry, asserting termination of lease - HPCL contended for further renewal under Section 7 of Caltex Act - Trial Court decreed eviction and ordered mesne profit inquiry - Appellate Bench upheld judgment - Defendant's argument of separate contractual and statutory renewal rights rejected - Court held statutory provision superseded contractual rights, restricting lease continuation beyond 2003 - Revision Application dismissed - Time granted for vacating premises with interim compensation - Civil Revision Application Dismissed

Law Point: Statutory renewal rights under Caltex Act supersede contractual rights, limiting lease renewals to one instance; concurrent findings upholding eviction are justified.

Acts Referred:

Code of Civil Procedure, 1908 Or. 20R 12, Sec. 115

Caltex (Acquisition of Shares of Caltex Oil Refining (India) Ltd. and The Undertakings In India of Caltex (India) Ltd.) Act, 1977 Sec. 7

Counsel:

Pralhad Paranjape, Manish Kelkar, Rohan Cama, Anish Karande, Shahrukh Shaikh, Rohit Shetty

JUDGEMENT

Sandeep V Marne, J.- [1] At the outset Mr. Paranjape, the learned counsel appearing for Revision Applicant seeks leave to convert Writ Petition into Civil Revision Application. Leave granted. Amendment to be carried out forthwith.

[2] Applicant-Hindustan Petroleum Corporation Limited **(HPCL)** has filed the present Civil Revision Application challenging the judgment and decree dated 18 September 2023 passed by Appellate Bench of Small Causes Court dismissing Appeal No.269 of 2018 and confirming the judgment and decree dated 7 July 2018 passed by Small Causes Court, Mumbai in TE Suit No.181/224 of 2011. The Trial Court has decreed the TE Suit No.181/224 of 2011 and has directed the Revision Applicant to handover vacant and peaceful possession of the suit premises to the Plaintiffs with further direction for conduct of enquiry into mesne profits under Order 20, Rule 12 of the Code of Civil Procedure, 1908 **(the Code)**.

[3] Facts of the case, in brief, are that Plaintiffs' father Mr. Mansukhlal B. Doshi was the owner of land bearing Plot No. B-1, Survey No.12, Hissa No.1 (part) admeasuring 2055.67 square yards at village Mohili, Sakinaka, Andheri Kurla Road, Mumbai **(suit premises)**. M/s. Caltex (India) Limited **(Caltex)**, Indian arm of global oil company, approached Plaintiffs' father in the year 1964 seeking lease in respect of suit premises for establishing its retail fuel outlet. Accordingly Indenture of Lease dated 31 January 1964 came to be executed between Plaintiffs' father and Caltex granting lease in respect of suit premises in favour of Caltex for a period of 20 years commencing from 1 December 1963 on monthly rent of Rs.1,500/-. Under clause 3(g) of the Indenture dated 31 January 1964, parties agreed that Caltex shall have an option of lease in respect of the suit premises for a further period of 10 years by making request two months before expiry of the tenure of the lease and that such further lease would contain a covenant for further renewal of the lease for 10 years on same terms and the conditions. It appears that Caltex established fuel station at the suit premises after securing leasehold rights vide Indenture dated 31 January 1964. Government of India incorporated HPCL by nationalizing Caltex, ESSO and Lube. By virtue of provisions of Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited) Act 1977, **(Caltex Act)** the right, title and interest of Caltex in relation to all its undertakings in India got transferred and vested in Central Government with effect from 30 December 1976. The said acquired business of Caltex was handed over by the Government of India to Revision Applicant/HPCL which continued operating retail fuel outlet at the suit premises.

[4] The original owner Mr. Mansukhlal B. Doshi passed away on 7 June 1977, leaving behind his wife, three sons (Plaintiffs) and daughters. The mother of Plaintiffs passed away on 1 April 2000 and it is the case of Plaintiffs that they have succeeded to the suit premises by virtue of the Will executed by the mother.

[5] The tenure of the original lease expired on 30 November 1983. It appears that HPCL continued to remain in possession of the Suit premises, possibly on account of renewal/extension clause in the Indenture. On 23 July 1993, Revisional Applicant/HPCL wrote to the Plaintiffs' mother for renewal of the lease for further term of 10 years on expiry of the extended tenure of lease on 30 November 1993. Plaintiffs served notice dated 29 July 2003 on Defendant-HPCL seeking possession of the suit premises on account of expiry of the tenure of original license as well as the extended/renewed tenure on 30 November 2003. Instead of handing over possession of the suit premises Defendant-HPCL wrote back to Plaintiffs on 11 August 2003 stating that under provisions of section 7(3) of the Caltex Act, it was entitled to renew the lease for further period of 10 years commencing from 1 December 2003. Accordingly, Defendant-HPCL exercised the right to renew the lease for further period of 10 years from 1 December 2003. Plaintiffs denied the claim of the Defendant-HPCL of right of renewal under provisions of section 7(3) of the Caltex Act and reiterated termination

of the lease on 30 November 2003 by its Advocate's letter dated 31 October 2003. Since Defendant-HPCL failed to vacate possession of the suit premises, Plaintiffs served notice dated 28 March 2011 on Defendant-HPCL demanding possession of the suit premises and mesne profits. The Defendant-HPCL responded by letter dated 22 July 2011 taking a position that it was entitled to seek renewal of lease for further period of 20 years from 30 November 2003 alongwith two renewals of 10 years each.

[6] In the above factual background, Plaintiffs instituted TE Suit No.181/224 of 2011 in the Court of Small Causes at Mumbai seeking recovery of possession of the suit premises from Defendant-HPCL alongwith mesne profits from the date of termination of lease. The suit was resisted by Defendant-HPCL by filing Written Statement inter alia contending that it was occupying the suit premises under valid and renewed/extended lease deed dated 30 November 1943. Both parties led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, the learned Judge of the Small Causes Court proceeded to decree the suit vide judgment and order dated 7 June 2018 holding that the Plaintiffs had validly terminated lease of Defendant-HPCL vide notices dated 29 July 2003 and 28 July 2011. The Small Causes Court therefore directed Defendant-HPCL to handover possession of the suit premises to the Plaintiffs within three months. An enquiry into mesne profits of the suit premises was also directed to be conducted under provisions of Order 20 Rule 12 of the Code.

[7] Aggrieved by the eviction decree dated 7 June 2018, Defendant-HPCL filed Appeal No.269 of 2018 before Appellate Bench of Small Causes Court. In the Appeal, Defendant-HPCL filed Application at Exhibit-8 for stay of eviction decree. By order dated 30 June 2020, Appellate Bench of Small Causes Court stayed execution of the eviction decree subject to the condition of Defendant-HPCL depositing interim mesne profits/compensation at the rate of Rs. 3,00,000/- per month from the date of decree till final disposal of the Appeal. After hearing the Appeal, the Appellate Bench has proceeded to dismiss the same by judgment and decree dated 18 September 2023. Defendant-HPCL is aggrieved by the decree passed by the Appellate Bench on 18 September 2023 and has filed the present Civil Revision Application.

[8] Mr. Paranjape, the learned counsel appearing for the Revision Applicant-HPCL would submit that the Small Causes Court and its Appellate Bench have erred in decreeing the Plaintiffs' suit in ignorance of the position that the Defendant-HPCL is validly occupying the suit premises in pursuance of currency of the lease upto 30 November 2043. He would submit that the original lease was for 20 years with a right in favour of Defendant-HPCL to have the same extended by 10 years each. That the extended tenure of the lease was to expire on 30 November 2003 and before expiry of the same, Defendant-HPCL exercised the right of seeking further renewal of the lease under provisions of section 7(3) of the Caltex Act. He would submit that the Defendant-HPCL has both contractual as well as statutory right to seek extension and

renewal of the lease. He would submit that there is marked difference in the concepts of 'extension' and 'renewal' of lease. That extension of the lease contemplates continuation of same contract for a specified period, whereas renewal of the lease envisages an act of recreation of legal relationship or replacement of an old contract with a new contract. In support he would rely upon definitions of the terms 'extension' and 'renewal' under the Black's Law Dictionary. He would submit that what was done during the period from 1983 to 2003 was an extension of lease and what is sought by Defendant-HPCL in the year 2003 is renewal thereof as per provisions of section 7(3) of the Caltex Act. Thus the same contract was continued between the parties upto the year 2003 and what was required to be done in the year 2003 was renewal thereof in accordance with right created in HPCL's favour under provisions of section 7(3) of the Caltex Act. Mr. Paranjape would particularly highlighted use of the term 'arrangement' under section 7(3) of the Caltex Act, in support of his contention that the entire arrangement that existed between the parties upto the year 2003 is required to be renewed under provisions of section 7(3) of the Caltex Act. He would submit that expression 'arrangement' used in section 7(3) of the Caltex Act has wide connotation and cannot be restricted only to lease executed between the parties. He would further submit that the judgment of the Apex Court in **Bharat Petroleum Corporation Limited vs. Rama Chandrashekhar Vaidya**, 2014 1 SCC 657 has no application to the present case in view of absence of pari materia provisions under the Burmah Shell (Acquisition of Undertakings in India) Act, 1976. **(Burmah Shell Act)**. Mr. Paranjape would therefore submit that the lease between the parties has rightly been extended upto 30 November 2003, which is required to be renewed under provisions of section 7(3) of the Caltex Act. He would therefore pray for setting aside the decrees passed by the Trial and the Appellate Courts.

[9] The Revision Application is opposed by Mr. Cama, the learned counsel appearing for Respondents/Plaintiffs. He would submit that what could be renewed under provisions of section 7(3) of the Caltex Act was the original lease deed that expired on 30 November 1983. That Defendant-HPCL cannot take benefit of contractual right under clause 3(g) of the Indenture as well as statutory right under section 7(3) of the Caltex Act. He would submit that the issue involved in the present case is squarely covered by the judgment of the Apex Court in **BPCL vs. Rama Chandrashekhar Vaidya** (supra), wherein the Apex Court has held that the contractual clause under the lease deed gets superseded by virtue of the statutory provisions in the Act. He would also rely upon judgment delivered by this Court in **Hindustan Petroleum Corporation Ltd. vs. Vilas Madhavrao Paygude & Ors.** [CRA No.216 of 2024, decided on 27 August 2024] . Mr. Cama would submit that both the Courts have considered the effect of contractual clause in the Indenture as well as alleged statutory right of the Defendant-HPCL under the Caltex Act and have thereafter arrived at the conclusion that the lease has expired on 30 November 2003. He would submit that no interference is warranted in concurrent findings recorded by

the Trial and Appellate Courts. He would pray for dismissal of the Civil Revision Application.

[10] Rival contentions of parties now fall for my consideration.

[11] The short issue that arises for consideration that in the present Revision Application is whether Defendant-HPCL is entitled to exercise contractual right of extension/renewal under clause 3(g) of the Indenture of lease as well as the statutory right of renewal of the lease under section 7(3) of the Caltex Act one after the another. Defendant-HPCL claims that it is first entitled to exercise contractual right under clause 3(g) of the Indenture by seeking two extensions of 10 years each upto 30 November 2003 and thereafter provisions of section 7(3) of the Caltex Act would govern the position creating right in its favour to seek renewal of the entire contractual arrangement of lease for 20+10+10=40 years. On the other hand, it is the case of the Plaintiffs that the Defendant/HPCL has exhausted its contractual as well as statutory rights of renewal/extension of lease on 30 November 2003 and therefore it does not have a right to occupy the suit premises.

[12] The Indenture of Lease dated 31 January 1964 granted leasehold rights in the suit premises in favour of M/s Caltex for a period of 20 years commencing from 1 December 1963. It would be relevant to reproduce the relevant clauses of the Indenture Lease dated 31 January 1964 as under:

> "(1) ------ ---- ---- ----
>
> To Hold the demised premises unto and to the use of the lessee from the 1st day of December 1963 for the term of 20 years (renewable and determinable as - hereinafter provided) yielding and paying therefor during the said term on the monthly rent of Rs.1500/-."
>
> 2(1) To deliver up the demised premises at the expiration or sooner determination of the lease or in the event of the lessee removing the buildings, structures, plant, equipments, machinery pumps, underground tanks and all other property belonging to the lessee pursuant to the proviso in that behalf hereinafter contained, to deliver up the demised premises restored to its former condition.
>
> 3(g) That the lessor will on the written request of the lessee made two calender months before the expiry of the term hereby created and if there shall not at the time of such request be any existing breach or non observance of any of the covenants on the part of the lessee hereinbefore contained grant to the lessee a lease of the demised premises for a further term of 10 years from the expiration of the said term - of twenty years upon the same rent and containing the like covenants and provisions as are herein contained including a clause for one further renewal of 10 years and on the same terms and conditions as herein contained so as to give the lessee an option of an

aggregate of two renewals of ten years each. PROVIDED that no advance rent and/or deposit shall be paid for any renewal."

[13] Thus, under clause 3(g) of the Indenture of Lease, the lessee was entitled to make a written request to the lessor two months before expiry of the tenure of lease for grant of lease of suit premises for a further term of 10 years after the expiration of original term of 20 years on payment of same rent and on same covenants and provisions, including a clause for one further renewal of 10 years. Thus, the lessee was granted an option of an aggregate of two renewals of 10 years each upon expiry of original lease on 30 November 1983.

[14] During currency of the tenure of the lease, the Caltex Act came to be enacted on 23 April 1977 transferring the right, title and interest of Caltex in relation to its undertakings in India in favour of the Central Government with effect from 30 December 1976. Section 7 of the Caltex Act made special provisions with regard to certain rights and interests held by Caltex before the appointed day. Section 7 of the Caltex Act provides thus:

"7. (1) Every right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or any right under any arrangement to secure any premises for any purpose), which Caltex (India) held immediately before the appointed day, shall, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, vest in, and be held by, the Central Government on and after the appointed day on the same terms and conditions on which Caltex (India) would have held it, if no negotiations had taken place for the acquisition by the Central Government of the undertakings of Caltex (India) in India or, as the case may be, if this Act had not been passed.

(2) If at any time after the 2nd day of February, 1974 (being the date on which the Central Government's policy for acquiring undertakings engaged in the production, marketing or distribution of petroleum products was made known) and before the commencement of this Act, Caltex (India) surrendered or otherwise relinquished any right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or a right under any arrangement to secure any premises for any purpose), then, for the purposes of this Act, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, the Central Government shall, on and after the appointed day, be entitled to such right or interest on the same terms and conditions on which Caltex (India) would have been entitled to such right or interest if it had not surrendered or otherwise relinquished such right or interest and this Act had not been passed:

Provided that nothing in this sub-section shall apply to any right or interest surrendered or otherwise relinquished by Caltex (India) before the commencement of this Act for sufficient monetary consideration.

(3) On the expiry of the term of any lease, tenancy or arrangement referred to in sub-section (1) or sub-section (2), such lease or tenancy or arrangement shall, if so desired by the Central Government, be renewed or continued, so far as may be, on the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into."

[15] Thus, under section 7 of the Caltex Act, the right and interest of Caltex in properties in India before the appointed day stood vested in the Central Government on same terms and conditions on which Caltex would have held the same. Under provisions of sub-section (3) of section 7 of the Caltex Act, upon expiry of term of any lease, tenancy or arrangement, the same could be renewed or continued on the same terms and conditions, if desired so by the Central Government.

[16] In the light of agreement between the parties under clause 3(g) of the Indenture providing for aggregate of two renewals of 10 years each as well as provisions of section 7(3) of the Caltex Act, the issue that arises for consideration is whether Defendant-HPCL is entitled to exercise both contractual right of extension/renewal under clause 3(g) of the Indenture, as well as the statutory right under section 7(3) of the Caltex Act, one after the other. To paraphrase, whether Defendant-HPCL could first exhaust the contractual right of extension/renewal upto 30 November 2003 and thereafter exercise the statutory right under section 7(3) of the Caltex Act for seeking renewal of the period of lease. As observed above, Defendant-HPCL has taken out defence in the Written Statement that it is entitled to automatic renewal/extension of lease for a period of 20 years alongwith further two extensions of 10 years each from 30 November 2003 and that therefore the lease stood renewed/extended upto 30 November 2043. In paragraph 11 of the Written Statement, Defendant-HPCL pleaded as under:

"11. With reference to para-10 of the Plaint, the Defendants deny that the lease period expired on 30th November, 2003 by efflux of time as alleged. The Defendants state and submit that before the period of last extension of lease was to expire on 30th November, 2003, the Defendants by their letter dated 11th August, 2003 exercised their statutory right of extension of lease under Caltex Acquisition Shares of Caltex Oil Refinery (India) Ltd. under Caltex Act, 1977 as well as under Ordinance of 1976. The Defendants state and submit that by virtue of provision of Section 7(3) of the said Caltex (India) Ltd. Act, the Lease got automatically and statutorily renewed /extended for the further period on the same terms and conditions as recorded in the Indenture of Lease dated 31st January, 1964. The Defendants state and submit that in view of the statutory renewal under the said Act, the lease in

respect of the suit premises would get automatically renewed and/or extended for a period of 20 years, alongwith further two extensions of 10 years each. The Defendants submit that thus on and from 30th November, 2003, the lease stands extended for 20 years i.e. till 30th November, 2023 though however, in Defendants letter dated 11th August, 2003, through bonafide mistake it is mentioned that the period of lease extended for 10 years in stead of 20 years. The Defendants further state and submit that since under the statute the lease would stand automatically renewed or extended on the same terms and conditions, even two options of 10 years each would also get included. The Defendants therefore submit that after 30th November, 2003, the lease would further be extended by the Defendants in all for 20 years i.e. two extensions of 10 years each. The Defendants submit that the lease in respect of the suit premises is therefore valid and renewed or extended till 30th November, 2043.

With further reference to para-10, the Defendants state and submit that lease is valid and subsisting till 30th November, 2003. In view of the statutory renewal/extension it is true that the Plaintiffs through their Advocate's Notice dated 29th July, 2003 called upon the Defendants to restore possession of the demised premises on or before 1st December, 2003. The Defendants however, state that the said Notice is bad in law, illegal and invalid in view of what is stated hereinbefore. As far as the contents of the said Notice dated 29th July, 2003 are concerned, the Defendants state that the same are incorrect. The Defendants further state that the Plaintiffs had no right to issue the said Notice dated 29th July, 2003 more particularly as the same was premature."

[17] The plea taken by Defendant-HPCL in Written Statement about right of renewal/extension of lease for further period of 20 years alongwith two extensions of 10 years each is contradictory to its letter dated 11 August 2003, in which it sought renewal of lease for a period of 10 years commencing from 1 December 2003. The Defendant-HPCL thus attempted to improve upon its case in the Written Statement by claiming subsistence of lease upto 30 November 2043 contrary to what it stated in letter dated 11 August 2003. However, it is not really necessary to delve deeper into the contradictory stands adopted by the Defendant-HPCL.

[18] Had there been a plain tenure of 20 years of lease in favour of Defendant-HPCL, the controversy that is sought to be raised in the present proceedings, would not have arisen and Defendant-HPCL would have been entitled to seek renewal of the lease for further period of 20 years under section 7(3) of the Caltex Act. The difficulty in the present case is created on account of right of renewal created in Defendant-HPCL's favour under clause 3(g) of the Indenture of lease. Thus, when the original tenure of the lease expired on 30 November 1983, Defendant-HPCL had two options

of either opting for contractual right of renewal under clause 3(g) of the Caltex Act or to seek statutory right of renewal of lease for 20 years under section 7(3) of the Caltex Act. On account of existence of twin rights of renewal of lease, one under the contract and another under the statute, the difficulty is created in the present case where Defendant-HPCL claims that it could first exercise the contractual right by getting the lease extended by 20 years and thereafter seek renewal of the entire extended period of contractual lease by a block of 40 years under section 7(3) of the Caltex Act. The issue involved in the present case is squarely answered by the judgment of the Apex Court in **BPCL vs. Rama Chandrashekhar Vaidya** (supra). The case before the Apex Court involved almost similar circumstances, where the predecessor of Defendant-HPCL viz. Burmah Shell Oil Storage and Distributing Company of India Limited was granted lease in respect of land in question vide registered deed of lease dated 29 September 1955 for a period of 25 years commencing from 1 March 1955. Under covenants of the said lease deed, there was unilateral right of renewal in favour of the Burmah Shell for additional period of 25 years by giving notice in writing of two months prior to expiration of its term. On 24 January 1976, the Burmah Shell Act came into force and section 5(2) of the Act created a right in favour of the Central Government/BPCL to seek renewal of the lease. Thus, in **BPCL vs. Rama Chandrashekhar Vaidya** also, there existed contractual as well as statutory rights of renewal. On behalf of the Appellant-BPCL similar contention was raised before the Apex Court as is sought to be raised by HPCL before me, which is captured by the Apex Court in paragraph 6 of the judgment, which reads thus:

> "Mr C.A. Sundaram, learned Senior Counsel appearing for the appellant, strongly argued that the right of renewal under the lease and the right of renewal in terms of Section 5(2) of the Act are two distinct and separate rights, the former being contractual and the latter statutory He further contended that the two rights being different in nature and arising from different sources could, therefore, be exercised separately and successively, independently of each other. Mr Sundaram contended that though in the year 1980, the Act had come into force nevertheless, the appellant chose first to exercise its right of renewal in terms of the provision in the lease. However, the exercise of the contractual right of renewal would not abrogate the appellant's statutory right as provided under Section 5(2) of the Act and at the expiry of the lease renewed in terms of the contract, it would be still open to the appellant to get a further renewal of the lease in exercise of the statutory right under Section 5(2) of the Act. In support of the submission, Mr Sundaram relied upon the decisions of this Court in **Bharat Petroleum Corpn. Ltd. v. P. Kesavant**, 2004 9 SCC 772 and **Hindustan Petroleum Corpn. Ltd. v. Dolly Dass**, 1999 4 SCC 450.

[19] The Apex Court has however rejected the contention on behalf of Appellant-BPCL and held in paragraphs 8, 9, 10, 11, 12 and 13 as under:

8. On a careful consideration of the matter, we find that though Mr. Sundaram has crafted his submissions very skilfully, the points raised by him do not really arise in the facts and circumstances of the case as noted above.

9 The original 1955 lease (which, as a matter of fact, is the only lease deed that came into existence between the parties) was for a period of 25 years and was due to expire on 28-2-1980. On 17-10- 1979, the appellant gave the notice of renewal invoking the renewal clause in the lease deed. In the renewal notice, there is no reference at all to any provision, much less Section 5(2) of the Act. After 28-2- 1980, the appellant admittedly continued in occupation of the suit premises but it is undeniable that no fresh deed of lease was executed and registered renewing the terms of the previous lease.

10 Now, let us examine what would be the position in the absence of a fresh deed being executed and registered between the parties. There are only two possibilities: one, that the renewal notice was in exercise of the renewal clause in the lease deed. If that be so, the execution and registration of a fresh deed of lease was essential for the renewal of lease to take place. [See **State of U.P.. v. Lalji Tandon**, 2004 1 SCC 1, paras 13 and 14: **Anthony v. K.C. Ittoop & Sons**, 2000 6 SCC 394 paras 8 to 11 and **Hardesh Ores (P) Ltd. v. Hede and Co.**, 2007 5 SCC 614].

11 In case the renewal was claimed in terms of the stipulation in the lease deed (described as "the contractual right" by Mr Sundaram), in the absence of a fresh deed of renewal, the appellant's status became that of a month-to-month tenant and after twenty-five years, in that relationship it would be ludicrous for the appellant to turn around and claim renewal of lease under Section 5(2) of the Act.

12 Mr Sundaram made an attempt to argue that it was not a case of renewal of lease but a case of extension of the term of the lease and in that case no fresh deed was required to be executed and registered between the parties. In support of the submission, he relied upon two decisions of the Calcutta High Court, one by a Division Bench in **Syed Ali Kaiser v. Ayesha f Begum**, 1977 AIR(Cal) 226 and the other by a learned Single Judge of the same Court in **Ranjit Kumar Dutna v. Tapan Kumar Shaw**, 1997 AIR(Cal) 278. We need not go into the question whether an extension of lease is permissible in the absence of any fresh deed for the simple reason that this is unquestionably a case of renewal of lease and not of extension of lease. Thus, in case renewal was claimed under a clause of the previous lease, the appellant has no case and the lessor cannot be faulted for terminating the tenancy by a notice under the Transfer of Property Act, 1882.

13 The other possibility is that though in the renewal notice dated 17-10-1979 there is no reference to Section 5(2) of the Act, the renewal must be deemed to have taken place under that provision because the Act had come into force on 24-1-1976 and by virtue of Section 5(2) of the Act, the renewal clause of the existing lease stood superseded. If the "renewal", beginning from 1-3-1980 is to be deemed under Section

5(2) of the Act that would be a legally valid and correct renewal even in the absence of a fresh deed being executed between the parties, as was held in **Bharat Petroleum Corpn. Ltd. v. P. Kesavan**, 2004 9 SCC 772. If that be the position, then the appellant has already exercised and exhausted its right under Section 5(2) of the Act and there can be no question of a second renewal in terms of the statutory provision. Thus, viewed from any angle, the appellant cannot claim any further renewal of lease beyond 28-2-2005."

[20] Thus, in **BPCL vs. Rama Chandrashekhar Vaidya** the Apex Court has held that by virtue of section 5(2) of the Burmah Shell Act, the renewal clause of the existing lease superseded and that the Appellant-BPCL had already exercised and exhausted its right under section 5(2) of the Burmah Shell Act and that therefore there could be no question of second renewal in terms of statutory provisions.

[21] In my view, the issue involved in the present case is squarely answered by the judgment of the Apex Court in BPCL vs. Rama Chandrashekhar Vaidya. Following the law expounded by the Apex Court in the said judgment, the contractual right in favour of Defendant-HPCL under clause 3(g) of the Indenture of Lease stood superseded by section 7(3) of the Caltex Act. It cannot be stated that Defendant-HPCL could exercise first the contractual right of renewal/extension of lease and thereafter once again exercise the statutory right of renewal under section 7(3) of the Caltex Act. Thus, both under the contractual right of extension/renewal as well as statutory right of renewal, the maximum permissible extension/renewal of lease of Defendant-HPCL was upto 30 November 2003 and the lease has expired thereafter.

[22] In **HPCL vs. Vilas Madhavrao Paygude** (supra) delivered by this Court, though the facts involved were slightly different, this Court has considered the judgment of the Apex Court in **BPCL vs. Rama Chandrashekhar Vaidya** (supra) and has held that right to seek renewal of lease was only a one time affair and that such right did not accrue concurrently or endlessly upon expiry of tenure of each lease.

[23] Mr. Paranjape's attempt to draw a distinction between the concepts of 'extension' and 'renewal' is wholly irrelevant for present case. It appears that similar attempt was made on behalf of **BPCL in Rama Chandrashekhar Vaidya**. Whether occupation of suit premises by Defendant-HPCL during the years 1983 to 2003 was by way of 'extension' or 'renewal' makes no difference. As held by the Apex Court in **Rama Chandrashekhar Vaidya**, the contractual right of extension/renewal got superseded by virtue of provisions of section 7(3) of the Caltex Act. The emphasis by Mr. Paranjape on use of the word 'arrangement' under provisions of sub-section (3) of section 7 of the Caltex Act is again meaningless. Under section 7(1) of the Caltex Act the right or interest of Caltex in any property in India could comprise of three classes viz. (i) right under any lease, (ii) right under tenancy, or (iii) any right under any arrangement to secure any premises for any purpose. Thus, the third eventuality of 'arrangement' would arise where there is no express lease or tenancy. The word

'arrangement' used in sub-section (3) of section 7 of the Caltex Act is in the context of any arrangement for securing any premises for any purposes by Caltex. The occupation of the suit premises by Defendant-HPCL is governed by the first category of lease and that therefore the third category of 'arrangement', where there is no formal agreement between the parties, is wholly irrelevant for the present case.

[24] The conspectus of the above discussion is that the lease of Defendant-HPCL has expired on 30 November 2003 and therefore the Trial and the Appellate Courts are justified in passing a decree for eviction of the Defendant-HPCL from the suit premises. The concurrent findings recorded by the Trial and the Appellate Courts do not suffer from any palpable error or any error of jurisdiction for this Court to exercise revisionary jurisdiction under section 115 of the Code. The Civil Revision Application is thus devoid of merits and the same is dismissed. However, considering the fact that Defendant-HPCL operates retail fuel station at the suit premises and would require removal of various fixtures from the suit premises after procuring necessary licenses, Defendant-HPCL is granted time of one year for vacating the suit premises, subject to the condition of continuing to pay interim compensation at the rate of Rs. 3,00,000/- per month as fixed by the Appellate Bench by order dated 23 June 2020. Payment of such interim compensation shall, however, be without prejudice to the right of the Plaintiffs to seek ascertainment of mesne profits under provisions of Order 20, Rule 12 of the Code from 28 July 2011

2025(1)MCJ66

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before S M Modak]

Writ Petition No 15378 of 2024 **dated 18/11/2024**

Dattatraya Ramchandra Chavan

Versus

G Jaykumar; Municipal Corporation For Greater Mumbai

IMPLEADMENT RIGHTS

Code of Civil Procedure, 1908 Or. 1R. 10 - Mumbai Municipal Corporation Act, 1888 Sec. 351 - Impleadment Rights - Writ petition filed by a cooperative housing society member seeking impleadment as a defendant in a suit challenging municipal demolition notices under Section 351 of MMC Act - Trial court dismissed impleadment plea, citing lack of harm evidence - Petitioner contended personal rights were affected by alleged unauthorized constructions encroaching common spaces - High Court held individual members can assert rights if society remains inactive - Petitioner's presence deemed necessary for effective adjudication - Trial court's order quashed, petitioner allowed as defendant with liberty to file written statement - Petition Allowed

Law Point: Cooperative society members can seek impleadment in suits involving common property rights when society does not act, ensuring complete and effective dispute resolution

Acts Referred:

Code of Civil Procedure, 1908 Or. 1R. 10

Mumbai Municipal Corporation Act, 1888 Sec. 351

Counsel:

S N Chandrachud, Hemant P Ghadigaonkar, Hitendra Gandhi, Kunal Bhanage, Akshay Pawar

JUDGEMENT

S M Modak, J.- [1] Heard learned Advocate for the Petitioner-Intervenor and learned Advocate for Respondent No.1 / Plaintiff.

[2] In a Suit filed by the Plaintiff, there is a challenge to the action of the Municipal Corporation of Greater Mumbai **("MCGM")** for issuing a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 **("MMC Act")** dated 17th December 2018 and there is a challenge to the Speaking Order dated 23rd February 2020. According to the Plaintiff, they are illegal and issued / passed in an arbitrary exercise of the power. There is also a permanent injunction sought restraining the Corporation from acting upon those actions.

[3] During pendency of the Suit, the present Petitioner being a member of Neel Gangan Co-operative Housing Society Limited and an occupant of Flat No.101, filed a Chamber Summons praying for issuing direction to the Plaintiff to join him as a party Defendant. This Chamber Summons was **dismissed** by the Court of City Civil - Borivali Division, Dindoshi, Mumbai as per the order dated 30th July 2024. That is why, the Intervenor has filed this Writ Petition.

[4] Though, all the prayers in the Plaint are against the Corporation who is Respondent No.2 in this Petition, complaints / representations filed / made to the Corporation and documents to show type of action taken is filed along with the Writ Petition. **The prayer made in the Chamber Summons is against the Plaintiff only.** That is why, I have taken up this Writ Petition for final disposal at an admission stage even though, the MCGM is not served and appeared before me.

[5] The only issue involved in this Petition is, **"whether a member of a Co-operative Society can seek an impleadment in a Suit filed by another member against the Local Authority when the Society is not a party Defendant"**.

[6] Learned Advocate Shri.Chandrachud made following submissions:-

(a) All action taken by the Corporation is at the behest of the complaints made by the present Petitioner and in fact, when the Corporation has not paid heed to his complaint.

(b) He was compelled to file a Writ Petition before the Division Bench and there is an order dated 9th January 2020 directing the Corporation to hear him and dispose of the representation dated 20th March 2018.

(c) The trial Court while dismissing the Chamber Summons has wrongly made observation about the merits of the claim of the Petitioner and he ought to have reserved it.

[7] Learned Advocate for Respondent No.1 / Plaintiff supported the order and opposed for any interference in a Writ jurisdiction. He made following submissions:-

(a) The contents of Affidavit in support of Chamber Summons nowhere show how the Petitioner is going to be affected by the alleged construction and dispute involved in the Suit.

(b) The Affidavit nowhere avers about joining hands by the Plaintiff with the Society and that is why, the Society is not coming forward to oppose the Plaintiff's claim.

(c) The averments in the Chamber Summons do not satisfy either of the tests laid down in Order I, Rule 10(2) of the Code of Civil Procedure, 1908 **("CPC")**. He cannot be said as a proper or necessary party.

(d) To buttress his submission, he relied upon the observations by a Division Bench of this Court in case of Ashok Babulal Avasthi V/s. Munna Nizamuddin Khan and Another,2023 SCCOnLineBom 2559 and more specifically, the observations in paragraph No.36.

(e) Even if the nature of alleged violations complained by the Petitioner and depicted in the show cause notice and Speaking Order are considered, it cannot be said that the Petitioner is really affected by those alleged constructions considering its nature.

Consideration

[8] It is important to note that the flats occupied by the Plaintiff and flat occupied by the Petitioner are situated in a building owned by the Society. The flats of the Plaintiff are situated on the ground floor whereas, that of the Petitioner is on the first floor. If, the nature of complaint of an illegal construction is considered, it deals with:-

(a) An amalgamation of two flats done by the Plaintiff without permission.

(b) Construction of Otla outside the flats of the Plaintiff in common passage.

(c) An encroachment in Office premises of the Society.

[9] There are complaints filed by the Intervenor to the Corporation Authorities for taking action for these acts against the Plaintiff. It is a matter of record that the Division Bench directed the Corporation to decide the representation after hearing the concerned parties. That order is dated 9th January 2020. Whereas, the show cause

notice issued is dated 17th December 2018. (Page No.55). The Speaking Order is passed on 23rd February 2020. (Page No.65). This Court is not expected to make any comment about the merits of the alleged unauthorised construction and validity of issuing notice and passing Speaking Order. **The only issue is about the locus standi of the Petitioner.** The Society has neither appeared before the trial Court nor they are before this Court. This Court is not aware why the Society has not appeared before any Court. On the set of these facts, the claim of the Petitioner needs to be decided.

[10] It is true, Order I, Rule 10(2) of CPC gives guidelines as to how a person can be added as a party. There are two tests. They are:-

(a) Name of the person who ought to have been joined either Plaintiff or Defendant. So to say, without joining him as a party, no relief can be granted. In this case, the Corporation is a proper party because against him, relief is sought by the Plaintiff.

(b) A party whose presence before the Court is necessary and the test is for deciding the issues involved effectually and completely.

[11] I have read the observations in case of **Ashok Babulal Avasthi** (cited supra). This was a judgment on a reference because earlier, there were two different views expressed by two learned Judges of this Court. The Division Bench has answered the reference by observing:-

> "Landlord or owner of the property is a proper party when there is an action taken restraining the Local Authority from taking action of demolition".

It is true, in Para No.36, the Division Bench has elaborated, how the landlord is a proper party. The reasoning is ultimately the landlord is the owner of the property and any decision taken by the Court about this property is going to affect the said landlord.

[12] No doubt, the relationship in between the landlord and tenant on one hand and the relationship in between a member of the Society and the Society on the other hand, stand on different footing. If, the scheme of the provisions of the Maharashtra Co-operative Societies Act, 1960 **("MCS Act")** are perused, the Society is the owner of the entire building and land (subject to conveyance) and person who is a member of the Society is having a right to possess the flat / shop. Now, in this case, no doubt the amalgamation of two flats is an issue which has taken place inside the flat. Other two grievances pertain to construction of Otla in common passage and an encroachment to the Office premises.

[13] The trial Court in Para No.12 observed:-

> "The Intervenor has not submitted any document against the Plaintiff to show how he is affected due to alleged unauthorised construction of the Plaintiff except words".

When the Affidavit in support of Chamber Summons is perused, in Para No.21 (Page No.78), the Intervenor has pleaded:-

> "Unauthorized structure is adversely affecting the rights of the Applicant as he encroached the society property which is common benefit of the all the members of the society including the Applicant and the same is highly prejudice and causing mental agony to me".

[14] If, there are allegations against the member of constructing Otla in common passage and encroaching the Office premises, no doubt, other member is having every right to make a grievance if his rights as a member are affected. Even though, the Society is not coming forward, it cannot be said that an individual member has to appear before the Court through the Society only. Being a member, he is also having an individual right to make use of common passage and the Office also.

[15] If, considered from that perspective, the Petitioner's presence before the trial Court is necessary. Ultimately, the trial Court after evidence, will be deciding whether the notice is as per the law or not. For that purpose, the trial Court is going to hear the Plaintiff and the Corporation. When the Corporation has taken an action at the behest of the Petitioner, certainly his presence before the Court in adjudicating the dispute effectively as well as completely is necessary.

[16] The trial Court was wrong in observing that the Petitioner has failed to produce any document which will show how harm is going to cause. **The trial Court has mixed up two issues.** First one, the entitlement of a person to be joined as a party and second, the merits of his contention at the time of deciding the Application. The Court has only to consider prima facie whether he is a proper or necessary party or altogether stranger. In this case, the Petitioner cannot be considered as a stranger. The Petitioner may succeed or may not succeed in assisting the Court to arrive at a proper conclusion that is the question of merit which can be gone into only when the parties will adduce the evidence.

[17] Prayer clause (a) of the Chamber Summons reads thus:-

> "That the Applicant be joined as a Defendant in the present suit by directing the Plaintiff to carry out necessary amendment in the Plaint in the interest of justice and kindness."

[18] I am inclined to allow the Petition. Hence, following order is passed:-

O R D E R

(i) The Writ Petition is allowed.

(ii) The order dated 30th July 2024 passed by the Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai on Chamber Summons No.448 of 2020 is set aside.

(iii) The Chamber Summons is allowed in terms of prayer clause (a).

(iv) The Respondent No.1-Plaintiff is directed to join the Petitioner as Defendant No.2 by carrying out necessary amendment within six (6) weeks from today. The Petitioner-Respondent No.2 is permitted to file Written Statement once the amendment is carried out.

(v) The Respondent No.1 is directed to inform the Petitioner about carrying out the amendment and no fresh summons will be issued.

(vi) Even, the Respondent No.1, if he desires, is at liberty to carry out an amendment in the Plaint in view of this development. If, he wants, he can exercise this liberty within eight (8) weeks from today.

(vii) If, Chamber Summons is moved, trial Court to allow it only on verifying that amendment pertains only to the averments of allowing impleadment of the Petitioner.

[19] In view of the above, **Writ Petition stands disposed of**

2025(1)MCJ71

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before A S Chandurkar]

Writ Petition No. 10220 of 2024 **dated 14/11/2024**

Pawan Advertising

Versus

State of Maharashtra & Ors

QUANTUM OF COSTS

Code of Civil Procedure, 1908 Sec. 35, Sec. 35A - Bombay High Court (Appellate Side) Rules, 1960 Rule 16, Rule 7 - Quantum of Costs - Petition challenged rejection of application by MMRDA for retention of unauthorized hoardings - Division Bench dismissed writ petition citing suppression of facts and false statements, leading to commercial gain - Judges differed on quantum of exemplary costs; Rs.5,00,000/- suggested by one Judge considered reasonable, while Rs.25,00,000/- proposed by another aimed to deter non-compliance - Court resolved difference in favor of Rs.5,00,000/- due to absence of material evidence on petitioner's gains and investment, emphasizing judicial discretion based on fair play and justice - Matter referred back to Division Bench for final order

Law Point: Imposition of exemplary costs must consider evidence on commercial gains and expenses, ensuring judicial discretion aligns with natural justice principles.

Acts Referred:

Code of Civil Procedure, 1908 Sec. 35, Sec. 35A

Bombay High Court (Appellate Side) Rules, 1960 Rule 16, Rule 7

Counsel:

Minal Chandnani, Urusah M I Advocates, S P Kamble, Kavita N Solunke

JUDGEMENT

A S Chandurkar, J.- [1] This opinion seeks to resolve the difference that has arisen between the Hon'ble Judges constituting the Division Bench that heard Writ Petition No.10220 of 2024 on the quantum of costs to be imposed on the petitioner. In the said writ petition, an order dated 11th July 2024 passed by the Mumbai Metropolitan Regional Development Authority- MMRDA rejecting the application made by the petitioner for retention of hoardings installed by it was under challenge. By its order dated 24th July 2024, the Division Bench proceeded to dismiss the writ petition after recording a finding that the hoardings installed by the petitioner exceeded the permissible limits as laid down in the statutory guidelines. There was a consensus between the learned Judges that the writ petition was liable to be dismissed with exemplary costs. However, there was a disagreement between them as regards the quantum of costs. Hon'ble M. S. Sonak, J was of the view that imposition of costs of Rs.5,00,000/- would be appropriate. However, Hon'ble Kamal Khata, J was of the view that the costs to be imposed could not be insignificant or trivial. Costs ought to be imposed so as to act as a genuine deterrent. He was of the view that costs of Rs.25,00,000/- ought to be imposed.

In view of the difference of opinion as regards the quantum of costs to be imposed, the writ petition has been placed before this Court in accordance with the provisions of Chapter-I Rule 7 of the Bombay High Court Appellate Side Rules, 1960 to resolve this difference.

[2] Ms. Minal Chandnani, the learned counsel appearing for the petitioner at the outset submitted that the order dated 24th July 2024 passed in the writ petition was the subject matter of challenge before the Supreme Court in SLP (C) No.20943/2024. The said Special Leave Petition however came to be dismissed on 13th September, 2024. It is thus only the difference of opinion with regard to the quantum of costs that is required to be adjudicated in the present reference. It was submitted that the facts of the present case did not indicate that the imposition of exemplary costs was warranted. The petitioner had approached the Grampanchayat for seeking permission for erecting the hoardings and after receiving its permission had errected the said hoardings. It was however found by the Division Bench that the permission of the MMRDA, which was the Competent Authority, had not been obtained and instead permission from the Grampanchayat had been sought. There were no malafides in the action of the petitioner and hence imposition of exemplary costs of Rs.25,00,000/- was not at all warranted. The observations made in paragraphs 19 and 23 of the order dated 24th July 2024 were unwarranted in the facts of the present case inasmuch as no fraud was played by the petitioner by obtaining permission from the Grampanchayat. It was the first instance when the petitioner had approached this Court and therefore, it could not

be said that the petitioner was a habitual law-breaker so as to invite an order for payment of exemplary costs. Drawing attention to the order passed by the said Division Bench in Writ Petition No.8657 of 2024 (Yash Raj Multimedia Pvt. Ltd. & Anr. Vs. State of Maharashtra & Ors.) decided on 21st August 2024, it was submitted that even in the said case, the petitioner had approached the Grampanchayat for grant of permission to put up an hoarding. The Division Bench dismissed the writ petition but did not impose any costs whatsoever. It was therefore submitted that imposition of exemplary costs of Rs.25,00,000/- on the petitioner was unwarranted.

To substantiate her contentions in this regard, the learned counsel relied on the decisions in **Ashok Kumar Mittal Vs. Ram Kumar Gupta and Another**, 2009 2 SCC 656, **Vinod Seth Vs. Devinder Bajaj and Another**, 2010 8 SCC 1, **Sanjeev Kumar Jain Vs. Raghubir Saran Charitable Trust and Others**, 2012 1 SCC 455 and **Maria Margarida Sequeira Fernandes and Others Vs. Erasmo Jack De Sequeira (dead) through LRS.**, 2012 5 SCC 370. Reliance was also placed on the recommendations of the 240th Report of the Law Commission of India on the subject "Costs in Civil Litigation". On the basis of aforesaid submissions, it was urged that exemplary costs of Rs.25,00,000/- as imposed did not warrant acceptance.

[3] Ms. Kavita Solunke, learned counsel appearing for the MMRDA on the other hand supported the imposition of exemplary costs of Rs. 25,00,000/-. Referring to the observations made by the Division Bench in its order dated 24th July 2024, it was submitted that firstly, there was no question of obtaining any permission from the Grampanchayat as it was the MMRDA which was the Competent Authority to grant permission for erection of hoardings. On the strength of the permission granted by the Grampanchayat, the petitioner proceeded to erect the hoardings which far exceeded the permissible limits. It was further pointed out that the Division Bench had recorded a finding that the petitioner had made false statements in the writ petition and that it had also suppressed correct facts. The writ petition was dismissed for suppression and misstatement of correct facts. Since the petitioner had made commercial gains from such conduct, the Division Bench was of the view that exemplary costs ought to be imposed. It was submitted that costs of Rs.25,00,000/- had been rightly imposed in view of the seriousness of the situation and with a view that such costs would act as a genuine deterrent. In the facts of the case, the amount of costs of Rs.5,00,000/- as imposed was on a lower side and the view imposing costs of Rs.25,00,000/- on the petitioner ought to be upheld.

To substantiate her contentions, the learned counsel placed reliance on the decisions in **S.P. Chengalvaraya Naidu (dead) by LRS. Vs. Jagannath (dead) by LRS. & Others**, 1994 1 SCC 1, **Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others**, 2005 AIR(SC) 540 and Dnyandeo Sabaji Naik and Anr. Vs. Pradnya Prakash Khadekar and Ors,2017 AIROnLineSC 515.

[4] I have heard the learned counsel for the parties and I have thereafter given thoughtful consideration to the respective submissions. The point of difference that seeks resolution is restricted only to the quantum of costs to be imposed upon the petitioner upon dismissal of the writ petition preferred by it.

As stated above, in the writ petition preferred by the petitioner an order passed by the MMRDA dated 11th July 2024 rejecting the petitioner's application for retention of hoardings erected by it was under challenge. While finding no merit in the challenge raised by the petitioner, the Division Bench was of the view that the petitioner erected the said hoardings after obtaining permission of the Grampanchayat which was not the Competent Authority. Permission of the MMRDA was required to be obtained which was not done. It was found that the hoardings erected by the petitioner exceeded the permissible limits as indicated in the statutory guidelines. It was noted that false statements had been made by the petitioner in the writ petition and that correct facts had also been suppressed therein. Thus after finding that there was no merit in the challenge raised by the petitioner, the Division Bench was of the view that the writ petition was liable to be dismissed for suppression and misstatement of correct facts. By such conduct, the petitioner had made commercial gains. There was also a consensus on imposition of exemplary costs on the petitioner while dismissing the writ petition. The order dismissing the writ petition has now attained finality with rejection of the Special Leave Petition preferred by the petitioner.

[5] Since both the learned Judges constituting the Division Bench were of the view that the petitioner was liable to pay exemplary costs, it is only the difference in the quantum of such exemplary costs to be paid that requires resolution. While doing so, it would be necessary to refer to certain relevant aspects. The writ petition as filed was by invoking Article 226 of the Constitution of India. In this regard, it is necessary to refer to Chapter XVII of the Rules of 1960. The said Chapter concerns the filing of writ petitions under Articles 226 and 227 of the Constitution of India. Rule 16 of Chapter XVII confers discretion on the Court in the matter of imposition of costs in a writ petition. It is thus clear that the amount of costs to be imposed on a party is within the discretion of the Court entertaining the writ petition. It is needless to state that exercise of such discretion has to be guided by a judicious approach. The manner in which such discretion has been exercised is expected to be reflected in the order imposing costs or same could also be discerned from the material on record.

[6] In the matter of exercise of discretion, useful reference can be made to the observations in paragraphs 9 to 12 of the decision in **National Insurance Co. Ltd Vs. Keshav Bahadur and Others**, 2004 2 SCC 370. The said observations read as under:-

9. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or

understanding to discern between falsity and the truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself. (Per Lord Halsbury, L.C., in Sharpe v. Wakefield). Also see S.G. Jaisinghani v. Union of India.

10. The word "discretion" standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently, therefore, a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore where the legislature concedes discretion it also imposes a heavy responsibility.

"The discretion of a judge is the law of tyrants; it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper, passion. In the best it is oftentimes caprice; in the worst it is every vice, folly, and passion to which human nature is liable," said Lord Camden, L.C.J., in Hindson and Kersey.

11. If a certain latitude or liberty is accorded by statute or rules to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion. It limits and regulates the exercise of the discretion, and prevents it from being wholly absolute, capricious, or exempt from review.

12. Such discretion is usually given on matters of procedure or punishment, or costs of administration rather than with reference to vested substantive rights. The matters which should regulate the exercise of discretion have been stated by eminent judges in somewhat different forms of words but with substantial identity. When a statute gives a judge a discretion, what is meant is a judicial discretion, regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is given on the assumption that he is discreet (per Willes, J. in Lee v. Bude Rly. Co. and in Morgan v. Morgan).

[7] Another facet that is required to be borne in mind is the nature of remedy that has been availed. Such remedy could either be a public law remedy when jurisdiction of a constitutional Court is sought to be invoked while another remedy is one before the Civil Court invoking the provisions of the Code of Civil Procedure, 1908 (for short, 'the Code'). The mode and manner of imposition of costs when public remedy is availed would be different from the imposition of costs by invoking the provisions of Section 35 or Section 35A of the Code. The nature of costs could either be compensatory or punitive in nature or the costs could be one in cause. In the present reference, it is only the quantum of exemplary costs that is required to be examined.

[8] At this stage, it is necessary to make a reference to the observations in Paragraphs 5 and 6 of the judgment of the Supreme Court in Satyapal Singh Vs. Union of India and Another SLP (C) No.32928/2009 decided on 23rd November 2009.

> "5. Exemplary costs are levied where a claim is found to be false or vexatious or where a party is found to be guilty of misrepresentation, fraud or suppression of facts. In the absence of any such finding, it will be improper to punish a litigant with exemplary costs. When the appellate court did not choose to levy any costs while dismissing the appeal filed by the petitioner after nine years of pendency with interim stay, the High Court, while dismissing the writ petition at preliminary hearing, ought not to have levied exemplary costs with reference to the period of pendency before the Appellate Court. We do not find any ground on which the exemplary costs of Rs. 50,000/- could be sustained. Levy of exemplary costs on ordinary litigants, as punishment for merely for approaching courts and securing an interim order, when there was no fraud, misrepresentation or suppression is unwarranted. In fact, it will be bad precedent.
>
> Even if any costs are to be levied on a petitioner, for any default or delaying tactics, where the respondents have entered appearance, costs should be ordered to be paid to the respondents, who were the affected parties on account of the litigation. There is no justification for levying costs of Rs.50,000/- on the petitioner payable to the High Court Legal Service Committee. There is also no justification for directing the State Government to act as the collecting agent for the costs payable to the Legal Services Committee. Directing a government servant, an ordinary employee, to pay Rs. 50,000/- as costs within one month and further directing the use of coercive process for recovery of costs as arrears of land revenue was unwarranted. The levy of such exemplary costs in favour of the High Court Legal Services Committee, is not a healthy practice.
>
> 6. The costs may be justifiably made payable to the High Court Legal Services Committee or other Legal Services Authorities, where before the other side is served or represented, the court wants to penalise a petitioner for lapses/omissions/delays, as for example, where the petitioner fails to pay the process fee for service of respondents, or fails to cure defects or comply with office objections, or where there is delay in refiling of petitions. Once the other side is represented, the costs levied by reason of any attempt by a party to delay the proceedings, should normally be for the benefit of the other party who has suffered due to such conduct. Only where both the parties are at fault, costs may be ordered to be paid to Legal Services Authority. At all events,the power to levy exemplary costs, it is needless to say, should be used sparingly to advance justice. It should not be threatening and oppressive."

[9] In the decisions relied upon by the learned counsel for the petitioner, the imposition of costs was in the context of the provisions of Sections 35 and 35A of the Code. The said decisions would therefore not be very relevant in the present context as exemplary costs have been imposed while exercising jurisdiction under Article 226 of the Constitution. Similarly, the 240th Report of the Law Commission of India contains recommendations for legislative amendments in the Code. The ratio of the decisions relied upon by the learned counsel for the MMRDA has been taken into consideration.

[10] In the order passed by Hon'ble M.S. Sonak, J, it has been indicated that the petitioner had suppressed correct facts and had made false statements while invoking the extraordinary and equitable jurisdiction of the Court so as to snatch an interim order. It is on this basis that the amount of Rs.5,00,000/- was determined as exemplary costs. On the other hand, as per the order passed by the Hon'ble Kamal Khata, J the exemplary costs to be imposed ought to be a significant fraction of the investment involved thereby impacting the rate of return of investment and rendering any non-compliance economically prohibitive. It was observed that erecting a 40 feet by 40 feet hoarding would cost not more than Rs. 15,00,000/- while advertising fees could range from a few thousand to several lakhs per day. It is for this reason and with a view to convey the seriousness of the situation and to set an example of genuine deterrence, costs of Rs.25,00,000/- were imposed.

[11] In my view, if the basis for determining the amount of exemplary costs is the illegal gain or benefit derived by a party, relevant material in the form of the amount invested, expenses incurred for undertaking such work and the profits earned in the interregnum would be relevant. If such material is available on record, the task of the Court in determining the amount of exemplary costs would become easier. However, if the aforesaid relevant material which could form the basis for determining the quantum of exemplary costs is not available on record, it would be necessary to call for such material from the parties so as to enable the Court to undertake a reasonable determination of the quantum of exemplary costs. This could be done either by calling upon the parties to place on record relevant material as regards the amount invested in undertaking such activity, expenses incurred and the probable gains from such activity. This material would facilitate determination of a realistic amount of exemplary costs. Such exercise would also serve a dual purpose. Firstly, the party on whom such exemplary costs are sought to be imposed would have an opportunity to place before the Court relevant figures which in turn would enable the Court to determine the amount of exemplary costs to be imposed. This would also satisfy the requirement of natural justice inasmuch as imposition of exemplary costs definitely visits such party with civil consequences. Secondly, in a challenge to an order imposing exemplary costs, the Court examining such challenge would be in a better position to gather the basis for imposition of exemplary costs as well as the manner or the yardstick on the basis of which the quantum of exemplary costs has been determined. Ultimately, the

imposition of exemplary costs is an exercise undertaken in discretion and hence such such exercise ought to satisfy the basic tenets of fair play and justice.

[12] In the present case, there was no such material available on record that could indicate the probable amount of investment made by the petitioner in the erection of the hoardings, the expenses incurred in doing so as well as the advertising fees paid for the same. Paragraph 20 of the order dated 24th July 2024 indicates that these aspects have been considered not on a factual basis but on the basis of probable figures which the Court considered in its perspective. There is absence of relevant material to indicate the approximate expenditure undertaken by the petitioner as well as the probable gain in that regard. With respect, the basis on which the figure of Rs.25,00,000/- as exemplary costs was determined cannot be gathered from the order dated 24th July 2024. Hence, in my view imposition of exemplary costs of Rs.5,00,000/- on account of suppression of correct facts and false statements made in the writ petition by Hon'ble M. S. Sonak, J. appears to be reasonable and appropriate.

[13] The reference is accordingly answered by opining that the facts of the present case warrant imposition of exemplary costs of Rs.5,00,000/- as per Hon'ble M. S. Sonak, J. The writ petition be now placed before the Division Bench in accordance with Rule 7 of Chapter-I of the Bombay High Court Appellate Side Rules, 1960

2025(1)MCJ78

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Abhay Ahuja]

Interim Application (L); Suit No 22817 of 2024, 2661 of 2024; 45 of 2020

dated 14/11/2024

Vijay Krishanji Sawant and Ors

Versus

Francis John Quinny and Ors

DELAY IN WRITTEN STATEMENT

Code of Civil Procedure, 1908 Or. 8R. 1, Or. 8R. 10 - Delay in Written Statement - Interim application sought condonation of 776-day delay in filing written statement under CPC Order VIII Rule 1 - Defendants argued delay caused by lack of knowledge and pandemic disruptions, including misplacement of summons - Plaintiffs opposed citing procedural lapses and unexplained periods - Court noted Covid-19 orders excluded initial delay; found weak but plausible reasons for remaining period - Recognized right to defend, emphasizing adjudication on merits - Allowed condonation with costs of Rs.1,00,000/- to promote equitable relief and accountability - Application Allowed

Law Point: Courts may condone significant delays in filing written statements for exceptional reasons, balancing procedural compliance with substantive justice, while imposing costs to address accountability.

Acts Referred:

Code of Civil Procedure, 1908 Or. 8R. 1, Or. 8R. 10

Counsel:

Akshay Bobade, Yatin Shah, Vipul Makwana, Niranjan Mogre, Vasim Shaikh, Pravin Mehta, Mithi & Co

JUDGEMENT

Abhay Ahuja, J.- [1] This Interim Application filed by the Defendants No. 1 and 2 seeks condonation of delay of 776 days in filing the written statement after setting aside the order dated 15th December, 2023, passed by the Prothonotary & Senior Master of this Court, transferring the Suit to the list of undefended suits inter alia against the Defendants No. 1 and 2.

[2] Mr. Mogre, learned Counsel appearing for the said Defendants submits that the delay has mainly been caused as the Applicants were not aware of the Suit until the 16th March, 2024, when the amended Plaint was served upon the said Defendants. That it is only when the reply was filed that the said Defendants came to know that the writ of summons had been served on 19th August, 2020. Mr. Mogre would submit that in fact the address on which the writ of summons is purported to have been served is a commercial premises and the Applicants do not operate from those premises since many years as the said premises is locked. Mr. Mogre would submit that in any case if the said packets as claimed by the Plaintiffs were received, the same have been received during the Covid-19 Pandemic period and the said envelopes were not traceable as it was peak Covid period particularly in Mumbai at that time. That the Applicant No. 1 being at an advanced age was extra cautious and strictly observing social distancing even while moving out of house for business and court related work. It is submitted that during that period he was staying isolated at home and also not touching documents, courier, parcels for several days/months due to fear of catching infection as he had to be extra cautious being senior citizen. That, therefore, the Applicant No. 1 does not recollect whether the copy of the writ of summons was received or not. However, Mr. Mogre submits that even if it is assumed that the said writ of summons is received on 19th August, 2020, in view of the suo motu orders of the Hon'ble Supreme Court, the period till 30th May, 2022 would be excluded for filing any written statement. That because the papers during this period were misplaced/lost, the Applicants could not take steps to engage advocates and it was only when the amended Plaint was received on 16th March, 2024, that after engaging appropriate advocate, this Interim Application has been taken out on 19th July, 2024.

Mr. Mogre submits that the delay that has been caused is unintentional and due to lack of knowledge on the part of the Applicants.

[3] Mr. Mogre also submits that the written statement is ready and the Applicants have a good case on merits as in fact the Plaintiffs have no locus to stake claim to the subject land. That the Applicant No. 1- Vijay Sawant is the partner of the Applicant No. 2, who has developed the said land and also created third party rights and the Plaintiffs are seeking to claim rights over the subject land on the basis of Letter of Administration dated 10th July, 2019, which is after 48 years of the death of original owner of the land viz. Mr. Louis Francis Misquita. That wife of Mr. Louis Misquita had transferred rights in respect of the subject land by various agreements to the developers in respect where of developments had been undertaken and third party rights have already been created.

[4] Mr. Mogre, therefore, submits that this Court permit the Defendants No. 1 and 2 to defend the Suit by first setting aside the order of the Prothonotary & Senior Master dated 15th December, 2023, and thereafter, condoning the delay of 776 days after 19th August, 2020 and direct the Registry to accept the written statements on their behalf. Mr. Mogre submits that this Court may subject the Applicants to any terms and conditions for allowing the Application.

[5] On the other hand, Mr. Bobde, learned Counsel appears for the Plaintiffs opposes the Interim Application submitting that the writ of summons has been served upon the clerical staff of the said Defendants on 19th August, 2020 and affidavit of service has also been filed. Mr. Bobde has tendered across the bar a list of dates and events and submits that although the Interim Application pleads that the writ of summons was not traceable but no explanation has been given with respect to the service of the Interim Application for amending the Plaint, which was received by the Defendant No. 1 on 24th July, 2023 and by the Defendant No. 2 on 28th July, 2023. That there is even no explanation as to why, though the amended Plaint was received on 16th March, 2024, the present Interim Application has been filed only on 9th July, 2024. It is submitted that there has been no explanation for the delay of 800 days in notarizing the written statement. Mr. Bobde submits that since the Applicants have failed to give a valid explanation for the delay and that this Court dismiss the explanation.

[6] Mr. Bobde relies upon the decision of the Hon'ble Supreme Court in the case of **Atcom Technologies Limited Vs. Y. A. Chunawala and Company and Ors.**, 2018 6 SCC 639 in support of his contentions.

[7] I have heard the learned Counsel and considered their rival contentions.

[8] In the list of dates and events tendered across the bar by the learned Counsel for the Plaintiffs, it is observed that the Plaint was lodged on 10th December, 2019. The summons had been lodged with the Office of the Sheriff of Bombay on 9th

March, 2020. That the Defendants No. 1 and 2 were served with the writ of summons on 19th August, 2020. That the Prothonotary & Senior Master had passed order transferring the Suit as against the Defendants No. 1 to 4 to the list of undefended suits on 15th December, 2023. That the copy of the Interim Application filed for amending the Plaint was served on 24th July, 2023 upon the Defendant No.1 and on 28th July, 2023 on the Defendant No. 2 and affidavit of service was filed on 31st October, 2023. The Interim Application was allowed on 31st January, 2024 and the amended Plaint was served on the Defendants No. 1 and 2 on 16th March, 2024.

[9] Learned Counsel for the Plaintiffs submits that there is a delay of 800 days whereas the learned Counsel for the Defendants No. 1 and 2 submits that there is a delay of 776 days. It has been submitted on behalf of the Plaintiffs that there has been absolutely no explanation with respect to the service of the Application for amending the Plaint in July 2023, although the Plaintiffs are also aggrieved that no explanation has been given from the date of receipt of the writ of summons on 19th August, 2020. The Plaintiffs are also aggrieved that there is no explanation from 16th March, 2024, which is the date on which the amended Plaint was admittedly received by the said Defendants and the date of filing of the Interim Application. As far as the explanation with respect to the period between 19th August, 2020 and 30th May, 2022 is concerned, I am inclined to accept the explanation by the Applicants in view of the sue motu said order of the Hon'ble Supreme Court dated 10th January 2022 in Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020 due to the Covid-19 Pandemic, as the period from 15th March, 2020 till 28th February, 2022, had been excluded by the suo motu order of the Hon'ble Supreme Court and a limitation period of 90 days thereafter i.e. till 30th May, 2022 was allowed. Post 30th May 2022 till 16th March, 2024, the said Defendants had been following the preventive measures due to Covid-19 Pandemic and had misplaced the papers and could not take steps to engage advocate in the matter and therefore, could not file the written statement.

[10] It is not unknown that during the period of Covid-19 Pandemic, which is the worst kind of disaster that affected not only the citizens of this country but the citizens of the world, the senior citizens were at the highest risk and Covid protocols that had been imposed with respect to the documents, couriers, parcels were also very strict. The senior citizens had to be extra cautious about their health and there are preventive measures to be adopted even after the Covid-19 Pandemic was over. It, therefore, is not unbelievable that the Applicants despite having searched for the papers received during the Covid, could not find that and therefore, could not take steps to engage an advocate. It is however, has also not been denied that the Interim Application seeking amendments to the Plaint has been served on the Defendants No. 1 and 2 respectively on 24th July, 2023 and on 28th July, 2023.

[11] Mr. Mogre has submitted that it is only when the amended copy of the Plaint was served upon the Defendants No. 1 and 2 on 16th March, 2024, that the said Defendants became aware of the Suit. In my view, this cannot be accepted and it is to be taken that there is no sufficient explanation for the period from the date of receipt of the Interim Applications for amendment of the Plaint in July, 2023 till 16th March, 2024. As far as the explanation from 16th March, 2024 till the filing of the Interim Application on 9th July, 2024 is concerned, although some weak explanation has been sought to be offered by the learned Counsel for the said Defendants that the Defendants thereafter engaged the Advocate and gave instructions to file written statement, even if the reasonable time was granted for engaging an advocate, the said explanation cannot be said to be a sufficient one for the cause of delay during this period.

[12] Under Order VIII Rule 1 of the Code of Civil Procedure, 1908 ("CPC") a written statement is to be filed within 30 days from the date of service of summons. If the Defendant failed to file the same within that period he may be allowed a maximum of another 60 days by a Court for reasons to be recorded in writing but a written statement cannot be filed beyond 90 days from the date of service of the summons. However, in the decision of the Hon'ble Supreme Court in the case of **Kailash Vs. Nankhu**, 2005 4 SCC 480 , the Hon'ble Supreme Court has held that the said Order VIII Rule 1 of the CPC is directory and not mandatory and that in an exceptional situation the Court can condone the delay.

[13] Learned Counsel for the Plaintiff has relied upon the decision of the Hon'ble Supreme Court in the case of Atcom Technologies Limited Vs. Y. A. Chunawala and Company and Ors. (supra), which also in paragraph no. 20 quotes the decision of the Hon'ble Supreme Court in the case of **Salem Advocate Bar Assn and Anr. Vs. Union of India**, 2005 6 SCC 344 where the Hon'ble Supreme Court has stated that there is no restriction in Order VIII Rule 10 that after expiry of 90 days, further time cannot be granted. That the Court has wide powers to make such order in relation to the Suit as it thinks fit. That clearly, therefore, the provisions of Order VIII Rule 1 of the CPC providing for the upper limit of 90 days to file written statement is directory, however, the order extending the time to file written statement cannot be made in routine. It has been done only in an exceptionally hard case. It has to be borne in mind that the legislature has fixed the upper time limit of 90 days and cannot be extended frequently and routinely so as to nullify the period fixed by Order VIII Rule 1 of the CPC. In paragraph 21 of the decision in the case of Atcom Technologies Limited Vs. Y. A. Chunawala and Company and Ors. (supra), it has been observed that the onus upon the Defendant is of a higher degree to plead and satisfactorily demonstrate a valid reason for not filing the written statement within 30 days.

[14] As noted in the facts of this case, the date on which according to the Plaintiffs writ of summons was served, fell within a Covid-19 Pandemic exclusion period and

even the period of 30 days as well as the period of 90 days fell within the said period. The Covid exclusion period ended on 28th February, 2022, granting an extended limitation of a period of 90 days, which ended on 30th May, 2022. Thereafter, as noted above, the Applicants have, in the view of this Court, explained the delay till the receipt of the Interim Applications for amendment of the Plaint i.e. till July, 2023, however, with respect to the period from the said date till receipt of the amended Plaint on 16th March, 2024, there does not seem to be any sufficient explanation. However, from 16th March, 2024, till 9th July, 2024 there is a weak explanation for the delay.

[15] It has been submitted by Mr. Mogre and it has also been observed from the written statement that has been annexed to the Interim Application at Exhibit-B that the said Defendants are challenging the very basis of the locus of the Plaintiffs submitting that the Letters of Administration that has been obtained 48 years after the death of the original land owner are fictitious. It has also been submitted that third party rights have been created in respect of the subject land in respect whereof a declaration is being sought by the Plaintiffs. It is settled law that the Defendants cannot be deprived of their rights to defend the Suit and it is always in the interest of justice that the matter be heard on merits after adjudication of rights of the parties in question.

[16] In my view, the circumstances as described above are exceptional and hard as well, which prevented the Applicants from filing the written statement in the time prescribed within Order VIII Rule 1 of CPC and valid reasons have sought to be given except as found above. Therefore, in my view the decision in the case of Atcom Technologies Limited Vs. Y. A. Chunawala and Company and Ors. (supra) relied upon by the Plaintiffs in fact assist the case of the Applicants herein and not the case of Respondents-Plaintiffs.

[17] In the case of Bharat Kalra vs. Raj Kishan Chabra,2022 SCCOnlineSC 613 it has been held that where the delay in filing the written statement could very well be compensated with costs, denying benefit of filing written statement would be unreasonable.

[18] Accordingly, I am inclined to allow this Application but not without imposing of costs for the period where there has been no sufficient explanation or where there has been a weak explanation for the cause of the delay. Accordingly, the subject delay is condoned subject to costs of Rs.1,00,000/- to be paid by the Applicants.

[19] Mr. Mogre has submitted that the costs be given for charitable causes, however, Mr. Bobade, learned Counsel for the Plaintiffs has left it to the orders of the Court.

[20] Let the costs of Rs. 1,00,000/- be paid by the Applicants to the High Court Non Gazetted Ministerial Staff Association, Mumbai, within a period of three weeks.

[21] Subject to payment of costs as above: (i) the order dated 15th December, 2023, passed by the Prothonotary & Senior Master is set aside; (ii) the delay is condoned; (iii) Registry is directed to accept the written statement.

[22] The Interim Application is allowed as above and accordingly stands disposed.

[23] Both the learned Counsel are ad-idem that in view of the aforesaid order, the Interim Application (L) No. 2661 of 2024 can be disposed as infructuous. Ordered accordingly.

[24] List the Suit for framing of issues on **9 th January, 2025.**List the Suit for framing of issues on Let the draft issues be exchanged between the parties by the next date

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2025(1)MCJ84

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before G S Kulkarni; Advait M Sethna]

Writ Petition (Lodg) No 17982 of 2024 **dated 12/11/2024**

Grasim Industries Limited

Versus

Chief Commissioner of Income Tax (Central); Assistant Commissioner of Income Tax (Central); Union of India

WAIVER OF INTEREST

Income Tax Act, 1961 Sec. 208 - Sec. 119 - Sec. 209 - Sec. 234C - Waiver of Interest - Petition filed challenging rejection of application seeking waiver of interest under Section 234C of Income Tax Act for deferment in payment of Advance Tax due to COVID-19 financial impact - Petitioner contended income estimation for A.Y. 2021-22 became difficult due to pandemic and sought exemption based on circular and precedents allowing waiver in unforeseen circumstances - Petitioner argued that Chief Commissioner's order lacked consideration of COVID-19's exceptional impact on income projections, citing non-compliance with procedural guidelines under Section 119 - High Court noted Commissioner's order failed to address core issues raised regarding waiver guidelines, statutory provisions, and case law invoked by petitioner - Held that lack of adequate consideration amounted to non-application of mind - Impugned order quashed and remanded for fresh evaluation within stipulated timeframe. - Petition Allowed

Law Point: Waiver of interest under Section 234C of Income Tax Act may be considered where estimation of advance tax becomes impossible due to unforeseen circumstances; non-consideration of COVID-19 impact on income projections constitutes procedural impropriety.

Acts Referred:

Income Tax Act, 1961 Sec. 208, Sec. 119, Sec. 209, Sec. 234C

Counsel:

Dharan V Gandhi, Akhileshwar Sharma

JUDGEMENT

Advait M. Sethna, J.- [1] Rule, made returnable forthwith. Respondents waive service. By consent of the parties, the petition is heard finally.

[2] This petition is filed under Article 226 of the Constitution of India. Briefly, the petition challenges an order dated 30th March 2024 passed by respondent No.1 (**"impugned order"** for short). By the said order, the application filed by the petitioner dated 9th November 2022 seeking waiver of interest charged under Section 234C of the Income Tax Act, 1961 (**"Income Tax Act"** for short) for the Assessment Year 2021-22 (**"A. Y. Year 2021-22"** for short) stood rejected. The reliefs/prayers in the petition are set out at pages 52 to 54 in para 12 thereof. The substantive relief/prayer is to quash and set aside the impugned order passed by respondent No.1 and to grant waiver of interest for an amount of Rs.3,88,59,353/- charged under Section 234C of the Income Tax Act. Such is the limited issue for consideration before us.

A. Factual Matrix:-

[3] The relevant facts need to be set out:-

The petitioner filed its return of income on 11th March 2022 for the A. Y. Year 2021-22, declaring income at Rs.3,65,12,48,710/- with book profits at Rs.11,57,63,40,425/- and total tax of Rs.2,06,03,13,939/- including interest of Rs.3,88,59,353/-. Such interest of Rs.3,88,59,353/- is charged for deferment of Advance Tax under Section 234C of the Income Tax Act for the A. Y. Year 2021-22. This is the undisputed factual position as also set out in the impugned order.

[4] The details of Advance Tax paid and computation of interest payable by the assessee under Section 234C of the Act for A. Y. 2021-22 are as under:-

Particulars	**Date of payment of Advance Tax**	**Advance Tax Paid within the due date (Rs.)**	**Interest Payable Amount (Rs.)**
Quarter 1	15.06.2020	**1** ,00,00,000	25,45,549
Quarter 2	-		2,02,96,287
Quarter 3	15.12.2020	70,00,00,000	1,54,24,282
Quarter 4	13.03.2021	90,00,00,000	5,93,235
Total		**1,71,00,00,000**	**3,88,59,353**

[5] It is the petitioner's case that the petitioner has paid Advance Tax of Rs.11 Crores for the first quarter being April to June 2020, despite suffering loss of Rs.395 Crores. The details of payment of Advance Tax and computation of interest under Section 243C of the Income Tax Act for the A. Y. Year 2021-22 are also set out in the impugned order at paragraph 2.4 thereof which is set out hereunder. The aforesaid details reveal that the petitioner has paid total Advance Tax of Rs.1,71,00,00,000/-. The total interest paid by the petitioner is an amount of Rs.3,88,59,353/- at the time of filing of returns for the said assessment year (A.Y. 2021-22).

B. Rival Submissions:-

[6] Mr. Gandhi, learned counsel for the petitioner has drawn our attention to the petitioner's application for waiver of interest dated 9th November 2022 filed for waiver of interest chargeable under Section 234C of the Income Tax Act. In support thereof, he submits that the Assessee diligently paid Advance Tax installments for the quarters commencing April to June 2020 to January to March 2021, amounting to Rs.1,71,00,00,000/- as noted hereinabove. He submits that only for the quarter July to September 2020, the Assessee could not make payment of the Advance Tax within the due date.

[7] Mr. Gandhi would further submit that such fluctuations were the impact of COVID-19 pandemic on the overall business of the petitioner, which made it extremely challenging for the Assessee to correctly/properly estimate the book profits for paying the Advance Tax during A.Y. 2021-22.

[8] The learned counsel places reliance on Section 234C of the Income Tax Act for the purposes of claiming waiver of interest amounting to Rs.3,88,59,353/- for the A.Y. 2021-22. In support of such submission, he places reliance on the expression 'failure to estimate' which appears in the said statutory provision. According to Mr. Gandhi, it was not possible for the Assessee to estimate the book profits for payment of Advance Tax during A.Y. 2021-22, which was primarily attributable to the COVID-19, which prevailed at the relevant time. He also places reliance on Sections 208 and 209 of the Income Tax Act which deal with the liability to pay Advance Tax. According to him, the correct/precise estimation of the income for the A.Y. 2021-22 was beyond the control of the petitioner due to the impact of the COVID-19 pandemic.

[9] Mr. Gandhi has also placed reliance on the provisions of Section 119 of the Income Tax Act under which the Central Board of Direct Tax issues orders, instructions to its subordinate authority. Such delegation of power encompasses inter-alia, Section 234C of the Income Tax Act, being the provision which is relied on behalf of the petitioner in the present case.

[10] In support of the above submission, Mr. Gandhi has placed reliance on a press note dated 21st May 1996 alongwith instructions/order F No. 400/129/2002 dated 26th June 2006. In this regard, he submits that the said order/instructions

envisage waiver of interest in certain circumstances stipulated in the order/instructions (supra). He has contended that the Chief Commissioners, by way of such delegated legislation were authorised to reduce or waive interest under Section 234C which was aimed at mitigating the hardship to the Assessee in deserving cases subject to certain conditions stipulated in such instructions. He submits that the order/instructions dated 26th June 2006 continues to hold the field and would be applicable to the present case, as far as the waiver of interest is concerned.

[11] Mr. Gandhi, in support of his submissions relies on the order passed by the Supreme Court dated 10th January 2022 in Suo moto Writ Petition (c) No. 3 of 2020 to contend that considering the difficulties faced by litigants in light of the COVID-19 pandemic, the period of limitation prescribed under the general law of limitation or under Special Law (both Central and/or State) stood extended due to the said COVID-19 pandemic. This was applicable for the period between 15th March 2020 till 20th February 2022 which stands excluded for the purposes of limitation, so as to justify waiver of the aforementioned interest amount under Section 234C of the Income Tax Act as claimed by the petitioner.

[12] Mr. Gandhi has also placed reliance on a recent decision of the Supreme Court dated October 3, 2024 in the case of Union of India vs. Rajeev Bansal,2024 167 taxmann.com 70 (SC) and more particularly on paragraphs 62 to 64 of the said judgment, to contend that even the Supreme Court has taken due cognizance on the compliance of relaxation of time limits which fell for compliance of certain action during the outbreak of COVID-19. He would thus contend that the case of the petitioner for waiver of interest is well within the contours of the said judgment and thus be allowed.

[13] Mr. Gandhi also relies on the decision of the Karnataka High Court in the case of Bosch Limited vs. Assistant Commissioner of Income Tax-LTU Bangalore,2016 65 taxmann.com; 170 (Karnataka) , in Writ Petition No. 2705 of 2015 dated 15th October 2015 to contend that this decision dealt with a similar issue on waiver of interest charged under Section 234C of the Income Tax Act referring to paragraph 2(b) of the Notification dated 26th June 2006. He submitted that this decision is applicable to the facts of the present case. He would submit that on similar reasons, as held by the Karnataka High Court in the said case, the impugned order in the present case ought to be quashed and set aside and the petitioner ought to be granted waiver of interest as prayed for.

[14] On the other hand, Mr. Sharma, learned counsel for the Revenue has vehemently opposed all submissions and contentions made on behalf of the petitioner. He has placed strong reliance while emphatically referring to the contents of the impugned order. According to Mr. Sharma, in light of the reasons set out in the impugned order, there is no justification to interfere with the same, as according to him, the petitioner's application for waiver was an after thought, as is clear from the

facts of the case. It is submitted that the impugned order is correct and justified both on facts and in law, warranting no interference in the proceedings. Mr. Sharma would contend that the impugned order justifies the refusal of granting waiver of interest which is discretionary. Such discretion according to him is appropriately exercised, as there is nothing arbitrary in rejecting the plea of the petitioner for grant of waiver of interest under Section 234C of the Income Tax Act, which is by a reasoned order. He also relied on the Affidavit-in-Reply filed by Mr. Yashpal Singh, Dy. Commissioner of Income Tax on behalf of respondent in support of his submissions to justify the legality and correctness of the impugned order.

C. Findings/Consideration:-

[15] We have heard learned counsel for the parties and with their assistance, we have perused the record. A perusal of the application of the petitioner dated 9th November 2022 for waiver of interest under Section 234C of the Income Tax Act addressed to the respondent No.1 would indicate that the petitioner has set out several reasons to justify its prayer for waiver of interest, elaborated in paragraph 3 of the said application. The thrust being the sudden outbreak of the COVID-19 pandemic which prevented the petitioner from correctly/properly estimating the income/book profits for paying the Advance Tax for the A.Y. 2021-22. It is stated that the pandemic brought about severe financial constraints and adverse impact on the petitioner's overall earnings and its revenue. It is also stated that even the World Health Organization (**"WHO"** for short) recognised the COVID-19 pandemic as a crisis of the century. The said application places reliance on certain decisions including that of Bosch Ltd vs. ACIT (cited supra) to justify the case of the Assessee on waiver of interest under Section 234C of the Income Tax Act.

[16] We have carefully perused the impugned order. It appears to us that the impugned order in its findings has nowhere considered the primary submission of the petitioner on waiver of interest, attributable to the COVID-19 pandemic. We find that there is no reference let alone findings on such submission of the petitioner, which is stated to be fundamental to the case of the petitioner as set out in its application dated 9th November 2022. There is another contention that the impugned order also fails to consider and/or deal with the position in law as reflected in the decisions cited and relied upon by the petitioner in its application dated 9th November 2022, let alone dealing with the same.

[17] We find substance on such submissions of Mr. Gandhi. In our view, the impugned order ought to have addressed these issues as flagged by the petitioner in supporting its case for grant of waiver of interest under Section 234C of the Income Tax Act as set out in the application of the petitioner dated 9th November 2022. Such approach of Chief Commissioner of Income Tax would show non-application of mind to the material contentions raised by the petitioner. Further, the other statutory provisions and/or the scheme of the Act, on which the petitioner intends to support the

case of the petitioner, in the given facts and circumstances, also lacks consideration in the impugned order. It was apposite for the Petitioner to raise contentions relying on the decisions cited before us, which also needs to be taken into consideration by the CCIT.

[18] In view of the above discussion, considering the peculiar facts and circumstances of the case, we deem it to be fit and proper to quash and set aside the impugned order dated 30th March 2024 passed by respondent No.1; and remand the proceedings to the respondent No.1 for a denovo consideration of the petitioner's waiver application to be decided on its own merits and in accordance with law in the light of our observations and strictly without being influenced by the impugned order. This be done within a period of eight weeks from the date of this order. All rival contentions of parties are expressly kept open on facts and law.

[19] Needless to mention that respondent No.1 will pass a reasoned order in accordance with law after hearing the parties.

[20] The petition is allowed in the above terms. No order as to costs

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2025(1)MCJ89

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Abhay Ahuja]

Interim Application (L); Commercial Summary Suit No. 18163 of 2024; 164 of 2015 **dated 12/11/2024**

Fertilizers and Chemicals Travancore Ltd

Versus

ICICI Bank Ltd

MIXED LEGAL ISSUES

Code of Civil Procedure, 1908 Or. 14 R. 2, Or. 14 R. 1, Sec. 151, Or. 15A R. 6 - Arbitration and Conciliation Act, 1996 Sec. 34 - Mixed Legal Issues - Plaintiff sought determination of framed issues as pure questions of law under Order XIV Rule 2 CPC - Defendant opposed arguing that issues involved disputed facts and mixed questions of law and fact - Plaintiff contended that documents were admitted by both parties, rendering issues as legal questions - Court observed that mixed questions of law and fact, or issues involving interpretation of facts, cannot be tried as preliminary issues under Order XIV Rule 2 CPC - Court emphasized that only pure legal issues relating to jurisdiction or statutory bar could be decided preliminarily - Plaintiff's argument rejected as issues framed required factual adjudication, including disputed claims regarding validity of Bank Guarantee cancellation and Award compliance - Interim application

Law Point: Issues under Order XIV Rule 2 CPC can only be decided as preliminary if they are pure legal questions concerning jurisdiction or statutory bar; mixed questions of law and fact require full trial.

Acts Referred:

Code of Civil Procedure, 1908 Or. 14R. 2, Or. 14R. 1, Sec. 151, Or. 15AR 6

Arbitration and Conciliation Act, 1996 Sec. 34

Counsel:

Ginny Rautray, Ashok Singh, Shubham Dhamnaskar, Phoenix Legal

JUDGEMENT

Abhay Ahuja, J.- [1] This Interim Application has been filed by the Plaintiff seeking to determine the matter on the settled issues on question of law.

[2] Ms. Rautray, learned Counsel appearing for the Applicant/Plaintiff would submit that this Application has been filed under Order XIV Rules 1 and 2 read with Order XV-A and Section 151 of the Code of Civil Procedure, 1908 ("CPC").

[3] Ms. Rautray submits that the Plaintiff has filed this Application since all the documents on which the Plaintiff is relying on to prove its case, have been admitted by the Defendant and also all the documents relied upon by the Defendant have been admitted by the Plaintiff and that, therefore, what remains is the determination on the questions of law on the issues that have been framed earlier with respect to those admitted documents and that therefore, even without any cross-examination or adducing evidence, the prayers in the suit can be decided.

[4] Ms. Rautray relies upon the Order XIV Rules 1 and 2 of the CPC and submits that since the documents have been admitted by both the sides and issues have been framed, facts remain un-controverted and this Court decide the issues framed as issues of law as a preliminary issue only on the basis of arguments of the parties. Ms. Rautray would submit that in view of Order XIV Rules 1 and 2 of the CPC, therefore, since specific facts are admitted, the question that arises is dependent upon the outcome of the admitted facts, this Court proceed with the arguments in the matter on the documents already placed on record and thereafter, it is open to the Court to pronounce the judgment based on the admitted facts as the questions to be decided are questions of law and the same are permitted to be decided as preliminary issues under Order XIV Rule 2 of the CPC.

[5] Ms. Rautray relies on the decision of the Hon'ble Supreme Court in the case of **Nusli Neville Wadia Vs. Ivory Properties and Others**, 2020 6 SCC 557 and draws this Court's attention in particular to paragraph 51 thereof in support of her contentions.

[6] Ms. Rautray also relies upon the decision of the Hon'ble Supreme Court in the case of **Saranpal Kaur Anand Vs. Praduman Singh Chandhok and Ors.**, 2022 8

SCC 401 which decision also quotes the above referred paragraph 51 of the decision in the case of Nusli Neville Wadia Vs. Ivory Properties and Others (supra). Further, drawing this Court's attention to paragraph 18 thereof, Ms. Rautray submits that procedure is merely the handmaiden of justice and whenever there is a space for shortening the dispute, the procedures laid down in the CPC encourage the endeavour to achieve the objective of speedy and effective disposal of the matter. Mr. Rautray has also drawn the attention of this Court to Sub-Rule (k) and (r) of Rule 6 to Order XV-A of the CPC in support of her contentions and submits that in view of admitted facts, this Court can decide the issues as preliminary issue to ensure efficient disposal of the suit.

[7] Ms. Rautray, learned Counsel for the Applicant, however, also fairly submits to this Court that in view of paragraph 63 of the decision of the Hon'ble Supreme Court in the case of Saranpal Kaur Anand Vs. Praduman Singh Chandhok and Ors. (supra), the issue with respect to the Order XIV Rule 2 of the CPC has been referred to a larger bench of the Hon'ble Supreme Court and the same is pending.

[8] On the other hand, Mr. Dhamnaskar, learned Counsel appears for the Defendant and opposes the Application by relying upon the reply notarised on 6th September, 2024. Mr. Dhamnaskar submits that ten issues were framed by this Court (Coram: N. J. Jamadar, J.) on 10th January, 2020. Mr. Dhamnaskar submits that it is not correct to say that just because all the documents have been admitted that this is a case of admitted facts or that therefore, all the issues are questions of law that can be decided without adducing any oral evidence merely by relying upon the documents placed on record by the parties. Learned Counsel would submit all the facts have not been admitted by the Respondent. That it is incorrect to say that the documents on record are sufficient for determining the issues in the matter. Mr. Dhamnaskar would submit that the commercial suit involves mixed questions of fact and law and the same were framed by order dated 10th January, 2020. Learned Counsel would submit that an issue is a question of fact where it determines whether a particular factual situation existed or not, is capable of being answered by way of demonstration. That for an issue to be a question of law, there has to be a conflict on the proposition of law. An issue is a mixed question of law and fact when it involves a determination of facts and subsequent application of the principles of law on the facts so determined. Mr. Dhamnaskar would submit that the interpretation of facts and the documents though admitted by both the sides in the matter is substantially different and therefore, it would not be correct to say that the facts in the matter are uncontroverted. As and by way of illustration, Mr. Dhamnaskar draws the attention of this Court to paragraphs 4.14 and 9 of the written statement and submits that, therefore, it is not correct to say that the facts are admitted and the questions are dependent upon the outcome of those admitted facts.

[9] Mr. Dhamnaskar, learned Counsel for the Defendant also relies upon the decision in the case of Nusli Neville Wadia Vs. Ivory Properties and Others (supra) and submits that the said decision clearly holds that until and unless the question is purely of law, it cannot be decided as a preliminary issue under Order XIV Rule 2 of the CPC.

[10] Mr. Dhamnaskar, further submits that under Sub-Rule 2 of Rule 2 of Order XIV of the CPC, an issue of law may be disposed first if that issue relates to the jurisdiction of Court or bar to the Suit created by any law for the time being in force. That in the present case, none of the issues framed relate to the jurisdiction of this Court or are in respect of a bar to the Suit created by any law. Mr. Dhamnaskar submits that Rule 2 gives limited power to the Court to dispose of the issues which are questions of law only if they relate to the jurisdiction of Court or bar to the Suit created by any law. That in the matter involving mixed questions of fact and law, those issues cannot be decided as preliminary issues except where legal issues relate to jurisdiction or bar created by law. Mr. Dhamnaskar submits that, therefore, where the decision on an issue of law depends on the decision on an issue of fact, it cannot be tried as a preliminary issue. Mr. Dhamnaskar further submits that even if it is assumed that all the issues framed are pure questions of law, going by the plain language of the Order XIV Rule 2(2) of the CPC as interpreted in the case of Nusli Neville Wadia Vs. Ivory Properties and Others (supra), since none of the questions in the matter create any issue as to jurisdiction or bar created by law, the same cannot be decided under Order XIV Rule 2(2) of the CPC.

[11] With respect to Order XV-A of the CPC, it has been submitted on behalf of the Defendant that the said provision does not apply in the present case.

[12] Mr. Dhamnaskar, therefore, submits that the Interim Application be dismissed and the Defendant be permitted to cross-examine the Plaintiff's witness on the affidavit in lieu of examination-in-chief filed on 8th March, 2021 and the documents.

[13] I have heard the learned Counsel and considered the rival contentions.

[14] While the issue with respect to Order XIV Rule 2 of the CPC in the case of Saranpal Kaur Anand Vs. Praduman Singh Chandhok and Ors. (supra), has statedly been referred to a larger Bench of the Hon'ble Supreme Court, I proceed to decide this application applying the law as settled by the Hon'ble Supreme Court in the case of Nusli Neville Wadia Vs. Ivory Properties and Others (supra).

[15] The Plaintiff had filed the present suit in the year 2015 for recovery of a sum of Rs. 12,68,68,763/- along with interest of Rs. 15,12,41,828/- and future interest at the rate of 18.75% on quarterly rest basis from 16th December, 2014 till decree and / or till realisation thereof.

[16] After filing of written statement by the Defendant, the following issues have been framed by consent of the Plaintiff and the Defendant on 10th January, 2020:-

"ISSUES

1. Whether the plaintiff proves that the defendant bank has illegally cancelled Bank Guarantee on 25.08.2014 and refused encashment of the said Bank Guarantee invoked on 20.07.2005 ?

2. Whether the plaintiff proves that the defendant bank refused to make payment contrary to the terms and conditions of the Bank Guarantee dated 12.02.1998 ?

3. Whether the plaintiff proves that the defendant's lability under the said Bank Guarantees was absolute and unequivocal and the defendant wrongly refused encashment of the invoked Bank Guarantee ?

4. Whether the plaintiff proves that the defendant has unilaterally and illegally cancelled the said Bank Guarantee vide letter dated 25.08.2014 pursuant to the Award dated 01.01.2014 ?

5. Whether the defendant proves that the defendant was justified in placing reliance on the Award dated 01.01.2014 to resist its obligation under the said Bank Guarantees, especially when the defendant undertook to pay the plaintiff any money so demanded notwithstanding any dispute or disputes raised by the Contractor in any suit or proceeding pending before any Court or Tribunal or Arbitrator ?

6. Whether the defendant proves that the defendant was justified in placing on reliance on the Award dated 01.01.2014 to resist its obligation under the Bank Guarantees especially during the pendency of application under section 34 of the Arbitration and Conciliation Act, 1996 filed by the plaintiff ?

7. Whether the plaintiff proves that it is entitled to recover the amount from the defendant despite the finding Whether the plaintiff proves that it is entitled to of the Arbitral Tribunal comprised of learned Sole Arbitrator the Hon'ble Mr. Justice K.T. Thomas (Retd.) in the arbitral award dated 01.01.2014 that the plaintiff is not entitled to encash the bank guarantees ?

8. Whether the plaintiff proves that the plaintiff is entitled to recover a sum of Rs.12,68,68,763/- along with 18.75% interest on quarterly rest basis with effect from 01.01.2014 till 15.12.2014 ?

9. Whether the plaintiff proves that the plaintiff is entitled to future interest at the rate of 18.75% on quarterly rest basis from 16.12.2014 till decree and/or realization thereof ?

10. What order, costs and decree ?"

[17] A bare perusal of the aforesaid settled issues indicates that there are issues of facts and issues of law. Therefore, these settled issues comprise of questions of fact and law and which obviously cannot be decided independent of each other. That for an issue to be a question of law, there usually has to be only a conflict on the proposition of law, which is not the case here.

[18] On 10th January, 2020, itself the Plaintiff as well as the Defendant had been given directions to file an affidavit of evidence, affidavit of documents and compilation of documents and also to complete discovery and inspection and to exchange the statements of admission and denial, after which the matter was to be listed for marking of Plaintiff's documents on 13th March, 2020.

[19] It is submitted by the parties that while the documents were yet to be marked, the Plaintiff had taken out two Interim Applications, however, one of the said Applications was withdrawn in view of having been filed under an omitted provision of the CPC, and the second one viz. Interim Application No.14045 of 2024 is, as stated in paragraph 1 of this Application, not being pressed.

[20] The present Application as has been submitted and noted above, has been filed under Order XIV Rules 1 and 2 read with Order XV-A of the CPC to determine the matter on the issues framed as questions of law.

[21] For the sake of convenience Order XIV Rules 1 and 2 of the CPC are usefully quoted as under:-

> **"1. Framing of issues -**(1) Issue arise when a material proposition of fact or law is affirmed by the one party and denied by the other.
>
> (2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.
>
> (3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.
>
> (4) Issues are of two kinds:
>
> (a) issues of fact,
>
> (b) issues of law.
>
> (5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under rule 2 of Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.
>
> (6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of suit makes no defence.

2. Court to pronounce judgment on all issues.- (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of Court, or

(b) a bar to the suit created by any law for the time being in force, and that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

[22] As per Order XIV Rule 1, issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. The issues are framed on the material proposition denied by another party. There may be issues of facts and issues of law.

[23] In the facts of this case, as noted above, ten issues have been framed. Admittedly thereafter based on the directions given by the Court, the Plaintiff has filed affidavit of examination-in-chief of the Plaintiff's witness and affidavit of documents along with compilation of documents, the Defendant has also filed affidavit of documents along with compilation of documents and admittedly the documents of Plaintiff have been admitted by the Defendant and the documents of the Defendant have been admitted by the Plaintiff. According to the Applicant all the issues are questions of law, as they arise out of admitted documents. However, according to the Defendant as the facts are not admitted even if the documents are admitted as the interpretation of facts and documents is substantially different by the parties, the issues arising out of a factual matter, the said issues are mixed questions of fact and law and cannot be decided under Order XIV Rule 2 of the CPC. I agree with the submissions made on behalf of the Defendant.

[24] But before proceeding further, it would be useful to quote paragraphs 51 and 52 of the decision of the case of Hon'ble Supreme Court in the case of Nusli Neville Wadia Vs. Ivory Properties and Others (supra):-

"51. The provision has been carved out under Section 9-A CPC to decide, question of jurisdiction to entertain, at the stage of deciding the interim application for injunction and the very purpose of enactment of the same was that the suits were being instituted without serving a notice under Section 80, which at the time of initial incorporation of provisions could not have been instituted without serving a notice of two months. There was a bar to institute a suit. It became a practice that after obtaining injunction, suit was allowed to be withdrawn with liberty to file fresh suit after serving the notice. To take

care of misuse of the provisions, Section 9-A was introduced in the year 1970 and had been reintroduced again in 1977 to consider question of jurisdiction to entertain at the stage of granting injunction or setting aside. The provision has been inserted having the narrow meaning as at the stage of granting exparte injunction; the question can be considered. The written statement, set-off and counterclaim are not filed, discovery, inspection, admission, production and summoning of the documents stage has not reached and after the stages described above, framing of issues takes place under Order 14. As per Order 14 Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted, and if the question of law arises which is dependent upon the outcome of admitted facts, it is open to the court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order 14 Rule 2. In Order 14 Rule 2(1), the court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order 14 Rule 2 (2) makes a departure and the court may decide the question of law as to jurisdiction of the court or a bar created to the Suit by any law for the time being in force, such as under the Limitation Act.

52. In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed. It cannot be decided as a preliminary issue if the facts are disputed and the question of law is dependent upon the outcome of the investigation of facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976."

[25] It, therefore, emerges that it is only in case specific facts are admitted and only if the question of law arises which is dependent upon the outcome of those admitted facts and that it is open to the Court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order XIV Rule 2 of the CPC.

[26] Under Order XIV Rule 2 (1), the Court may dispose a case on a preliminary issue but then it has to pronounce judgment on all issues. It is only under Order XIV

Rule 2 (2) where issues both of law and of fact arise in the same Suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law, only then that the Court may decide that issue first if that issue relates to jurisdiction of the Court or a bar created to the Suit by any law for the time being in force and then for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

[27] As noted above, paragraph 51 of the decision of the Hon'ble Supreme Court in the case of Nusli Neville Wadia Vs. Ivory Properties and Others (supra) clearly lays down that in case specific facts are admitted and if the question of law arises which is dependent upon the outcome of admitted facts, it is open to the Court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order XIV Rule 2 of the CPC. That under Order XIV Rule 2 (1) of the CPC, the Court may decide the case on a preliminary issue but it has to pronounce the judgment on all issues. That under Order XIV Rule 2(2) of the CPC, the Court may decide the question of law as to jurisdiction of the Court or bar created by the Suit by any law. In the case of Nusli Neville Wadia Vs. Ivory Properties and Others (supra) as noted above, it has also been clearly held that a mixed question of law and fact cannot be decided as a preliminary issue under Order XIV Rule 2 of the CPC. Having held that the settled issues are mixed question of fact and law, I cannot agree with the submission on behalf of the Applicant, that because all the documents of both sides have been admitted, this is a case of admitted facts and therefore, the issues that have been framed are questions of law.

[28] Also for the sake convenience paragraph 4.14 and 9 of the Written Statement relied upon by the learned Counsel for the Defendant are usefully quoted as under:

> "4.14. The Defendant states that thereafter, the Plaintiff issued a letter dated September 29, 2014 and bearing reference no. DGM(Fin)-HO-ABCL-BG-016 (Exhibit O at Page 310 of the Plaint) to the Defendant wherein the Plaintiff has wrongly called upon the Defendant to pay to the Plaintiff an amount of Rs. 9,89,44,900/- (Rupees Nine Crores Eighty Nine Lacs Forty Four Thousand and Nine Hundred Only) allegedly being the mobalisation advance and interest at the rate of 18.75% per annum on quarterly rest basis for the period from April 1, 2004 till date of payment. The Plaintiff has also stated incorrectly in the said letter that the stay on the encashment granted by the High Court of Kerala vide the Restraining Order was only against encashment of Bank Guarantees till termination of the arbitration proceedings and that there is no stay on the encashment of the Bank Guarantees thereafter, and that accordingly, the Defendant ought to remit the amounts claimed to the Plaintiff.

9. The Defendant states without admitting, without prejudice to its rights and merely for the sake of argument that even assuming that the Plaintiff may have a potential claim against the Defendant, crystallised as on the date of the Invocation Letter, the same cannot be a cause of action to file a Summary Suit for recovery of the amounts under the Bank Guarantees until such point in time when the finding of the Award that the Bank Guarantees are not encashable is reversed or modified by an appellate court. Even then, the effect of setting aside of the Award will not result in a finding/decision entitling the Plaintiff to recover any amount."

[29] There is no doubt that the above paragraphs suggest disputed factual issues.

[30] I, therefore, agree with the submissions on behalf of the Defendant that even if the documents have been admitted by both sides, it cannot be said that the facts have been admitted and that, the issues pertain to mixed questions of fact and law as also the interpretation of facts and the documents though admitted by both sides is substantially different and the facts not uncontroverted. That until and unless the question is a pure question of law it cannot be decided as a preliminary issue.

[31] Ms. Rautray, learned Counsel for the Applicant has tirelessly labored to persuade this Court to take a view that because under Order XIV Rule 2 (1) of the CPC, a judgment has to be pronounced on all the issues since this is a case of admitted facts, the Court has to decide the issues framed as preliminary issues and therefore, it would not be necessary to permit cross-examination and only on the basis of arguments between the parties, the Suit can be decided. Much as I would have liked to agree with the learned Counsel, I am afraid that neither the provisions of the CPC nor the law settled in the matter would come to the aid of the Applicant.

[32] As noted above, a plain reading of Order XIV Rule 2(2) of the CPC as well as the decisions cited by the parties, make it clear that unless the question is a pure question of law, it cannot be decided as a preliminary issue under Order XIV Rule 2 of the CPC and not a mixed question of law and fact. The issues that have been framed would depend on the facts in the matter and even if the documents on both sides are admitted, the issues would need to be decided on the basis of the facts to be proved after cross-examination of concerned witnesses on the contents of the documents and after a hearing thereafter. In case, question of law can be decided based on admitted facts, it can be decided as a preliminary issue under Order XIV Rule 2(2)(b). Once facts are disputed, the determination of the question also cannot be made under Order XIV Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. Such question cannot be decided as a preliminary issue. In such a case, the question of jurisdiction also depends upon the proof of facts which are disputed. It cannot be decided as a preliminary issue if the facts are disputed and the question of law is dependent upon the outcome of the investigation of facts and therefore such a question of law cannot be decided as a preliminary issue. I, therefore,

agree with the learned Counsel for the Respondent that where the decision on an issue of law depends on the decision on an issue of fact, it cannot be tried as a preliminary issue.

[33] The issues framed herein and as noted above, are mixed questions of fact and law and cannot be decided under Order XIV Rule 2 of the CPC.

[34] Learned Counsel for the Applicant has also relied upon the decision of the Hon'ble Supreme Court in the case of Saranpal Kaur Anand Vs. Praduman Singh Chandhok and Ors. (supra) and has drawn the attention of this Court to paragraph 18 to submit that the Court can take benefit of the provisions of the CPC to meet the ends of justice as the procedure is the handmaiden of justice and to advance the cause of justice. I am afraid that although the learned Counsel may be correct in submitting that procedure is the handmaiden of justice and to advance the cause of justice, until and unless there is a pure question of law that cannot be decided under Order XIV Rule 2 of the CPC, which is not the case here.

[35] Moreover, as paragraph 51 of the decision in the case of Nusli Neville Wadia Vs. Ivory Properties and Others (supra), suggests that the issue on admitted facts can be decided along with the issue relating to jurisdiction of the Court or a bar to the Suit created by law, which in any event is not the case here and I agree with the submissions made on behalf of the Defendant that even if it is assumed that all the issues framed are pure questions of law, going by the plain language of the Order XIV Rule 2(2) as interpreted in the case of Nusli Neville Wadia Vs. Ivory Properties and Others (supra), since none of the questions in the matter create any issue as to jurisdiction or bar created by law, the same cannot be decided under Order XIV Rule 2(2) of the CPC.

[36] Ergo, having already noted that the issues framed raise mixed questions of fact and law, I am unable to accept the submissions made on behalf of the Applicant / Plaintiff.

[37] As far as the reliance of the learned Counsel for the Applicant on Order XV-A and in particular Rule 6 (k) and (r) are concerned again in view of what has been held above, the said provisions though enacted to ensure efficient disposal of suit, I am afraid would be of no assistance to the case of the Applicant.

[38] In view of the above discussion, the Application is liable to be rejected and is hereby dismissed. Further, Interim Application No.14045 of 2024, in view of the submission of the Applicant in paragraph 1 of this Application, is disposed as not pressed.

[39] List the Suit for marking of Plaintiff's documents on **22 nd January, 2025.** Let the Plaintiff's witness remain present on the next date

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2025(1)MCJ100

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before R I Chagla]

Interim Application (L); Commercial I P R Suit (L) (Commercial Intellectual Property Rights Suit (L)) No 34166 of 2024; 34066 of 2024 **dated 12/11/2024**

Phonographic Performance Limited

Versus

Sports Authority of India

COPYRIGHT INJUNCTION

Code of Civil Procedure, 1908 Sec. 80 - Copyright Injunction - Application sought leave under Sec. 80(2) CPC for urgent relief against copyright infringement by a government entity - Plaintiff alleged unlicensed use of sound recordings during an event hosted by defendant - Urgency demonstrated through prior cease and desist notices and imminent likelihood of infringement - Court granted leave under Sec. 80(2) allowing immediate relief against government entity, recognizing need to protect intellectual property rights in urgent cases - Application Allowed

Law Point: Sec. 80(2) CPC permits bypassing notice requirement when urgent relief against a government body is essential to prevent rights violations, including intellectual property infringement.

Acts Referred:

Code of Civil Procedure, 1908 Sec. 80

Counsel:

Amogh Singh, Asmant Nimbalkar, Neeraj Nawar, Mrunmayee Nagar, Anil Kumar Singh

JUDGEMENT

R I Chagla, J.- [1] By this Interim Application, the Applicant/Plaintiff is seeking leave under Section 80(2) of the Code of Civil Procedure, 1908 for seeking urgent and immediate relief against the Respondent for infringement of copyright.

[2] The Applicant has filed the present Suit for copyright infringement and also quiatimet action for apprehended future violations by the Respondent.

[3] Urgency for moving for ad-interim relief by seeking leave under Section 80(2) of the Code of Civil Procedure, 1908 is that the Applicant on 8th November 2024 came across an advertisement of the upcoming event "Horn Ok Please" dated 16th and 17th November 2024 to be organised at the premises of Jawaharlal Nehru Sports Stadium owned/operated/managed by the Respondent on websites of insider.in and Instagram. There is a serious apprehension that sound recordings of the Plaintiff will be played during the said event by the Respondent without procuring licence from the

Applicant. Annexed at Exh.H is the printout of the said websites of insider.in and Instagram.

[4] The Applicant has further stated that cease and desist notices have been issued by the Applicant to which there is no response from the Respondent.

[5] The Applicant has sought injunctive relief against the Respondent, as the Respondent has in the past indulging in acts of copyright infringement and there is a genuine apprehension that they may do so at the said event.

[6] I have considered the averments in the Interim Application, as well as the urgency made out by the learned Counsel appearing for the Applicant. This is a fit case to grant leave under Section 80(2) of the Code of Civil Procedure, 1908 by which exemption is carved out to file a Suit against the Respondent being the Government Body, when urgent and immediate relief has been sought.

[7] Accordingly, leave is granted to the Applicant under Section 80(2) for seeking urgent and immediate relief against the Defendant for infringement of copyright.

[8] Interim Application is accordingly, disposed of

2025(1)MCJ101

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Anil L Pansare]

Miscellaneous Civil Application (Review); Writ Petition No 1100 of 2018; 5282 of 2015 **dated 11/11/2024**

Arjun S/o Chandulal Kewalramani

Versus

Dharamdas S/o Tekchand Kewalramani

REVIEW OF ADDITIONAL EVIDENCE ADMISSION

Code of Civil Procedure, 1908 Or. 41 R. 27 - Review of Additional Evidence Admission - Review application filed by tenant challenging dismissal of writ petition seeking additional evidence under Order 41 Rule 27 CPC - Tenant argued High Court erred by considering application under Rule 27(1)(b) instead of Rule 27(1)(aa) related to due diligence - Tenant sought to admit a NOC from landlord, which referred to tenant status, to rebut concurrent findings that he did not pay rent or license fee - High Court observed tenant's counsel emphasized NOC's evidentiary value over due diligence requirement - Concluding that prior counsel's focus influenced decision, court held absence of error in judicial reasoning - Rejected review, affirming absence of grounds for error apparent on record. - Review Application Dismissed

Law Point: An error apparent on record does not arise from counsel's strategic emphasis or shifts in argument post-judgment; concurrent factual findings and proper application of Order 41 Rule 27 do not warrant review unless clear error exists.

Acts Referred:
Code of Civil Procedure, 1908 Or. 41R. 27

Counsel:
M G Bhangde (Senior Counsel), S N Tapadiya, H D Dangre

JUDGEMENT

Anil L Pansare, J.- [1] This review application arises out of judgment dated 6/9/2018 passed by this Court (Coram: Rohit B. Deo, J.) in Writ Petition No. 5282/2015, whereby this Court was pleased to dismiss the writ petition challenging the judgment and order dated 30/6/2015 passed by the District Judge - 11, Nagpur, in Regular Civil Appeal No. 59/2014. The First Appellate Court had dismissed the appeal and, thus, confirmed the decree of eviction dated 11/12/2013 passed by the Additional Judge, Small Causes Court, Nagpur, in Regular Civil Suit No. 67/2010, which was filed by the respondent - late Shri Dharamdas Kewalramani, who is/ was represented by legal representatives.

[2] Mr. M.G. Bhangde, learned Senior Counsel appearing for the review applicant (hereinafter referred to as "tenant"), submits that this Court, while dealing with application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (for short "the Code"), was required to examine the aspect of 'due diligence' and nothing else. He submits that the application was filed under Order XLI Rule 27(1)(aa) of the Code, but the Court considered the same under Order XLI Rule 27(1) (b) of the Code. He has invited my attention to paragraph 13 of the judgment, which deals with the application so filed by the tenant, which reads thus:

> "13. The petitioner has preferred Civil Application 1897/2015 under Order XLI Rule 27 of the Civil Procedure Code, 1908 ("Code" for short) for permission to produce additional documents-evidence on record. The said application is predicated on the assertion that after the judgment and order of the appellate Court dated 2272015, MSEDCL provided certain documents to the petitioner-defendant under the Right to Information Act including a copy of the NOC issued by the plaintiff to the defendant at the time of obtaining the electricity connection. The NOC, which could not be produced on record earlier inspite of exercise of due diligence and tire less efforts made to procure a copy thereof from MSEDCL, would clinchingly prove that the defendant is not a gratuitous licensee, is the contention. The contention is based on a reference in the NOC to defendant as tenant. In view of the settled position of law, the application under Order XLI Rule 27 of the Code is

considered only at the time of final hearing. The learned Counsel Shri Akshay Naik did make a valiant attempt to persuade this Court to allow production of additional evidence. Shri Akshay Naik would submit that the reference to the defendant as tenant in the NOC is virtually an admission on the part of the plaintiff that the defendant is a tenant. In rebuttal, Shri Harish Dangre, learned Counsel for the plaintiff would submit that tenant is statutorily defined in subsection (15) of Section 7 and licensee is defined in subsection (5) thereof and the very sine qua non for entitlement to the protection of the Maharashtra Rent Control Act, 1999 is the payment of either rent or licence or charge. Shri Harish Dangre would submit that even if it is assumed arguendo that the plaintiff referred to the defendant as a tenant in the NOC issued to enable the defendant to obtain an electricity connection, in the absence of proof that the defendant is paying either rent or licence fee or charge to the plaintiff, such a reference would not clothe the defendant with the status of tenant. The submission of Shri Harish Dangre, is well merited. In the teeth of the concurrent findings recorded by the Courts below that the defendant did not prove payment of rent or licence fee or charge, and I am not inclined to take a different view, mere reference in the NOC to the defendant as tenant would not confer the status of tenant upon the defendant. It is axiomatic, that in view of the concurrent findings recorded by the Courts below, with which findings I concur, the production of the NOC on record and permission to adduce additional evidence would not be necessary for effective adjudication or for just decision."

[3] As could be seen, this Court noted the contentions of the tenant that in spite of exercise of due diligence, copy of NOC, issued by original plaintiff (hereinafter referred to as 'landlord') to the defendant/ tenant for obtaining electricity connection, was procured from MSEDCL subsequent to the judgment and order dated 22/7/2015 passed by the First Appellate Court. The Court has then considered the submissions made by the tenant that NOC is a document, which in clear terms, is an admission on the part of the landlord that the applicant is a tenant. The Court then referred to the arguments made in rebuttal by the learned Counsel appearing for the landlord, wherein it was contended that even if it is assumed arguendo that NOC was so issued for obtaining electricity connection, in absence of proof that the tenant is paying either rent or license fee or charge to the original plaintiff, such reference would not cloth the original defendant with the status of tenant. This Court found merit in the aforesaid arguments made in rebuttal and taking note of concurrent finding of both the Courts below that since the defendant did not prove payment of rent or license fee, production of NOC on record and permission to adduce additional evidence would not be necessary for effective adjudication or for just decision.

[4] The last line of paragraph 13 indicates that this Court has considered the application under Order XLI Rule 27(1)(b) of the Code.

[5] Mr. Bhangde, learned Senior Counsel submits that this Court could not have taken recourse to Clause (b) of sub-rule (1) of Rule 27 of Order XLI of the Code. In support, he has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **K.R. Mohan Reddy Vs. Net Work Inc. Represented Through MD**, 2007 14 SCC 257. The Supreme Court considered, in detail, the scope of Order XLI Rule 27 of the Code and held thus:

> "15. The High Court, in our opinion, failed to apply the provisions of Order 41 Rule 27 CPC in its correct perspective. Clauses (a), (aa) and (b) of sub-rule (1) of Rule 27 of Order 41 refer to three different situations. Power of the appellate court to pass any order thereunder is limited. For exercising its jurisdiction thereunder, the appellate court must arrive at a finding that one or the other conditions enumerated thereunder is satisfied. A good reason must also be shown as to why the evidence was not produced in the trial Court.
>
> 16. The respondent in its application categorically stated that the books of accounts had been misplaced and the same were discovered a few days prior to the filing of the said application while the office was being shifted. The High Court, unfortunately did not enter into the said questions at all . As indicated hereinbefore, the High Court proceeded on the basis as if clause (b) of sub-rule (1) of Rule 27 of Order 41 CPC was applicable.
>
> 17. It is now a trite law that the conditions precedent for application of clause (aa) of sub-rule (1) of Rule 27 of Order 41 is different from that of clause (b). In the event the former is to be applied, it would be for the applicant to show that the ingredients or conditions precedent mentioned therein are satisfied. On the other hand if clause (b) to sub-rule (1) of Rule 27 of Order 41 CPC is to be taken recourse to, the appellate court is bound to consider the entire evidence on record and come to an independent finding for arriving at a just decision; adduction of additional evidence as has been prayed by the appellant was necessary. The fact that the High Court failed to do so, in our opinion, amounts to misdirection in law. Furthermore, if the High Court is correct in its view that the respondent-plaintiff had proceeded on the basis that the suit is entirely based on a cheque, wherefor, it was not necessary for it to file the books of accounts before the trial court, finding contrary thereto could not have been arrived at that the same was in fact required to be proved so as to enable the appellate court to arrive at a just conclusion."

[6] Thus, the Supreme Court has held that the conditions precedent for application of Clause (aa) of sub-rule (1) of Rule 27 of Order XLI of the Code are different from that of Clause (b). The Court further held that if Clause (aa) is to be applied, it would be for the applicant to show that the ingredients or the conditions precedent therein are satisfied and if recourse is to be taken to Clause (b), the Appellate Court is bound to consider the entire evidence and then to come to an independent finding for arriving at

a just decision. In the said case, like in the present case, the application was filed under Clause (aa) of sub-rule (1) of Rule 27 of Order XLI of the Code. The High Court, however, took recourse to Clause (b) thereof. Accordingly, the Supreme Court held that the High Court misdirected itself in law.

[7] Accordingly, Mr. Bhangde, learned Senior Counsel has argued that this Court has also misdirected itself when it took recourse to Clause (b) of sub-rule (1) of Rule 27 of Order XLI of the Code. This error is said to be an error apparent on the face of record.

[8] As against, Mr. H.D. Dangre, learned Counsel for the landlord argued that the application filed by the tenant has been rejected by this Court since it found that to permit the tenant to adduce additional evidence would be a futile exercise, considering the fact that the tenant failed to prove that he continued to pay rent or license fee in terms of the provisions of the Maharashtra Rent Control Act, 1999. He has then invited my attention to the grounds pleaded to review the judgment to contend that none of the grounds would satisfy the ingredients of Order XLI of the Code.

[9] The first ground deals with the application preferred by the tenant under Order XLI Rule 27 of the Code. As such, in the said ground, the tenant has not really put forth the case in terms of the provisions of Order XLI Rule 27 of the Code, which necessitates consideration of different parameters for applications filed under sub-clause (aa) or sub-clause (b) of sub-rule (1) of Rule 27 of Order XLI of the Code, as has been argued by the learned Senior Counsel. The said ground takes up a plea that since the status of review applicant as tenant was not disputed, there was no requirement to prove payment of rent or license fee by the tenant. In that sense, the argument advanced by the learned Senior Counsel is not in consonance with the grounds raised in the review application. Nonetheless, I'll deal with this issue a little later.

[10] The argument of Mr. Dangre, learned Counsel for the landlord, is that none of the grounds would attract ingredients of Order XLI of the Code and in that context, he submitted that the first ground, as has been raised, cannot be said to be an error apparent on the face of record. So far as other grounds are concerned, the tenant has quoted excerpt from the evidence to contend that this part of evidence has been not considered by this Court and, therefore, there appeared apparent error. He submits that if at all this Court has not considered the evidence, the finding so rendered can be said to be erroneous or perverse, but is not an error apparent on the face of record. Accordingly, he submits that the application is devoid of merit and requires dismissal.

[11] He has relied upon the judgment of the Supreme Court in the case of **Parsion Devi And Others Vs. Sumitri Devi And Others**, 1997 8 SCC 715, wherein the Supreme Court, while dealing with the scope of review, held that under Order XLVII Rule 1 of the Code, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of record. The Supreme Court held that an error, which is

not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the Court to exercise its power of review under Order XLVII Rule 1 of the Code. The Supreme Court then held that while exercising such jurisdiction, it is not permissible for an erroneous decision to be 're-heard and corrected'. The Supreme Court noted that there is clear distinction between an erroneous decision and an error apparent on the face of record. The Supreme Court held that an erroneous decision can be corrected by the higher forum, but the error apparent on the face of record can be only corrected by exercise of review jurisdiction.

[12] The question, therefore, is whether there occurred error apparent on the face of record while dealing with application filed under Order XLI Rule 27 of the Code. The answer would be in the negative for more than one reason.

[13] The argument made by Mr. Bhangde, learned Senior Counsel for the applicant, that this Court misdirected itself in law when it took recourse to Clause (b) of sub-rule (1) of Rule 27 of Order XLI of the Code, completely overlooks that it is not the Court, which misdirected itself, but the Counsel appearing for the tenant has solicited the said direction. A careful reading of paragraph 13 of the judgment would show that it is tenant's Counsel, who did not really argue on exercise of due diligence but made this Court to focus on the importance of placing on record NOC issued by the landlord to the tenant. The tenant's Counsel submitted that NOC is a self-speaking admission of landlord-tenant relationship. Having made such submission, this Court was required to consider the said argument and to proceed to note that even if the said argument is to be considered, mere production of NOC, in absence of proof of rent or license fee to permit the tenant to lead additional evidence, will be a futile exercise. Accordingly, the Court refused to permit to lead additional evidence. The said finding having been fetched by the tenant himself, he cannot now argue that this Court misdirected itself in law. Why did the Counsel, who appeared for the tenant in writ petition, focused on production of NOC and not on due diligence, is for him to answer. Now, the Counsel has been changed, so also a Judge, and a fresh plea is being put up before the Court by relying upon the Supreme Court's judgment, which was never placed for consideration before my predecessor. This, to my mind, is beyond the scope of review jurisdiction.

[14] It is worth mentioning here that the Supreme Court in the case of **Tamil Nadu Electricity Board And Another Vs. N. Raju Reddiar And Another**, 1997 9 SCC 736 has deprecated the practice of filing review petition by an Advocate, who neither appeared nor was party in the main case. The Supreme Court observed thus:

> "1. .... When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the Advocate-on-Record who neither appeared nor was party in the main case. It is salutary to note that the court spends valuable time in

deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on-Record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No. 2670 of 1996 in CA No. 1867 of 1992, a Bench of three Judges to which one of us, K. Ramaswamy, J., was a member, had held as under:

"The record of the appeal indicates that Shri Sudarsh Menon was the Advocate-on-Record when the appeal was heard and decided on merits. The review petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the review petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would not be in the interest of the profession to permit such practice. That apart, he has not obtained 'No Objection Certificate' from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the 'No Objection Certificate' would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the 'No Objection Certificate' from the erstwhile counsel has disentitled him to file the review petition. Even otherwise, the review petition has no merits, It is an attempt to reargue the matter on merits.

On these grounds, we dismiss the review petition.""

[15] The Co-ordinate Bench of this Court in the case of Shobha Bajirao Damodar Vs. Triratna Krida and Shikshan Prasarak Mandal, Akola and others,2008 SCCOnLineBom 1024 has, by relying upon the judgment in Tamil Nadu Electricity Board's case, deprecated the practice of filing review application by changing the Advocate. The Co-ordinate Bench, in a way, took a view that Vakalatnama filed by an Advocate in the main petition would continue in review application unless the Advocate, who appeared in main petition, seeks discharge. The Court observed thus:

"20. Learned Adv. Mr. DCR Mishra states that this being first occasion of the type, the Court may not take a serious view of the matter, and further that the client may have own difficulties in doing so. The tenor of submission is that learned Advocate, who was appearing earlier, was indicated by the respondent No. 1 - present applicant that he should not conduct the case. These oral submissions are not supported by any material on record. It is not demonstrated that power of Advocate was withdrawn, cancelled or terminated. If applicant had any difference of opinion or conflict with Advocate, who had appeared for her and argued, she would have appeared

before Court to cancel the Vakalatnama or taken such steps as available in law. Nothing of this type is brought on record, which would justify change of Advocate on facts to file a Review Application. Yet learned Advocate has argued with vigour."

[16] What follows from the above rulings is that in review petition, presence of Advocate, who appeared in main petition, will be necessary for appropriate decision. In the present case, the question as to why did the Advocate then appearing focused on production of NOC and not on due diligence, could have been answered only by him, had he appeared in the review petition. In absence of such assistance, one cannot jump to the conclusion that this Court of its own has carried the matter in a particular direction and to blame it to have committed error apparent on the face of record. There is, thus, no substance in the argument that this Court misdirected itself in law. The contention is accordingly rejected.

[17] That apart, if the tenant is required to rely upon a judgment to argue that mistake/error, if any, has been committed by the Court, the said mistake/error can be never said to be a mistake/error apparent on the face of record. To refer to authorities to explain as to what amounts error apparent is justified but to rely upon the authority to contend that the decision taken by the Court is not in consonance with the law laid down, will amount to detection of error, which is not permissible. In other words, if the mistake/error is self-evident, the party, applying for review, may not require to take recourse to various judgments to show that such mistake/error is apparent. In such eventuality, the Court will have to then arrive at a decision of mistake/error having been committed only by relying upon the judgments so referred by the party seeking review, which then fall in the category of finding mistake/ error by a process of reasoning.

[18] Mr. Bhangde, learned Senior Counsel for the applicant, has then relied upon the judgment of the Supreme Court in the case of **Green View Tea & Industries Vs. Collector, Golaghat, Assam And Another**, 2004 4 SCC 122 to contend that failure of this Court to consider the relevant part of evidence would constitute error apparent on the face of record.

[19] I have gone through the said judgment to find that the Supreme Court has found error apparent on the face of record because the High Court therein, despite material available on record as regards status of the land in question, failed to consider the same. Such is not the case here. This Court has, in paragraph 14 of the judgment, noted that it has considered the entire evidence on record in the light of the submissions made by the parties and opined that the findings recorded by the Courts below were not perverse. The Court has considered admissions of the defendants in paragraph 15 to the extent necessary and held that the concurrent finding recorded by the Courts below do not suffer from any infirmity.

[20] It is well settled that the writ court will be slow in disturbing concurrent finding on facts. Accordingly, the detailed assessment of evidence appears to be deliberately not taken recourse to, which can be said to be a conscious decision taken by this Court. Such finding cannot be said to be an error apparent on the face of record. In the present case, the assessment of evidence by the courts below was found to be in order. In fact, the tenant can be said to be aware of correctness in assessment and, therefore, sought permission to bring on record the additional evidence. The contention, therefore, that this Court has not considered relevant evidence is incorrect. The judgment in Green View's case will be, thus, not relevant.

[21] There is, thus, no merit in the application. The same is accordingly rejected

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2025(1)MCJ109

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Abhay Ahuja]

Interim Application; Commercial Execution Application No 3099 of 2021; 849 of 2019 **dated 11/11/2024**

Drive India Enterprises Solutions Ltd

Versus

Haier Telecom (India) Pvt Ltd; Olive Global Holding Pvt Ltd

GARNISHEE ATTACHMENT ORDER

Code of Civil Procedure, 1908 Or. 21 R. 41 - Or. 21 R. 46 - Or. 21 R. 46C - Or. 21 R. 46A, Sec. 51 - Bombay High Court (Original Side) Rules, 1980 Rule 345 - Garnishee Attachment Order - Interim Application by Judgment Creditor sought attachment of Rs. 17,40,82,984/- from Respondent, asserted as Garnishee owing debt to Judgment Debtor - Financial statements confirmed outstanding debt from Respondent to Judgment Debtor - Respondent contested claim, asserting transaction was a paper entry without obligation, citing historical dealings - Court found Respondent's objections lacking substantiation; acknowledged liability evident in audited statements - Directed attachment and deposit of amount within six weeks for creditor recovery under Order XXI Rule 46 and Rule 46-A of CPC - Court dismissed Respondent's reliance on irrelevant precedent distinguishing liability among separate entities. - Application Allowed

Law Point: Acknowledgment of debt in financial statements establishes Garnishee's obligation under CPC Order XXI, Rule 46-A; objection must be substantiated beyond nominal entries to avoid attachment order.

Acts Referred:

Code of Civil Procedure, 1908 Or. 21R. 41, Or. 21R. 46, Or. 21R. 46C, Or. 21R. 46A, Sec. 51

Bombay High Court (Original Side) Rules, 1980 Rule 345

Counsel:

Sarosh Bharucha, Sneha Jaisingh, Yash Arora, Janhavi Sakalkar, Bharucha And Partners, Akash Rebello, Nadeem Shama, Hubab Sayyed, Paras Gosar

JUDGEMENT

Abhay Ahuja, J.- [1] This Interim Application filed by the Judgment Creditor inter alia seeks an order and direction against the Respondent, who is stated to be a Garnishee owing Rs. 17,40,82,984/- to the Judgment Debtor, of attachment and of deposit of the said amount in this Court under Order XXI Rules 46 and 46-A of the Code of Civil Procedure, 1908 ("CPC") towards execution of decree drawn up pursuant to final order and judgment dated 10th September, 2018.

[2] Mr. Bharucha, learned Counsel for the Applicant has submitted that since the Judgment Debtor failed and neglected and refused to comply with the decree and make payment of the decretal amount of Rs. 64,11,78,970.50 along with interest of Rs. 9,63,32,603.43 and with further interest at the rate of 12% per annum from 11th September, 2018, the Applicant was compelled to file Commercial Execution Application. Thereafter, pursuant to an order passed by this Court in the Chamber Summons taken out in the said Commercial Execution Application, the Judgment Debtor was directed to make disclosures. Mr. Bharucha would further submit that although the Judgment Debtor failed to make timely disclosures, however, from the affidavit dated 22nd June, 2020 filed by the Judgment Debtor, the Applicant became aware that amongst several entities to whom loans and advances were advanced by the Judgment Debtor, a sum of Rs. 17,40,82,984/- was advanced to the Respondent. That from the provisional balance sheet annexed by the Judgment Debtor for financial year 2017-18, 2018-19 and 2019-20 with the affidavit dated 8th March, 2021, it was found that a sum of Rs. 17,40,82,984/- was outstanding from the Respondent. Thereafter, due to persistent non-compliance of the Judgment Debtor, the directors of the Judgment Debtor, who were directed to remain present for oral examination in terms of Section 51 read with Order XXI Rule 41 of the CPC, that on 1st September, 2021, Mr. Rajesh Duggal, Director, was present and during the course of Mr. Duggal's cross-examination, he admitted that the sum of Rs. 17,40,82,984/- as reflected in the provisional balance sheet of the Judgment Debtor for the financial year 2019-20 was yet to be repaid by the Respondent and was due and recoverable by the Judgment Debtor. Mr. Bharucha would submit that the disclosure affidavits, the provisional balance sheet of the Judgment Debtor for the financial year 2019-20 and the submissions made by Mr. Rajesh Duggal in his deposition on 1st September, 2021, conclusively revealed that the Respondent owed a sum of Rs. 17,40,82,984/- to the Judgment Debtor and is a Garnishee of the Judgment Debtor. Not only that, Mr. Bharucha submits that even the Respondent's financial statements confirm an amount of Rs. 17,40,82,984/- as being due from the Respondent to the Judgment Debtor. Mr.

Bharucha would submit that the financial statements of the Respondent for the year ended 31st March, 2023, reflects the amount of Rs. 17,40,82,984/- under Note 5 as other current liabilities towards the Judgment Debtor.

[3] Mr. Bharucha, learned Counsel appearing for the Applicant draws the attention of this Court to the notes forming integral part of the provisional balance sheet as at 31st March, 2020 of the Judgment Debtor as well as notes forming part of the financial statement for the year ended 31st March, 2023 of the Respondent in support of his contentions, which indicates that a sum of Rs. 17,40,82,984/- is due from the Respondent to the Judgment Debtor.

[4] Mr. Bharucha has relied upon the decision of the Hon'ble Supreme Court in the case of **Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal and Anr.**, 2021 6 SCC 366 and in particular refers to paragraph 20 of the said decision which refers to the decision of the Calcutta High Court in the case of Bengal Silk Mills Co. Vs. Ismail Golam Hossain Ariff,1961 SCCOnLineCal 128 where it has been held that an acknowledgment of liability that is made in the balance sheet can amount to an acknowledgment of debt.

[5] Mr. Bharucha submits that, therefore, this Court direct attachment and deposit of the sum of Rs. 17,40,82,984/- into this Court under Order XXI Rules 46 and 46A of the CPC as previously by order dated 11th March, 2020, this Court had inter alia directed the Judgment Debtor (i) not to dispose of, alienate or encumber or part with its assets without the leave of the Court, and (ii) not to appropriate or alienate its fixed deposits or other securities till 31st March, 2020.

[6] Pre-Empting the arguments on behalf of the Respondent-Garnishee in view of the reply filed, Mr. Bharucha has referred to Rule 46-C of Order XXI of the CPC as well as the decision of the Calcutta High Court in the case of Mackinnon Mackenzie and Company Pvt. Ltd. Vs. Anil Kumar Sen and Anr.,1974 SCCOnLineCal 64 to submit that it is only where the garnishee disputes liability that the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit. Mr. Bharucha submits that in the facts of this case, it is undisputed as can be seen from the statement of accounts of the Judgment Debtor as well as the Respondent that a sum of Rs. 17,40,82,984/- is due to the Judgment Debtor from the Respondent. Mr. Bharucha would submit that only where there is a real dispute, this Court can direct trial and not otherwise.

[7] Mr. Bharucha, learned Counsel submits that it is also an admitted position that the Respondent is a 49.90% shareholder of the Judgment Debtor with Mr. Arun Khanna (Director of the Judgment Debtor) not only being a Director in both the Companies but also having 80% shareholding in the Respondent. That Mr. Arun Khanna is also a promoter of both the Judgment Debtor and the Respondent. That while the Judgment Debtor and the Respondent are separate entities in law, they are owned and effectively operated/managed by the same person i.e. Mr. Arun Khanna on

a day to day basis. Mr. Bharucha would also submit that in fact Mr. Arun Khanna's wife Ms. Ritu Khanna is also a Director in the Respondent. Mr. Bharucha submits that funds have been transferred by the Judgment Debtor to the Respondent only to defeat the Applicant's claim and the decree passed by this Court. That the transaction appears to be nothing but siphoning of monies.

[8] Referring to the reply filed by the Respondent, Mr. Bharucha would submit that the transaction between the Judgment Debtor and the Respondent with respect to the third party, viz. HT Media, apart from being a circuitous and collusive transaction between related parties viz. the Respondent and the Judgment Debtor, has nothing to do with the amount disclosed in the balance sheets which has been due from the Respondent to the Judgment Debtor. That even otherwise the said transaction as disclosed in the reply is as of the year 2012, whereas the financial statements of the Judgment Debtor and the Respondent are respectively of the years 2020 and 2023 and admittedly the Respondent is a debtor of the Judgment Debtor. Mr. Bharucha would submit that in the premises the Respondent has failed to discharge the onus of establishing a valid dispute with regard to the amount owed by it to the Judgment Debtor. There is, therefore, no disputed question which is required to be tried as if it were an issue in a Suit. Mr. Bharucha submits that therefore, there being no real dispute, this Court direct attachment and deposit of the said amount of Rs.17,40,82,984/- into this Court.

[9] On the other hand, Mr. Rebello, learned Counsel appearing for the Respondent, at the outset, submits that he has no quarrel with the principle that there should be a real dispute which can be referred for a trial under Rule 46-C of Order XXI of the CPC, however, submitting that in the facts of this case, as stated in the affidavit in reply, the Respondent does not owe any money to the Judgment Debtor as the Respondent has already paid the said money to the HT Media for subscription of shares in the year 2012 and that the entries with respect to the Judgment Debtor in the financial statement of the Respondent are only book/paper entries with no underlying transaction and that there is a triable dispute. Mr. Rebello has also submitted that there is neither any siphoning of funds even though there may have been a circuitous transaction between the Respondent and the Judgment Debtor as they are related parties.

[10] Mr. Rebello relies upon the decision of the Andhra Pradesh High Court in the case of **Walnut Packaging Private Limited Vs. The Sirpur Paper Mills Limited & Anr.**, 2009 1 APLJ 155 (HC) to submit that even if the transaction between the Respondent and the Judgment Debtor is between related parties, both being separate legal entities, the Respondent cannot be held to be liable for the dues of the Judgment Debtor, which is a separate company.

[11] Mr. Rebello further submits that in fact the Respondent has to recover a sum of Rs. 3,13,98,220/- from the Applicant-Decree Holder and the Respondent is in the process of initiating appropriate legal proceedings.

[12] I have heard the learned Counsel and considered the rival contentions.

[13] Since, Mr. Rebello has accepted the principle that only where there is a real dispute by the Garnishee as to the liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, this Court does not consider it necessary to delve on this subject and suffice it to say that under Rule 46-C of Order XXI of the CPC, where the dispute appears to be frivolous or of no substance, the Court is entitled to direct payment of debt by the Garnishee.

[14] In the facts of this case, it is not in dispute that the financial statement of the Respondent as exhibited at Exhibit A at page 97 to page 113 and in particular page 97 and page 102 record that a sum of Rs. 17,40,82,984/- is a liability which the Respondent owes to the Judgment Debtor as on 31st March, 2023. The Note No.7 at Exhibit F (page 62) which is part of the provisional balance sheet of the Judgment Debtor as on 31st March, 2020, at serial no. 3 also clearly indicates that there is a long term loan and advance given by the Judgment Debtor to the Respondent viz. Olive Global Holding Pvt. Ltd. In Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal and Anr. (supra) the Hon'be Supreme Court has reiterated that an acknowledgment of liability made in a balance sheet can amount to an acknowledgment of debt. Neither of these financial statements or their contents have been disputed by the Respondent, except to say that no monies are due from the Respondent to the Judgment Debtor as a sum of Rs. 17,61,22,150/- which includes the amount of Rs.17,40,82,984/- has been paid by the Respondent to the HT Media towards share subscription in the year 2012 and that the entries in the financial statements are mere book entries and paper transactions.

[15] As noted above, Mr. Rebello has also submitted that the Respondent has to recover the sum of Rs. 3,13,98,220/- from the Applicant-Decree Holder and the Respondent is in the process of initiating appropriate legal proceedings.

[16] I am of the view that the dispute or objection sought to be raised by the Respondent-Garnishee is without any substance. The financial statements recording the liability of the Respondent to the Judgment Debtor are of 2020 and 2023 respectively, whereas the alleged transaction with HT Media, based on which dispute is sought to be raised is of the year 2012. This is ex-facie without substance and misconceived. There is no real dispute. The Respondent has failed to discharge the onus of establishing a valid dispute with regard to the amount owed by it to the Judgment Debtor. There is no disputed question which is required to be tried as if it were an issue in a suit. The acknowledgment of liability which is based on the financial statements of both the Judgment Debtor and the Respondent is clear. There is

no bona-fide dispute. What is sought to be raised is something frivolous and unsubstantiated. I am, therefore, in agreement with Mr. Bharucha's submissions and his reliance on the principles laid down in the decision of the Calcutta High Court in the case of Mackinnon Mackenzie and Company Pvt. Ltd. Vs. Anil Kumar Sen and Anr. (supra). Without commenting on the circuitous and collusive transaction of the Respondent, Judgment Debtor and HT Media, the submission by Mr. Rebello that the entries in the audited accounts are only book entries and paper transactions is only stated to be rejected. It is not Mr. Rebello's case that the said accounts are forged or false. Further, even if there is a claim that the Respondent has against the Applicant, there is no adjudicated claim as admittedly the Respondent is in the process of initiating separate legal proceedings and that certainly cannot be a ground to delay the payment that the Respondent owes as Garnishee to the Applicant, the financial statements/books of accounts referred to above clearly indicating that the sum of Rs. 17,40,82,984/- is outstanding from the Respondent to the Judgment Debtor.

[17] Mr. Rebello's reliance upon the decision of the Andhara Pradesh High Court in the case of Walnut Packaging Private Limited Vs. The Sirpur Paper Mills Limited and Anr (supra), in my view, would also not be relevant in the facts of this case in as much as in the facts of that case the Court was considering the liability of a holding company for the debts of a subsidiary company in the case of a winding up of the subsidiary company, where the Andhra Pradesh High Court held that even if the subsidiary company is promoted by the holding company, it is not enough to pass any liability on the holding company as both the companies are separate legal entities and the liability of one cannot be passed on to the other even if they are managed by the same Board of Directors. In the facts of the present case, we are not concerned with the winding up of any of the companies but execution of a decree under Order XXI of the CPC and in particular under Rule 46-A on the basis of what has been categorically stated in the statement of accounts/financial statements of both the companies, where it has been clearly recorded that a sum of Rs.17,40,82,984/- is due from the Respondent to the Judgment Debtor. Therefore, the decision in the case of Walnut Packaging Private Limited Vs. The Sirpur Paper Mills Limited and Anr (supra), does not assist the case of the Respondent.

[18] In view of the above discussion, I have no hesitation in holding that there is no dispute that the Garnishee viz. the Respondent owes sum of Rs.17,40,82,984/- to the Judgment Debtor.

[19] Accordingly, this Court directs attachment and deposit of Rs. 17,40,82,984/- in this Court within a period of six weeks in terms of prayer Clauses (b) and (c), which read thus:-

> "b. That this Hon'ble Court be pleased to pass an appropriate order and direction under provisions of Order XXI Rule 46 of the CPC attaching the sum of Rs. 17,40,82,984/- in the hands of the Respondent / garnishee by

issuing a Warrant of Attachment in respect thereof, prohibiting the Respondent from paying the said amount or any part thereof to the Judgment Debtor and prohibiting the Respondent from parting with or in any manner dealing with the said amount or any part thereof until further orders of the Court;

c. That this Hon'ble Court be pleased to pass an appropriate order and direction in terms of Form 47 read with Rule 345 of the Bombay High Court (Original Side) Rules, 1980 read with Order XXI Rule 46-A of the CPC for issuing notice to the Respondent and directing the Respondent to deposit in this Hon'ble Court the sum of Rs. 17,40,82,984/- (Rupees Seventeen Crores Forty Lakhs Eighty-Two Thousand Nine Hundred and Eighty-Four only)."

[20] Goes without saying that the Applicant is at liberty in terms of prayer Clause (d) to withdraw this amount by making an appropriate application to the Prothonotary & Senior Master, after the same is deposited in this Court.

[21] The Application accordingly stands allowed and disposed as above

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2025(1)MCJ115

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Anil L Pansare]

Writ Petition No 764 of 2021 **dated 11/11/2024**

Akhilesh S/o Mohansingh Thakur

Versus

Hari Alias Haribhau S/o Shankar Masram

JURISDICTION ON COUNTER

Code of Civil Procedure, 1908 Or. 7 R. 10A - Or. 7 R. 11 - Or. 7 R. 10 - Maharashtra Rent Control Act, 1999 Sec. 24, Sec. 40, Sec. 47, Sec. 33 - Jurisdiction on Counter-claim - Petitioner filed suit for specific performance, while Respondent filed counter-claim for declaration and possession - Respondent alleged Petitioner's trespass after repayment of loan secured by temporary license - Petitioner contested jurisdiction citing Maharashtra Rent Control Act, 1999 and argued for counter-claim's rejection under Order VII Rule 11 CPC - Trial court held claim as trespass not under Rent Act, ruling that court fees depended on outcome of mesne profits - Held - Counter-claim must be returned under Order VII Rule 10 CPC as claim based on licensor-licensee relationship invokes Rent Act's exclusive jurisdiction and requires Competent Authority for possession - Trial court erred in failing to direct Respondent to revalue and pay court fees accordingly - Petition Allowed

Law Point: Civil courts lack jurisdiction over counter-claims based on licensor-licensee disputes under Maharashtra Rent Control Act, requiring claims to be pursued through Competent Authority

Acts Referred:

Code of Civil Procedure, 1908 Or. 7R. 10A, Or. 7R. 11, Or. 7R. 10

Maharashtra Rent Control Act, 1999 Sec. 24, Sec. 40, Sec. 47, Sec. 33

Counsel:

Ramaswamy Sundaram, Reynold T Anthony

JUDGEMENT

Anil L Pansare, J.- [1] Heard. Issue Rule returnable forthwith. The learned Counsel for Respondent waives service of Rule on behalf of the Respondent. With consent of the learned Counsel for the parties, the Petition is taken up for final hearing.

[2] This Petition arises out of the rejection of application filed by the Petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short 'the Code') together with registration of the counter-claim without payment of Ad-veloram Court Fees.

[3] The Petitioner/Original Plaintiff filed a suit against the Respondent/Original Defendant for specific performance of contract. The Respondent filed a written statement with counter-claim seeking declaration and possession of the suit property. The counter-claim is based on the premise that the Respondent was in financial crisis and required a sum of Rs.4,50,000/- for repayment of loan due to the Bank. Accordingly, he requested the Petitioner to extend finance to pay loan amount. The Petitioner agreed to do so on the condition of Respondent providing the block of first floor of the suit property on leave and license basis for monthly license fees of Rs.10,000/-. This license fee was to be adjusted towards repayment of finance and upon full discharge, the Petitioner was to vacate the premises. According to Respondent, the finance of Rs.4,50,000/- was fully adjusted on or about 15/4/2012, and therefore, the Petitioner ought to have vacated the suit premises. Having not done so, the Respondent sought declaration of the Petitioner being a trespasser and to restore possession.

[4] The Petitioner filed application (Exhibit-49) under Order VII Rule 11 of the Code on two counts. One is that, the counter-claim is barred in view of Section 33 read with Section 47 of the Maharashtra Rent Control Act, 1999 (for short, 'the Act of 1999'); and the second is, the counter-claim was neither properly valued nor the Court Fees paid in terms of the reliefs sought. According to the Petitioner, since the Respondent is claiming possession and compensation, the suit ought to have been valued accordingly.

[5] The trial court, opined that the Respondent has sought declaration of the Petitioner being a trespasser and not a tenant and that the claim of compensation is in the form of damages towards mesne profit and not license fees, and therefore, the provisions of the Act of 1999 will not apply on the point of payment of Ad-veloram Court Fees. The trial court held that the question, whether Petitioner's possession over the suit property is that of a trespasser, has been not yet decided and unless the same is decided, the entitlement of Respondent for mesne profit cannot be ascertained. The trial court, accordingly, held that once these questions are answered in favour of the Respondent, then only he will be required to pay requisite Court Fees. Accordingly, the trial court rejected the application.

[6] In my view, the trial court committed serious error of law in deciding both the questions involved in the case. It is well settled that the counter-claim is treated as plaint and the questions as regards jurisdiction and payment of Ad-veloram Court Fees are wholly dependent on the pleadings made in the counter-claim. As stated earlier, the Respondent, while filing counter-claim, has made certain averments which were relevant to decide the jurisdiction of the court. The Respondent averred that the parties entered into an agreement of leave and license with an understanding that license fees of Rs.10,000/- shall be adjusted towards repayment of finance and upon adjusting the entire liability, the Petitioner shall vacate the suit premises. Thus, a theory of licensor and licensee is put-forth in the counter-claim. The Respondent then averred that Petitioner failed to deliver the possession in terms of the agreement, and therefore, his possession be treated as that of trespasser.

[7] On this point, Section 24 of the Act of 1999 is relevant, which reads thus:

> **"24. Landlord entitled to recover possession of premises given on licence on expiry**
>
> (1) Notwithstanding anything contained in this Act, a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the Competent Authority, and, the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.
>
> (2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

(3) The Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence."

As could be seen, sub-section (1) of Section 24 provides that a licensee in possession or occupation of the premises given to him on license for residence shall deliver possession of the said premises to the landlord on expiry of the period of licence; and on failure to do so, a landlord may file application to the Competent Authority for recovery of possession. The appointment of Competent Authority is made in terms of Section 40 of the Act of 1999. Sub-section (2) of Section 24 provides for damages to be paid by the licensee to the licensor upon his failure to deliver possession of the premises to the landlord.

[8] Thus, the appropriate remedy, that was available to the Respondent, was to approach the Competent Authority for recovery of possession.

[9] Section 47 of the Act of 1999 provides that no civil court shall have jurisdiction in respect of any matter which the Competent Authority or the State Government or an Officer authorized by it is empowered by or under this Act, to decide, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power so conferred on the Competent Authority or the State Government or such Officer.

[10] As such, Section 47 commences with saving clause, however, the Counsels before the Court have not invited my attention to any provision that would enable the civil court to entertain the counter-claim.

[11] The trial court, thus, committed serious error of law when it has read in isolation the reliefs claimed by the Respondent to declare the Petitioner as trespasser. The trial court ignored the averments made in the counter-claim to seek such relief. Once the claim has been based on the agreement of leave and license, the relationship of licensor and licensee stands admitted by the Respondent. In turn, the provisions of the Act of 1999 would attract. Consequently, the civil court shall have no jurisdiction to entertain the counter-claim.

[12] On the point of valuation of counter-claim and payment of Ad-veloram Court Fees, again the trial court failed to apply the provisions of the Code, particularly Order VII Rule 11(b), which provides that the plaint shall be rejected in a case where the relief claimed is under-value, and the plaintiff, on being required by the Court to so correct the valuation within a stipulated time fails to do so.

[13] Thus, the valuation is dependent on the relief claimed, and not on the possibility of plaintiff's succeeding in the reliefs so claimed. The finding of the trial court that payment of requisite Court Fees is dependent on the Plaintiff's entitlement for declaration and mesne profit, if decided, runs contrary to the aforesaid provision.

The trial court ought to have directed the Defendant (who will be Plaintiff in counter-claim) to correct the valuation and to pay the same within stipulated time.

[14] The learned Counsel for Petitioner has placed reliance upon the Judgment of the Supreme Court in the case of **Mahadev P. Kambekar (dead) through Legal Representatives V/s Shree Krishna Woolen Mills Private Limited**, 2020 14 SCC 505. The plaintiff in the said case claimed himself to be lessee of the suit land whereas the defendant claimed himself to be the owner/lessor on the terms set out in the indenture of the lease deed executed between the parties. There arose dispute between the parties. The defendant terminated the lease by serving a quit notice requesting the plaintiff to handover the possession. The plaintiff filed a suit claiming specific performance of contract. The suit was based on Clause 7 of the lease deed, which according to the plaintiff, enabled him to elect and exercise his right to purchase the suit land. The defendant filed written statement and also counter-claim seeking plaintiff's eviction from the suit land and arrears of rent. The Division Bench of this Court held that counter-claim was not maintainable in view of Section 41 of the Presidency Small Cause Courts Act, 1882 (for short, 'the Act of 1882'). The Supreme Court upheld the Judgment of the Division Bench and held that the counter-claim is barred by Section 41 of the Act of 1882. In doing so, the Court also observed that it is immaterial, if the suit is between licensee and licensor or between the landlord and tenant, and held that such types of suits fall under Section 41 of the Act of 1882, and are therefore, cognizable by the courts of Small Causes.

[15] One of the grounds raised before the Division Bench by the Defendant therein was that, if the tenancy is determined, such suit would not come within the purview of Section 41 of the Act of 1882. This argument was rejected by the Division Bench in the light of the law laid down by this Court in the case of Nagin Mansukhlal Dogli V/s Haribhai Manibhai Patel,1979 SCCOnLineBom 29. In **Nagin's case** (supra), the Division Bench has dealt with the arguments, which is also the argument before this Court, so far as the Respondent is concerned. The Court held thus:

> **"17.** Mr. Sanghavi next argued that the relief claimed by him in the suit was not a decree for possession but was a declaration that the defendant was a trespasser upon or in respect of the said flat and that he had no right, title or interest to remain or continue to remain in use and occupation or possession thereof, and for a mandatory injunction against the defendant forthwith to remove himself, his servants and agents, together with his belongings, from the said flat and to hand over vacant and peaceful possession of the said flat to the plaintiff. In Mr. Sanghavi's submission this was thus a suit for a declaration and an injunction, and by reason of clauses (i) and (s) of section 19 of the Presidency Small Cause Courts Act, 1882, the Small Cause Court had no jurisdiction to entertain such a suit or to grant such reliefs. The material provisions of the said section 19 are as follows:

"19. Suits in which Court has no jurisdiction. The Small Cause Court shall have no jurisdiction in-

x x x

(i) suits to obtain an injunction;

x x x

(s) suits for declaratory decree;"

18. The first question which arises is whether this is really in substance a suit for a declaratory decree or an injunction, or a suit for recovery of possession of immovable property camouflaged in the guise of a suit for a declaration and injunction. The words which clause (s) of section 19 uses are "suits for declaratory decrees". Suits for declaratory decrees are governed by Chapter VI of the Specific Relief Act, 1963, When declarations can be granted is provided for by section 34 of that Act which occurs in that Chapter. Under the said section 34 "any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right". Now, here at no stage has the defendant denied or been interested in denying the plaintiff's title to the said flat. On the contrary, his case as set out in his said affidavit in reply and in the correspondence preceding the suit is that while the second agreement of licence was still subsisting, it was orally agreed between the parties that the licence would continue as long as the defendant desired. He is thus accepting the title of the plaintiff to the said flat as also the plaintiff's right to give the licence in respect thereof to him in the plaintiff's legal character as the licensor. The plaintiff has contended in the plaint that on the licence coming to an and the defendant is a trespasser upon the said promises. Whether the defendant has become a trespasser or not is an issue which has to be tried in the suit. What the plaintiff really wants by the declaration prayed for in prayer (a) of the plaint is a declaratory decree with respect to the answer in his favour to that issue. Such a declaration would stand on the same footing where a plaintiff in a suit for damages for breach of contract to ask for a declaration to the effect that the defendant has committed a breach of contract. It is the determination of the issue whether the licence has come to an and or not which would give the right to the plaintiff to obtain the relief of possession. The declaration sought for does not change the real nature of the suit. Section 34 of the Specific Relief Act has no application to the case, and this suit cannot be described as a suit for a declaratory decree.

19. Prayer (b) of the plaint, in the guise of a prayer for a mandatory injunction against the defendant to remove himself from the said flat, is in substance no other than a prayer for the recovery of possession of the said flat. Realizing

full well that the proper relief to pray for would be a decree or order for possession but at the same time being desirous of bringing the suit in this Court and simultaneously not wishing the suit to suffer from a technical defect, the draftsman of the plaint has in the said prayer sough to protect the plaintiff by using the phraseology "that the defendant be ordered and decreed by a mandatory order or injunction ..." Thus really, what is prayed for is a decree for possession.

20. It is now well-settled that when we have to determine the nature of the suit what we are to look at is the real substance of the suit and not legal ingenuity in drafting the plaint. The plaint read as a whole and the real substance of the suit leave no doubt that this is a suit between persons who hold the character of a licensor and licensee, which relationship having come to an and according to the plaintiff, the plaintiff has become entitled both in law and under the agreement of licence to recover possession of the property from the defendant, his licensee.

21. Mr. Sanghavi also submitted that in the plaint the plaintiff has claimed a sum of Rs. 35,625 by way of damages for trespass for the period from June 1, 1970, till the date of the suit, that is, till April 1978, at the rate of Rs. 375 per month and for a sum of Rs. 375 per month from the date of the suit till possession of the said flat is handed over to the plaintiff either by way of future mesne profits or damages or compensation for wrongful use and occupation of the said fiat Mr. Sanghavi argued that section 41 of the Presidency Small Cause Courts Act did not in terms include a suit for damages for trespass or for compensation for wrongful use and occupation or for mesne profits. In his submission, the section only related to recovery of licence tea or charges and that the license having been determined, all that the plaintiff could recover from the defendant was either damages for trespass or compensation for wrongful use and occupation of the property or mesne profits. This argument of Mr. Sanghvi overlooks the language used in the said section 41. The said section 41 speaks or "all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay". It is significant that the words used in the said section 41 are "suits ... relating to the recovery of possession" and not "suits, for possession". Rule 12, of Order XX of the Code of Civil Procedure, 1908, provides as to how a Court is to proceed "Where a suit is for the recovery of possession of immovable property and for rent or mesne profits." The contrast between the language used in Order XX, Rule 12 and the said section 41 immediately strikes one. The phrase "relating to the possession of any immovable property" is wider than the phrase "for the recovery of possession of any immovable property." The words "relating to" are intentionally and designedly used in the said

> section 41 not to confine the section only to a suit for the recovery of possession of immovable property situate in Greater Bombay but also to permit to be included within the ambit of such a suit all other reliefs which the plaintiff can claim in a suit for the recovery of possession of immovable property on the termination of a licence or a tenancy."

Thus, the argument that counter-claim was not for a decree of possession, but was for a declaration that the Petitioner herein is a trespasser, will not take away the jurisdiction of the Small Causes Court to entertain the claim. What is important, is a substance in the suit, and not any relief in isolation. In fact, in the present case, the Respondent has categorically sought restoration of possession, which relief is covered under Section 25 of the Act of 1999.

[16] Thus, the finding of the trial court that the Respondent is seeking relief of trespasser and not a tenant, is not in tune with the settled principles of law. The order impugned is, therefore, unsustainable. The Petitioner has made out a case.

[17] The Writ Petition is, accordingly, allowed. The order dated 28/9/2020 passed below Exhibit-49 by the Civil Judge Senior Division, Nagpur in Special Civil Suit No. 326/2012 is hereby quashed and set aside. The counter-claim is returned to the Respondent in terms of Order VII Rule 10 of the Code. The consequential orders, in terms of Order VII Rule 10 and 10-A of the Code, shall be passed by the trial court.

[18] Rule is disposed of in above terms. No order as to costs

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