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MAHARASHTRA CIVIL JUDGEMENTS

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COMMERCIAL SUIT TRANSFER

Commercial Suit Transfer - Plaintiffs filed commercial summary suits for recovery of large amounts - Defendants sought return of plaints contending that suits were not commercial disputes under Commercial Courts Act - Plaintiffs argued suits could be renamed as ordinary civil suits instead of return - Court observed that though Rule 283 of Bombay High Court (O.S.) Rules allows return of plaint, both commercial and original side divisions are part of same High Court - Held that suits filed before competent court though under wrong nomenclature need not be refiled afresh - Directions issued to rename and renumber suits as ordinary civil suits - Applications for return of plaints rejected - Proceedings to continue from same stage before ordinary original side jurisdiction - Suits renamed and renumbered as ordinary suits [*Prime Developers and Another; In The Matter Between : Mayank Jaswantlal Shah; Minaxi P Satra vs. Prime Developers and Others; Minaxi P Satra* (BOMBAY HIGH COURT) 2026(1)MCJ120]

ELECTION PETITION REJECTION

Election Petition Rejection - Returned candidate sought rejection of election petition under Order VII Rule 11 CPC alleging absence of material facts and improper verification - Petitioner alleged suppression of property details and false affidavit in nomination - Court examined pleadings and found petition disclosed triable issues supported by documents including objections raised before election authority - Held that verification complied with Sec.83 of Representation of People Act and allegations regarding affidavit, nomination irregularities and EVM functioning warranted evidence - Observed threshold rejection improper when pleadings reveal material facts supporting cause of action - Application under Order VII Rule 11 dismissed and election petition retained for trial - Application Dismissed [*Anna Dadu Bansode; In Matter Between Sulakshana Raju Dhar vs. Anna Dadu Bansode; Tiif Returning Officer; Chief Electoral Officer of Maharashtra; Election Commission of India; District Election Officer* (BOMBAY HIGH COURT) 2026(1)MCJ109]

EX PARTE DECREE CHALLENGE

Ex Parte Decree Challenge - Petitioners challenged concurrent orders rejecting application to set aside decree passed after restoration of eviction suit - Both courts found defendants repeatedly served but absent despite several notices - Held that decree not ex parte but one under Order XVII Rule 2 CPC after parties led evidence - Contention regarding invalid service through female family member rejected as Bombay Amendment inconsistent with central amendment and deemed repealed - Courts observed no sufficient cause shown for non-appearance - High Court held concurrent findings based on record and not amenable to supervisory interference -

Petition Dismissed as Without Substance [*Mediwal Nagendra Dastgi; Sugamma Wd/o Nagendra Dastgir & Ors vs. Kshtriya Dnyati Sabha & Ors* (BOMBAY HIGH COURT) 2026(1)MCJ70]

EXECUTION OF DECREE

Execution of Decree - Appeal filed by judgment debtor against execution order under Rent Act - Appellant contended that Competent Authority had no jurisdiction to award damages and such order could not be executed through Civil Court - Respondent opposed stating delay caused in execution deprived decree holder of fruits of decree - Court observed that Section 24(2) of Rent Act clearly provides liability of licensee to pay damages at double rate when possession not delivered after expiry of license - Held that Competent Authority has jurisdiction to determine and award such damages and order can be executed in accordance with law - Court found that interpretation suggested by appellant would defeat object of Rent Act - Decree holder entitled to execute order - Execution to proceed without delay. - Appeals Dismissed [*Arun Kumar Ohri vs. Rajendra W Khanna; Mansi Khanna; Richa Khanna* (BOMBAY HIGH COURT) 2026(1)MCJ48]

EXECUTION PROCEEDINGS

Execution Proceedings - Appeal concerns challenge to orders staying execution proceedings connected with arbitral award rendered to resolve family asset issues - Facts indicate initiation of arbitration followed by award communication by concerned party signalling challenge intent absence of challenge under statute and commencement of execution abroad due to residence of judgment debtor - Proceedings travel across jurisdictions culminating in domestic execution where orders of single judge attract stay through intra-court appeals - Submissions address maintainability of such appeals in light of statutory bar and assertion that statute constitutes complete code - Issue revolves around whether letters patent appeal lies from order in execution arising out of arbitral award - Matter reveals conflict between statutory framework and intra-court appellate jurisdiction - Court examinesd implications of stay and propriety of appellate intervention - Appeals Allowed [*Bharat Kantilal Dalal (Dead) Through Lr vs. Chetan Surendra Dalal & Ors* (SUPREME COURT OF INDIA) 2026(1)MCJ1]

MAINTAINABILITY OF SUIT

Maintainability of Suit - Defendant sought rejection of plaint under Order VII Rule 11(d) of CPC contending that suit by Public Trust for recovery against former trustee barred for want of Charity Commissioner's consent under Sections 50 and 51 of Bombay Public Trusts Act - Plaintiffs claimed defendant was trespasser and not valid trustee - Defendant argued that pleadings and documents admitted he was trustee and hence consent mandatory - Plaintiffs contended occupation was illegal and suit maintainable without such consent - Court observed plaint itself acknowledged defendant's status as trustee during contentious period and claim arose out of alleged breach of trustee duties - Held suit clearly governed by Sections 50 and 51 of Bombay

Public Trusts Act - Absence of prior permission from Charity Commissioner rendered suit not maintainable - Plaint rejected under Order VII Rule 11(d) of CPC - Suit rejected [*Niket Mehta; In The Matter Between: Lilavati Kirtilal Mehta Medical Trust vs. Niket Mehta.* (BOMBAY HIGH COURT) 2026(1)MCJ85]

MARITIME INTERVENTION

Maritime Intervention - Applicant mortgagee sought intervention in Commercial Admiralty Suit concerning sale proceeds of vessel M.V. Karnika - Applicant claimed decree as mortgagee and sought impleadment to prevent exaggerated decree for plaintiff's wage claims - Plaintiff agreed to limited intervention - Court examined Rule 1086 of Original Side Rules and held applicant having maritime interest can intervene to limited extent of ensuring no excess decree - Applicant allowed to join as party defendant restricted to defences appropriate to competing maritime claimant - Application Allowed [*Carnival Plc; In Matter Between Irwin Edmund Sequeira & Ors vs. Sale Proceeds of Mv Karnika* (BOMBAY HIGH COURT) 2026(1)MCJ23]

MESNE PROFIT DETERMINATION

Mesne Profit Determination - State Trading Corporation filed revision challenging concurrent findings awarding mesne profits to landlords after eviction - Landlords sought compensation for wrongful possession of office premises - STC contended that clause in lease deed fixed Rs.12 per sq.ft per month as maximum rate and no higher mesne profits can be claimed - Landlords argued clause did not restrict claim and mesne profits depend on market rate - STC also moved for considering additional documents discovered later asserting it functioned as government agency - Tenants objected to reopening matter citing constructive res judicata and concluded interpretation in prior judgment - Court observed that concurrent findings based on evidence cannot be interfered in limited revisional jurisdiction under Sec.115 CPC - Found that clause did not restrict right to claim mesne profits for wrongful possession and fresh evidence sought was irrelevant - Held that applications for additional documents and revision petitions devoid of merit - Orders of appellate and trial courts upheld granting mesne profits to landlords - Revision Applications Dismissed [*State Trading Corporation of India Ltd vs. Ravinder Singh Indersingh Sehgal; Smita Ravinder Singh Sehgal (Deceased); Alankar Ramesh Joshi; Master Arnav Alankar Joshi; Master Arjan Joshi; Gazala Singh Sehgal; Godavaridevi Agarwal* (BOMBAY HIGH COURT) 2026(1)MCJ97]

REDEVELOPMENT JURISDICTION

Redevelopment Jurisdiction - Petition challenged order of Co-operative Appellate Court rejecting application under Order VII Rule 11 for dismissal of proceedings on redevelopment issue - Petitioner contended that redevelopment not covered by society's bye laws and therefore not within Co-operative Court jurisdiction - Respondent argued that general body resolutions touching society's affairs fall within Sec.91 - Court observed that Sec.154B(1)(17) only enables but does not mandate

inclusion of redevelopment in housing society's business - Bye laws not amended automatically by 2019 Amendment - Redevelopment by developer includes elements beyond membership activities - Dispute essentially concerns conduct of general body and management decisions - Such disputes fall under Sec.91 and can be tried by Co-operative Court - Hence application under Order VII Rule 11 rightly rejected - Writ Petition lacks merit - Petition Dismissed [*Bank of India Staff Panchsheel Cooperative Housing Society Limited vs. Jitendra Kumar Jani; Deputy Registrar, Cooperative Societies; Vikas R Korade* (BOMBAY HIGH COURT) 2026(1)MCJ8]

REJECTION OF PLAINT

Rejection Of Plaint - Defendants filed revision against order rejecting applications seeking rejection of plaint under Order VII Rule 11 - Plaint sought specific performance of old MOU and cancellation of subsequent sale deeds - Defence contended that cause of action was cleverly drafted to avoid limitation and that documents being registered constituted notice to plaintiff - Plaintiff argued cause of action arose from recent discovery of father's Will and that limitation involved mixed questions of law and fact - Court observed that mechanical acceptance of pleaded cause of action not required and meaningful reading of plaint necessary to detect vexatious suits - Found that suit initiated after long delay using artful drafting could not be saved by claims of later discovery - Noted that limitation for specific performance begins from refusal or neglect of performance, not from alleged discovery - Held plaint barred by limitation and liable to be rejected - Trial court order unsustainable - Revision Applications Allowed [*Kumar Beharay Properties Llp; Vidya Shrikrishna Devkule and Another vs. Rajesh Chandrakant Shinde and Others* (BOMBAY HIGH COURT) 2026(1)MCJ57]

SUCCESSION OF TENANCY LAND

Succession of Tenancy Land - Petition filed to determine rightful heirs of deceased tenant - Dispute arose on inheritance of tenancy land after tenant's wife's death - Petitioners claimed succession through husband's heirs - Contesting respondent claimed right under will and as brother's son - Court analyzed Sec.43 of Tenancy Act restricting transfer of tenancy land and Sec.15 of Hindu Succession Act governing succession of female Hindu - Held land purchased under tenancy cannot be transferred by will - Property inherited from husband devolves upon husband's heirs in absence of children - Found petitioners legal representatives of deceased tenant's wife - Will declared invalid - Application Allowed [*Sahadeo Namdeo Mahadik (Since Deceased); Bhagirathibai Sahadeo Mahadik; Sunderabai Rambhau Patil; Indirabai Dattatray Mahalkar; Gayabai Yashwant Jadhav; Nandkumar Sahadeo Mahadik; Krushna Sahadeo Mahadik; Machindranath D vs. Parvatibai Mahadeo; Hari Vitthal Tulpule; Kum Rohini Hari Tulpule; Trimbak Hari Tulpule; Vijay Trimbak Tulpule; Sameer Ashok Tulpule; Nitin Ashok Tulpule; Sushma Ashok Tulpule; V H Tulpule; Malini Tulpule; Ajay Vitthal T* (BOMBAY HIGH COURT) 2026(1)MCJ15]

TERRITORIAL JURISDICTION

Territorial Jurisdiction - Issue raised whether writ petition under Article 227 arising from dispute originating in Kolhapur District should be heard at principal seat or Kolhapur Bench - Petition under Article 227 filed challenging order of Cooperative Appellate Court at Pune - Petitioner claimed matter to be heard at Bombay - Respondents relied on Rule 3A of Appellate Side Rules mandating matters from Kolhapur District to be heard at Kolhapur - Held that there is only one High Court exercising jurisdiction over entire State - Distribution between benches is administrative and binding - Rule 3A mandatory for allocation of business - Petition concerning dispute from Kolhapur District must be heard by Single Judge at Kolhapur - Petition ordered to be transferred to Kolhapur Bench - Directions issued to registry - Petition Transferred [*Shivneri Sahakari Bank Ltd vs. Rupee Cooperative Bank Ltd ; Shree Swaroop Sying Pvt Ltd ; Mukund Atmaram Pitre* (BOMBAY HIGH COURT) 2026(1)MCJ36]

MAHARASHTRA CIVIL JUDGEMENTS

2026(1)MCJ1

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

(Hon'ble Judge: Sanjay Kumar; Alok Aradhe)

Civil Appeal No 1026 of 2019, 1027 of 2019, 1028 of 2019, 1029 of 2019 **dated 20/11/2025**

Bharat Kantilal Dalal (Dead) Through Lr

Versus

Chetan Surendra Dalal & Ors

EXECUTION PROCEEDINGS

Code of Civil Procedure Or. 21R. 23 Or. 21R. 22 - Arbitration and Conciliation Act Sec. 34 - Execution Proceedings - Appeal concerns challenge to orders staying execution proceedings connected with arbitral award rendered to resolve family asset issues - Facts indicate initiation of arbitration followed by award communication by concerned party signalling challenge intent absence of challenge under statute and commencement of execution abroad due to residence of judgment debtor - Proceedings travel across jurisdictions culminating in domestic execution where orders of single judge attract stay through intra-court appeals - Submissions address maintainability of such appeals in light of statutory bar and assertion that statute constitutes complete code - Issue revolves around whether letters patent appeal lies from order in execution arising out of arbitral award - Matter reveals conflict between statutory framework and intra-court appellate jurisdiction - Court examinesd implications of stay and propriety of appellate intervention - Appeals Allowed

Law Point: When statute governing arbitration forms complete code intra-court appeal against order relating to execution of arbitral award does not ordinarily lie and interference by appellate forum must conform strictly to statutory limitations.

Acts Referred:

Code of Civil Procedure, 1908 Or. 21R. 23, Or. 21R. 22

Arbitration and Conciliation Act, 1996 Sec. 34

Counsel:

Neeraj Kishan Kaul (Senior Advocate), Mahesh Agarwal, Malcom Singaporia, Rishi Agrawala, Himanshu Saraswat, Vidisha Swarup, Ira Mahajan, Varad Kolhe, Saumitr Kumar, Udit Sidhra, E C Agrawala, Chander Uday Singh (Senior Advocate), Harish M

Jagtiani (Senior Advocate), Bhargava V Desai, Shivam Sharma, Abrar Ahmad, Yashpal Jain, Jahnavi Vora, Sumeer Sodhi, Harshit Joshi

JUDGEMENT

Alok Aradhe, J.- [1] These appeals call in question the correctness of orders dated 06.03.2018 passed by a Division Bench of the High Court of Bombay in Letters Patent Appeals, namely Appeal No(s). 320 and 372 of 2015. By the aforesaid orders, the High Court has stayed two orders passed by the learned Single Judge dated 18.12.2014 passed in chamber summons no.243 of 2014 and chamber summons (L) no.1297 of 2013 in Execution Application (L) No. 1036 of 2013. The relevant facts for deciding these appeals briefly stated are as under.

FACTS

[2] The appellant is the son of late Mr. Kantilal Dalal (hereinafter, referred to as 'father') and nephew of late Mr. Girdharilal Dalal (hereinafter, referred to as 'uncle'). The first respondent is the nephew of the appellant, and the son of second respondent. The other respondents are cousins of second respondent. A fracture in the joint family-steeped in business dealings, shared ventures and mutual expectations, led to discord about the accounting and distribution of family funds. To resolve the dispute with his father in relation to the family assets, the appellant sought the intervention of sole arbitrator, Shri Dilip J Thaker. The sole arbitrator passed an arbitral award on 12.07.2010 in favour of the appellant. The father addressed the communication dated 23.07.2010 to the arbitrator alleging unfair conduct of arbitral proceedings and signalling his intent to challenge the arbitral award. A caveat was filed by the appellant, but challenge to the arbitral award dated 12.07.2010 under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act) did not materialise.

THE ARBITRAL AWARD TRAVELS ACROSS JURISDICTIONS: -

[3] The appellant initiated the execution proceeding for execution of the arbitral award in Dubai, where the father resided. The Court in Dubai, declared the father as judgment debtor. However, the arbitral award remained unsatisfied. The appellant moved the High Court of Singapore which also recognized the arbitral award and held the father liable for US $12,951,078.03, a garnishee notice followed. The father responded to the notice by denying the knowledge of the execution proceeding and claiming residence in London. The uncle filed an affidavit asserting that his brother i.e., the father was not the sole beneficiary of Auro Mira Services Private Limited i.e., the concerned company but both of them were the directors and shareholders of the company. It was averred that corporate separateness insulated him from the repercussions of the arbitral award.

[4] The father had executed a Will dated 16.09.1994 in favour of the uncle. The father expired on 08.03.2013. The appellant, therefore, required the uncle, who was a substantial beneficiary under the aforesaid Will executed by the father, to disclose the details of assets of the father. The uncle refused to divulge the details of the assets on the

ground that the arbitral award dealt with the properties in which he had personal stakes, and he was not bound by the arbitral award dated 12.07.2010 passed in favour of the appellant, as he is not the party to the same. The uncle filed a Civil Suit, namely suit no. 470 of 2013 in the High Court of Bombay, seeking a declaration that the arbitral award dated 12.07.2010 is a nullity. The learned Single Judge by an order dated 08.07.2013 directed the appellant to file an affidavit in reply within a period of two weeks. The appellant thereupon filed an affidavit in reply in the said civil suit, which is pending.

EXECUTION PROCEEDING IN BOMBAY: -

[5] The appellant filed Execution Application (L) no.1036 of 2013 in the High Court seeking execution of arbitral award dated 12.07.2010. The appellant also filed a chamber summons no.243 of 2014, in the execution application seeking issuance of notice under Order 21 Rule 22 of the Code of Civil Procedure (for short "CPC") and various reliefs inter alia for disclosure of assets, issuance warrants of attachment, sale and arrest.

THE ORDERS: -

[6] The learned Single Judge by an order dated 18.12.2014, held that execution must proceed and a notice under Order 21 Rule 22 of the CPC should issue. The learned Single Judge further directed the respondents not to create any third-party rights in respect of share, entitlement of the father in the property situate in London. It was also directed that in case the respondents create any third-party rights in respect of the properties which belong to the father, the same shall be subject to further orders of the Court.

[7] The uncle filed a chamber summons (L) No. 1297 of 2013 raising various objections, to the execution of the arbitral award and assailed the same on the ground that it is a nullity.

[8] The learned Single Judge, by another order passed on 18.12.2014, on an application of uncle i.e. chamber summons (L) no.1297 of 2013, inter alia, held that, the arbitral award which has attained finality can neither be set aside under the Act nor can the same be declared as nullity. It was further held that the chamber summons taken out by the uncle is premature. It was also held that execution shall proceed in accordance with law, and the chamber summons was accordingly disposed of.

[9] The respondents assailed the validity of the orders dated 18.12.2014 passed in chamber summons (L) no.1297 of 2013 and chamber summons no. 243 of 2014, in Letters Patent Appeals, namely Appeal No.320 and 372 of 2015, before the Division Bench of the High Court. The Division Bench by orders dated 06.03.2018, admitted the appeals subject to maintainability of the same, and thereafter, by separate orders passed on the same day admitted the appeal and stayed the orders dated 18.12.2014 passed by the learned Single Judge in chamber summons (L) no.1297 of 2013 and chamber summons no.243 of 2014. In these Civil Appeals, validity of orders dated 06.03.2018

passed by Division Bench of the High Court in Appeal No(s). 320 and 372 of 2015, have been challenged.

SUBMISSIONS: -

[10] Learned Senior Counsel for the Appellant, while inviting the attention of this Court to Sections 5, 36, 37 and 50 of the Act, submitted that, against the orders dated 18.12.2014 passed by the learned Single Judge in the Chamber Summons, no Letters Patent Appeals lie, as the Act is a complete code in itself. In support of the aforesaid submissions, reliance has been placed on decisions of this Court in **Paramjeet Singh Patheja v. ICDS Ltd.**, 2006 13 SCC 322 **Fuerst Day Lawson Ltd. v. Jindal Exports Ltd**, 2011 8 SCC 333 **Union of India v. Simplex Infrastructures Ltd.**, 2017 14 SCC 225 **Kandla Export Corporation and Anr. v. OCI Corporation and Anr.**, 2018 14 SCC 715 **Sundaram Finance Ltd. v. Abdul Samad and Anr.**, 2018 3 SCC 622 **Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd. and Ors.**, 2022 1 SCC 209 **Noy Vallesina Engineering Spa v. Jindal Drugs Limited & Others**, 2021 1 SCC 382 **PASL Wind Solutions Private Limited v. GE Power Conversion India Private Limited**, 2021 7 SCC 1 and **Electrosteel Steel Limited v. Ispat Carrier Private Limited**, 2025 7 SCC 773 and decisions of the Bombay High Court in Jet Airways (India) Ltd. v. Subrata Roy Sahara,2011 SCCOnLineBom 1379 and Sushila Singhania v. Bharat Hari Singhania,2017 SCCOnLineBom 360.

[11] It is further submitted that the Division Bench of the High Court grossly erred in not assigning any reasons while admitting the appeals and for staying the operation of the orders dated 18.12.2014 passed by the learned Single Judge. It is also pointed out that notice under Order 21 Rule 22 (1) of the CPC is yet to be issued to the respondents. It is urged that the chamber summons filed by the respondents in the execution proceedings, seeking a declaration that the arbitral award dated 12.07.2010 is a nullity is misconceived, and the chamber summons filed by respondents was premature. It is also pointed out that the respondents have already filed the Civil Suit seeking a declaration that the arbitral award dated 12.07.2010 is a nullity. It is, therefore, prayed that the impugned orders dated 06.03.2018 be quashed and set aside and the learned Single Judge be directed to proceed with execution expeditiously.

[12] On the other hand, learned Senior Counsel for the Respondents contended that the respondents are strangers to the arbitration proceeding and the arbitral award dated 12.07.2010, and they do not have locus to challenge the same under the Act, as the Act envisages the challenge to the arbitral award in the manner indicated, therein by a party. It is, therefore, contended that the Letters Patent Appeals filed by the respondents are maintainable. It is also pointed out that, while deciding the chamber summons, the learned Single Judge has held that the arbitral award (i) is not without jurisdiction, (ii) not accentuated by fraud, (iii) not barred by limitation and (iv) is not against the public policy. It is further contended that the learned Single Judge ought to have appreciated that the arbitral award deals with properties of which the respondents are either the

owners or have substantial interest. It is, therefore, urged that appeals are liable to be dismissed.

ANALYSIS: -

[13] We have considered the rival submissions and have perused the record. Before proceeding further, it is apposite to take note of the relevant statutory provision, namely Order 21 Rule 22, which is extracted below for the facility of reference.

"22. Notice to show cause against execution in certain cases.-

(1) Where an application for execution is made-

(a) more than [two years] after the date of the decree, or

(b) against the legal representative of a party to the decree [or where an application is made for execution of a decree filed under the provisions of section 44A], [or]

(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent, the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than [two years] having elapsed between the date of the decree and the application for execution if the application is made within [two years] from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

[14] Thus Order 21 Rule 22 mandates that where execution is sought (a) more than two years after the decree or (b) against the legal representative of judgment debtor or (c) against the assignee or receiver in insolvency, where party to the decree has been adjudged to be an insolvent, the executing court shall issue notice to the person against whom execution is sought, requiring him to show cause, why the decree should not be executed.

[15] The use of word 'shall' in Order 21 Rule 22 (1) admits of no ambiguity and the executing court is under an obligation to issue notice to the person against whom a decree is sought to be executed in the circumstances enumerated therein. The mandate of

Order 21 Rule 22 (1) stands on two independent and mutually reinforcing foundations (i) the statutory compulsion-the use of word 'shall' in the provision leaves no discretion to the executing court in the circumstances enumerated therein, (ii) it incorporates the principles of natural justice as the legal representative of the deceased cannot be proceeded unless he is given an opportunity to contest the execution. Thus, the requirement of notice under Order 21 Rule 22 (1) to the persons enumerated therein is not a mere procedural courtesy but is the very foundation of the jurisdiction when the execution is sought against the estate of the deceased judgment debtor. The foundation of this requirement was laid down by the Privy Council in **Raghunath Das v. Sundardas Khetri**, 1914 AIR(PC) 129 wherein it was held that notice under Section 248 of the Old Code, (equivalent to Order 21 Rule 22) is a condition precedent to jurisdiction of the Court to proceed with execution against the legal representative of a deceased judgment debtor.

[16] Now, we may advert to Order 21 Rule 23 of the CPC which reads as under:

23. Procedure after issue of notice. -

(1) Where the person to whom notice is issued under [rule 22] does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

[17] The aforesaid rule prescribes the procedure after issue of notice. Order 21 Rule 23 (1) provides that where a person to whom notice is issued under Rule 22 does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed. Order 21 Rule 23 (2) provides that where any person offers any objection to the execution of the decree the court shall consider such objection and shall make such order as it thinks fit.

APPLICATION OF AFORESAID PROVISIONS TO THE PRESENT CASE: -

[18] In the backdrop of relevant statutory provisions, we may advert to the facts of the cases in hand. Admittedly, the father of the appellant had executed a Will on 16.09.1994 in favour of his brother. From perusal of the cause title of the execution proceeding, it is axiomatic that the uncle was arrayed in execution proceedings as legal representative/executor of the Will dated 16.09.1994 of the father and not in his individual capacity. The respondents, therefore, cannot be treated as third party to the arbitral award.

[19] The Act is a self-contained code and is founded upon principles of party autonomy, expedition and finality. The legislative design of the Act restricts judicial interference. The orders of the learned Single Judge dated 18.12.2014, were passed in course of execution of arbitral award and are, therefore, traceable to the Act and not to CPC. The execution of the arbitral award is sought against the respondents in their capacity as executors of the aforesaid Will. The respondents step into the shoes of

judgment debtor of the limited purpose of the execution. The Letters Patent Appeals filed by respondents were therefore not maintainable. The Division Bench of the High Court erred in admitting the appeals subject to maintainability of the same and in admitting the appeals without assigning any reasons.

[20] A careful scrutiny of the order dated 18.12.2014 passed in chamber summons no.243 of 2014, reveals that the learned Single Judge has held that the issue with regard to attachment of properties shall be dealt with at an appropriate time, upon an application made in accordance with law. It has further been held that a notice under Order 21 Rule 22 (1) of the CPC to proceed in execution of the arbitral award is granted.

[21] Thus, it is axiomatic that the notice under Order 21 Rule 22 (1) of the CPC is yet to be issued to the respondents. Once a notice is issued to the respondents, it is open for them to raise an objection to the execution of the arbitral award under Order 21 Rule 23(2) of the CPC. However, we find that the learned Single Judge while deciding the chamber summons (L) No.1297 of 2013, has made observations/findings though not determinative, have the potential to prejudice the respondents in their objections under Order 21 Rule 23 (2) of the CPC, which they are statutorily entitled to raise on receipt of notice. The respondents, therefore, must be placed in the position, the law intended them to occupy i.e. the legal representatives are entitled to be heard before their estate is saddled with execution.

CONCLUSION: -

[22] In view of foregoing discussion, impugned orders dated 06.03.2018 passed by the Division Bench of the High Court of Bombay in Letters Patent Appeals, namely Appeals No.320 and 372 of 2015 are quashed and set aside. The aforesaid Letters Patent Appeals are dismissed as not maintainable. In order to restore the execution proceeding to the track mandated by the CPC, as well as in the facts and circumstances of the case, we deem it appropriate to issue following directions: -

(i) The learned Single Judge in Execution Application (L) No. 1036 of 2013, shall issue notice to respondents under Order 21 Rule 22 (1) of the CPC.

(ii) On receipt of such notice, it would be open for the respondents to prefer objections to the execution proceedings under Order 21 Rule 23 (2) of the CPC.

(iii) The objections which may be preferred by the respondents shall be dealt with, on its own merit, by the learned Single Judge without being influenced by any of the observations/findings contained in the orders dated 18.12.2014 passed in chamber summons no(s). 243 of 2014 and 1297 of 2013 in Execution Application (L) No.1036 of 2013.

[23] The appeals are accordingly disposed of on above terms

2026(1)MCJ8

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Amit Borkar)

Writ Petition No. 8889 of 2024 **dated 19/12/2025**

Bank of India Staff Panchsheel Cooperative Housing Society Limited

Versus

Jitendra Kumar Jani; Deputy Registrar, Cooperative Societies; Vikas R Korade

REDEVELOPMENT JURISDICTION

Code of Civil Procedure, 1908 Or. 7R. 11 - Maharashtra Co-Operative Societies Act, 1960 Sec. 91, Sec. 2, Sec. 154B - Redevelopment Jurisdiction - Petition challenged order of Co-operative Appellate Court rejecting application under Order VII Rule 11 for dismissal of proceedings on redevelopment issue - Petitioner contended that redevelopment not covered by society's bye laws and therefore not within Co-operative Court jurisdiction - Respondent argued that general body resolutions touching society's affairs fall within Sec.91 - Court observed that Sec.154B(1)(17) only enables but does not mandate inclusion of redevelopment in housing society's business - Bye laws not amended automatically by 2019 Amendment - Redevelopment by developer includes elements beyond membership activities - Dispute essentially concerns conduct of general body and management decisions - Such disputes fall under Sec.91 and can be tried by Co-operative Court - Hence application under Order VII Rule 11 rightly rejected - Writ Petition lacks merit - Petition Dismissed

Law Point: Redevelopment matters may fall within Co-operative Court's jurisdiction under Sec.91 if they involve conduct or management of society, but amended definition of housing society under Sec.154B does not by itself expand a society's business unless bye laws are amended accordingly.

Acts Referred:

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

Maharashtra Co-Operative Societies Act, 1960 Sec. 91, Sec. 2, Sec. 154B

Counsel:

Mayur Khandeparkar, Rachna Mamnani, Prashant P Kulkarni, Nikhil Rajeshirke, Vishwajeet Kapse, Saurabh Rajeshirke, Kavita N Solunke, Hamid Mulla

JUDGEMENT

Amit Borkar, J.- [1] The petitioner society, by the present petition, has called in question the order passed by the Co operative Appellate Court, whereby the petitioner's application under Order VII Rule 11 of the Code of Civil Procedure seeking dismissal of the dispute was rejected. The application was founded on the contention that the issue of redevelopment does not fall within the jurisdiction of the Co operative Court.

[2] Respondent No.1 instituted Dispute No. CC/III/49/2024 before the Co operative Court at Mumbai, along with an application seeking interim relief. The petitioner society

filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908. Respondent No.1 filed his reply to the said application. The learned Judge of Co operative Court No.3, Mumbai, passed an order on the application dismissing dispute. Aggrieved thereby, Respondent No.1 preferred Appeal No.24 of 2024 challenging the order dated 17 May 2024. The learned Appellate Judge allowed Appeal No.24 of 2024 preferred by Respondent No.1. The order dated 17 May 2024 passed below Exhibit 18 in Dispute No. CC/III/49/2024 was set aside. In its place, the application filed by the petitioner at Exhibit 18 came to be rejected. The Appellate Court further directed the office of Co operative Court No.3, Mumbai, to restore the dispute to its original position. It is in these circumstances that the present writ petition has been filed.

[3] Mr. Khandeparkar learned advocate for petitioner submitted that Section 154B(1)(17) of the Maharashtra Co operative Societies Act, 1960 defines a housing society to mean a society whose object is to provide its members common amenities and services and also to demolish existing buildings and reconstruct or to construct additional tenements or premises by utilising the potential of the land. The definition, on its plain reading, includes demolition and reconstruction as one of the permissible objects of a housing society. The question that therefore arises is whether a housing society, which has not amended its bye laws to incorporate such an object, can be said to be carrying on the business of demolition and reconstruction merely because the Amendment Act of 2019 has come into force. The answer to the above question must necessarily be in the negative, for the reason that Section 154B(1)(17) is an enabling provision. The co operative movement is founded on voluntary association. The State cannot compel a society to amend its bye laws, as such compulsion would defeat the very purpose of its formation. The inclusion of demolition and reconstruction in the statutory definition only confers an option on housing societies to amend their objects, if they so choose. It does not operate as a mandate. This position is supported by the judgment in **Happy Home Co operative Housing Society Limited v. State of Maharashtra**, 2016 2 BCR 462. The statutory definition must be read in the context of the object of a particular housing society. Unless the bye laws of the society contain demolition and reconstruction as one of its objects, such activity cannot be treated as its business. In the absence of such an object in the bye laws, redevelopment cannot be forced into the fold of the society's business merely on the strength of the amended definition. Section 154B(31)(1) contains a saving clause in respect of existing bye laws. It expressly provides that bye laws in force on the date of commencement of the Amendment Act of 2019 shall continue to apply until they are expressly modified or amended. This makes it clear that societies governed by Chapter XIII B are not deemed to have automatically amended their bye laws to include demolition and reconstruction as an object. The saving provision does not render Chapter XIII B inapplicable. However, it also does not create a legal fiction by which existing bye laws stand amended with immediate effect. As a consequence, resolutions relating to demolition and reconstruction cannot, by default, be treated as matters of management or business

of such societies. Sub clause (2) of Section 154B(31) further provides that pending proceedings shall continue and be decided as if the said chapter had not been made applicable. This reinforces the legislative intent underlying the saving provision.

[4] He submitted that a learned Single Judge of this Court, by order dated 6 October 2022 in Bhoumik Co operative Housing Society v. Vina Sisawala and others, has held that Section 154B(1) (17) is an enabling provision. It was further held that the amended definition of housing society would not apply where the existing bye laws do not include redevelopment as one of the objects, particularly in view of the saving clause under Section 154B(31). There can be several reasons why a housing society may consciously decide not to include demolition and reconstruction as one of its objects. That decision must be left to the collective wisdom of the society. A society may deliberately avoid making redevelopment part of its business, as doing so would attract the bar of civil court jurisdiction and exclude arbitration as a mode of dispute resolution, having regard to Sections 91 and 163 of the Act. Section 91 of the Act enumerates the disputes over which the Co operative Court has jurisdiction. This provision does not restrict the power of a society to deliberate or resolve upon matters beyond the subjects falling within such jurisdiction. Through its general body, a society may take decisions on various aspects, including those falling within its bye laws. There is a clear distinction between demolition and reconstruction of a society's existing building and redevelopment undertaken through a developer acting as an agent coupled with interest. The differences are significant.

[5] He submitted that redevelopment by a developer involves construction not only for allotment to members but also construction undertaken by the developer on a principal to principal basis for third parties. The definition of housing society under Section 154B(1)(17) recognises tenant ownership and tenant co partnership housing societies, both of which contemplate allotment only to members. Redevelopment through a developer typically results in construction of units for non members, who may or may not be admitted subsequently. A developer appointed for redevelopment acts as an agent coupled with interest. The free sale component is dealt with by the developer in his own right, and the proceeds thereof accrue exclusively to the developer, not to the society. Funds raised by the developer are not raised as an agent of the society. Lending institutions do not have recourse against the society or the rehabilitation component on the premise of agency. Indian law recognises the concept of dual ownership, where a developer, upon payment of requisite premiums and utilisation of TDR, acquires ownership rights in the free sale component. For this reason, such a developer is treated as a promoter under the provisions of MOFA and RERA.The Supreme Court in **Margret Almeida v. Bombay Catholic Co operative Housing Society Limited**, 2012 5 SCC 642, has held that a developer does not fall within the scope of Section 91(1)(c) or Section 93 of the Act. This view has been followed by this Court in Komal Arvind Vesavkar v. Vesawa Koli Sarvoday Sahakari Society Limited, Writ Petition No. 8254 of 2022.

[6] Per contra, Mr. Rajeshirke learned advocate for Respondent No. 1 submitted that a plain reading of Section 91 shows that a member of a co operative housing society, who is bound by the decisions of the general body, is entitled to question such decisions before the Co operative Court. The provision expressly takes within its fold disputes relating to the conduct of general meetings, as well as disputes touching the affairs, management, or business of the society. These categories are independent. A dispute need not satisfy all of them together. It is sufficient if it falls under any one category.

[7] He submitted that when the dispute application and the prayers are read as a whole, it becomes evident that the disputant has challenged the manner in which the general body meetings were conducted and the resolutions passed therein. These resolutions are sought to be enforced against him on the premise of collective will. The dispute has been raised by a member of the society against the society itself. The second statutory requirement is therefore clearly satisfied. The dispute squarely falls within the ambit of Section 91. By virtue of Section 91(3), the Co operative Court alone has jurisdiction to entertain and decide such a dispute.

[8] He submitted that this view finds support from the judgment of this Court in **Chirag Infra Projects v. Vijay Jwala Co operative Housing Society Limited**, 2022 2 AllMR 484. In paragraph 12 of the said decision, this Court observed that a member is bound by the resolutions of the general body unless he challenges them by resorting to the remedies provided under the Maharashtra Co operative Societies Act. This principle applies even where the resolutions relate to redevelopment of the society property.

[9] He submitted that as regards the judgments relied upon by the petitioner to contend that redevelopment does not touch the business of the society, the reliance is misplaced. The petitioner has relied upon the decisions of the Division Bench of this Court in Mohinder Kaur Kochar v. Mayfair Housing Private Limited, Maya Developers v. Neelam R. Thakkar, and Parimal H. Solanki v. Bhauik Co operative Housing Society Limited. The factual context of those cases is materially different. In those matters, suits were instituted by developers seeking specific performance of development agreements executed in their favour. The question of jurisdiction under Section 91 arose in the context of claims made by developers under contractual arrangements. In those cases, the courts were not concerned with the validity of resolutions passed by the general body or with the legality of the conduct of general meetings. The discussion was confined to whether such disputes could be said to touch the business of the society. Those judgments do not consider, nor do they lay down any binding principle, in relation to the other categories expressly provided under Section 91, such as conduct of general meetings or management of the society. For this reason, the said judgments do not govern the controversy in the present case.

[10] He submitted that the legislative change brought about in the year 2019. Prior to the amendment, Section 2(16) of the Maharashtra Co operative Societies Act defined

a housing society as one formed to provide its members with plots, dwelling houses, or flats, and common amenities and services. By the 2019 amendment, a separate definition of housing society was introduced under Section 154B(1)(17). The amended definition expressly includes demolition of existing buildings, reconstruction, and construction of additional tenements by utilising the potential of the land. The scope of activities of a housing society has thus been expressly expanded to include redevelopment.

[11] He submitted that in view of this statutory framework, a dispute raised by a member challenging resolutions passed by the general body and the conduct of general body meetings clearly falls within the jurisdiction of the Co operative Court under Section 91 of the Act. The order passed by the Trial Court, therefore, does not warrant interference. On the contrary, the Appellate Court was justified in affirming the maintainability of the dispute. For these reasons, the petition lacks merit and is liable to be dismissed.

Reasons:

[12] The petition raises a narrow but important question. It concerns the scope of the Court's power under Order VII Rule 11 of the Code of Civil Procedure. The petitioner society seeks rejection of the dispute at the threshold. The foundation of the request is that the dispute is barred by law and that the Cooperative Court lacks jurisdiction. The respondent disputes both propositions.

[13] At the outset, the legal position governing Order VII Rule 11 must be stated with clarity. While considering an application under this provision, the Court must confine itself strictly to the averments in the dispute application and the reliefs claimed therein. Nothing beyond the dispute application can be looked into. No defence. No reply. No documents produced by the opponent. No disputed facts. The Court must assume the pleadings of the disputant to be true and test only one thing. Whether on those pleadings, the dispute is barred by any law or does not disclose a cause of action. This limitation on the Court's power is a rule of law. Any adjudication which travels beyond the dispute application converts a summary scrutiny into a full trial. Order VII Rule 11 does not permit such an exercise.

[14] The central argument of the petitioner is that issues relating to redevelopment do not fall within the jurisdiction of the Co operative Court and, on that basis alone, the dispute deserves to be rejected at the threshold.

[15] To answer this, one must first understand the clear difference between jurisdiction and a statutory bar. Jurisdiction means the legal authority of a court to hear a dispute and decide it. This authority does not come from the court's own will. It flows only from the statute which creates the court and defines its powers. If a court acts without jurisdiction, its decision has no legal existence. Maintainability stands on a different footing. It concerns whether a particular case can be entertained in the form in which it is filed. A court may have full jurisdiction over a class of disputes, yet a

particular case may still fail because it is filed late, or by a person who has no legal right to complain, or because some law forbids that kind of proceeding.

[16] A statutory bar for the purpose of Order VII Rule 11(d) is not the same thing as absence of jurisdiction. Rejection of a plaint under this provision is permitted only where the law clearly prohibits such a suit or dispute from being filed at all. The bar must be evident from the plaint itself. The court must be able to say, by reading only the statements in the plaint, that the law expressly prevents the court from proceeding further. If the bar is not plain, or if it requires examination of facts or evidence, the plaint cannot be rejected. This Court has earlier explained this distinction in Deepak Manaklal Katariya v. Ashok Motilal Katariya and others,2025 SCCOnLineBom 4345, where rejection was set aside because the trial court had mixed up lack of jurisdiction with a supposed statutory bar.

[17] The courts below have treated jurisdiction and maintainability as if they are the same. They are not. Jurisdiction refers to the power of the court to receive a case, examine the facts, apply the law, and give a binding decision. Jurisdiction is commonly understood in three forms. Subject matter jurisdiction relates to the type of disputes a court can hear. Territorial jurisdiction concerns the geographical limits of that power. Pecuniary jurisdiction depends on the monetary value involved. Jurisdiction is entirely statutory. Either the statute grants the power or it does not. No consent of parties can confer jurisdiction where none exists. If a court lacking jurisdiction decides a matter, the decision is void. On the other hand, if a court having jurisdiction commits an error in deciding the case, the decision does not become invalid merely because it is wrong. Jurisdiction concerns the power to decide, not the correctness of the decision.

[18] Maintainability addresses a different question. It asks whether the case is properly brought before the court. A court may have jurisdiction over the subject matter, yet the case may be dismissed because mandatory procedure is not followed, because it is filed beyond limitation, because the person approaching the court has no enforceable right, or because a specific statutory condition has not been satisfied. These defects do not destroy the court's authority. They only prevent the particular case from proceeding. There may be several kinds of statutory bars. The law of res judicata prevents a matter already decided from being raised again. The law of limitation bars stale claims. Absence of locus standi means the person filing the case is not legally entitled to raise the grievance. All these result in dismissal of the case. None of them mean that the court itself lacked jurisdiction to hear such disputes.

[19] It is therefore essential to keep these two concepts separate. Jurisdiction flows from the statute and defines the court's power. Maintainability depends on whether the party has fulfilled the legal conditions for invoking that power. When jurisdiction is absent, everything that follows is void. When maintainability fails, only that particular proceeding ends; the court's general authority remains untouched. Jurisdiction thus concerns the court's authority. Maintainability concerns whether the dispute, as presented, satisfies legal requirements. This distinction is crucial while applying Order

VII Rule 11(d). That provision applies only where the plaint itself shows a clear and absolute statutory bar. It does not apply where the court has jurisdiction and the objections raised require examination of facts or evidence.

[20] Order VII Rule 11 permits rejection of a plaint only where the bar is clear from the plaint itself. When an issue requires examination of additional material or evaluation of facts, it travels beyond the limited scope of that provision. Whether redevelopment forms part of the object of a housing society, as contemplated under Section 154B(1)(17) of the Maharashtra Co operative Societies Act, is not a pure question of law. It is a mixed question of law and fact. Its determination depends upon the specific objects of the society as recorded in its bye laws, the manner in which the society has acted upon those objects, and the nature of the resolutions passed by the general body. In the present case, the bye laws of the society are not part of the plaint. Without examining the bye laws, it is not possible to record a definitive finding as to whether redevelopment does or does not form part of the society's objects. Such an exercise would necessarily require evidence and adjudication on merits. That exercise lies squarely within the domain of the Co operative Court during trial. Order VII Rule 11 permits rejection of a plaint only where the bar is clear from the plaint itself. When an issue requires examination of additional material or evaluation of facts, it travels beyond the limited scope of that provision. Since the question of redevelopment being part of the society's object is a mixed question of law and fact, and since the necessary factual foundation is not before the Court at this stage, the dispute cannot be rejected under Order VII Rule 11.

[21] The submission based on Section 154B and the saving clause also does not justify rejection of the dispute at the threshold. The effect of the 2019 amendment, the nature of the enabling provision, and the impact of the saving clause are all matters requiring interpretation in the context of evidence and statutory scheme. They do not create an express bar to institution of a dispute by a member challenging resolutions of the general body. At the highest, they raise issues for adjudication on merits.

[22] The argument that the society has executed a Memorandum of Agreed Terms and is bound contractually is equally irrelevant at this stage. Whether the MOAT is valid. Whether it binds dissenting members. Whether it was executed pursuant to valid resolutions. All these are mixed questions of fact and law. They cannot be decided while testing the maintainability of the dispute under Order VII Rule 11.

[23] It is also important to note that rejection of a dispute is a drastic power. It non suits a party without trial. Such power must therefore be exercised with circumspection. Unless the bar under law is clear, unambiguous, and apparent from the dispute application itself, rejection is impermissible.

[24] In the present case, no such bar emerges from the dispute application. On the contrary, the pleadings disclose a dispute which, on its face, falls within the jurisdiction of the Cooperative Court. The petitioner's submissions may constitute defences on

merits. They may succeed or fail at the conclusion of the trial. They cannot be used to shut out the dispute at inception.

[25] For these reasons, the writ petition fails. The challenge is rejected. The dispute shall proceed in accordance with law

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2026(1)MCJ15

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Amit Borkar)

Writ Petition; Civil Application (St) No 21067 of 2016 **dated 18/12/2025**

Sahadeo Namdeo Mahadik (Since Deceased); Bhagirathibai Sahadeo Mahadik; Sunderabai Rambhau Patil; Indirabai Dattatray Mahalkar; Gayabai Yashwant Jadhav; Nandkumar Sahadeo Mahadik; Krushna Sahadeo Mahadik; Machindranath D

Versus

Parvatibai Mahadeo; Hari Vitthal Tulpule; Kum Rohini Hari Tulpule; Trimbak Hari Tulpule; Vijay Trimbak Tulpule; Sameer Ashok Tulpule; Nitin Ashok Tulpule; Sushma Ashok Tulpule; V H Tulpule; Malini Tulpule; Ajay Vitthal T

SUCCESSION OF TENANCY LAND

Code of Civil Procedure, 1908 Or. 22R. 5 - Bombay Tenancy and Agricultural Lands Act, 1948 Sec. 32G, Sec. 43 - Hindu Succession Act, 1956 Sec. 15 - Succession of Tenancy Land - Petition filed to determine rightful heirs of deceased tenant - Dispute arose on inheritance of tenancy land after tenant's wife's death - Petitioners claimed succession through husband's heirs - Contesting respondent claimed right under will and as brother's son - Court analyzed Sec.43 of Tenancy Act restricting transfer of tenancy land and Sec.15 of Hindu Succession Act governing succession of female Hindu - Held land purchased under tenancy cannot be transferred by will - Property inherited from husband devolves upon husband's heirs in absence of children - Found petitioners legal representatives of deceased tenant's wife - Will declared invalid - Application Allowed

Law Point: Tenancy land obtained under Sec.32G cannot be transferred by will - On death of female heir without issue, such property devolves upon husband's heirs under Sec.15(2)(b) of Hindu Succession Act.

Acts Referred:

Code of Civil Procedure, 1908 Or. 22R. 5

Bombay Tenancy and Agricultural Lands Act, 1948 Sec. 32G, Sec. 43

Hindu Succession Act, 1956 Sec. 15

Counsel:

Ajit J Kenjale, Utkantha A Kenjale, Sohil M Gulabani, Sai Rajendra Kadam, Azharuddin A Khan, Milind Parab, Milind Parab & Associates

JUDGEMENT

Amit Borkar, J.- [1] Civil Application (St.) No.21067 of 2016:

1. Having regard to the nature of the dispute, it becomes necessary to determine the status of the parties by applying Order XXII Rule 5 of the Code of Civil Procedure, 1908. The Court is required to decide who succeeds respondent No.1 Parvatibai, in whose favour the Maharashtra Revenue Tribunal delivered its judgment holding that she was the wife of tenant Mahadeo. The Tribunal further held that Mahadeo was in possession of the disputed land as a tenant.

[2] The facts relevant for deciding the present civil application may be stated thus. In proceedings arising under Section 32-G of the Maharashtra Tenancy and Agricultural Lands Act, 1948, the Tribunal, by judgment and order dated 21 September 2017, set aside the order passed by the Tahsildar and Agricultural Lands Tribunal, Mumbai, as well as the appellate authority, which had accepted the petitioners' predecessor in title as a tenant on 1 April 1957. However, by its judgment dated 21 September 2012, the Tribunal declared Mahadeo, the predecessor in title of Parvatibai, to be the tenant as on 1 April 1957 and accordingly directed issuance of a certificate under Section 32-G of the said Act in favour of Parvatibai.

[3] The petitioners, claiming to be heirs of Sahdeo, instituted the present writ petition challenging the judgment and order passed by the Maharashtra Revenue Tribunal. During pendency of the writ petition, Parvatibai, respondent No.1, expired on 11 March 2016. The petitioners therefore filed the present civil application seeking to bring themselves on record as legal representatives of Parvatibai. According to the petitioners, Parvatibai had inherited the property of her husband Mahadeo. They contend that succession is governed by Section 15 of the Hindu Succession Act, 1956 and that in the absence of heirs mentioned in clause (1) of Section 15, namely son, daughter and husband, the heirs specified in clause (2) would take precedence over the personal heirs of Parvatibai.

[4] The petitioners further contend that the contesting respondent claims to be the son of Parvatibai's brother and asserts rights on the basis of a registered Will allegedly executed by Parvatibai in the year 2000. According to the petitioners, Section 43 of the Maharashtra Tenancy and Agricultural Lands Act prohibits transfer of ownership in favour of third parties except legal representatives. They submit that a transfer by Will is also hit by the bar under Section 43. In support of this contention, reliance is placed on the judgment of the Supreme Court in **Vinodchandra Sakarlal Kapadia v. State of Gujarat and others**, 2020 18 SCC 144.

[5] On the other hand, learned Advocate for the contesting respondent, who claims rights both under the registered Will and as legal representative of Parvatibai, submitted

that the restriction under Section 43 of the Act operates only for a period of ten years. He contended that since the said period has expired, the bar under Section 43 would not apply. He further submitted that the contesting respondent, being the son of Parvatibai's brother, is entitled to priority over the heirs of the husband, in view of the judgment of the Supreme Court in Khushi Ram and others v. Nawal Singh and others, Civil Appeal No.5167 of 2010 decided on 22 February 2021. He also submitted that the claim of the petitioners as heirs of the husband is itself disputed and therefore the contesting respondent ought to be brought on record as the heir and legal representative of original respondent No.1.

[6] I have heard the learned Advocates appearing for the parties and have considered the submissions advanced on behalf of both sides.

[7] For proper adjudication of the controversy, it is necessary to notice the relevant statutory provisions. The dispute turns on the scope and effect of Section 43 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 and Section 15 of the Hindu Succession Act, 1956., which read thus:

> **"43.** (1) No land purchased by a tenant under section 32, 32F, 32I, 32O, 33C or 43-ID or sold to any person under section 32P or 64 shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector, Such sanction shall be given by the Collector in such circumstances, and subject to such conditions, as may be prescribed by the State Government:
>
> Provided that, no such sanction shall be necessary where the land is to be mortgaged in favour of Government or a society registered or deemed to be registered under the * Bombay Co-operative Societies Act, 1925, for raising a loan for effecting any improvement of such land:
>
> Provided further that, no such previous sanction shall be necessary for the sale, gift, exchange, mortgage, lease or assignment of the land in respect of which ten years have elapsed from the date of purchase or sale of land under the sections mentioned in this sub-section, subject to the conditions that,--
>
> (a) before selling the land, the seller shall pay a nazarana equal to forty times the assessment of the land revenue to the Government;
>
> (b) the purchaser shall be an agriculturist;
>
> (c) the purchaser shall not hold the land in excess of the ceiling area permissible under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961; and
>
> (d) the provisions of the @ Bombay Prevention of Fragmention and Consolidation of Holdings Act, 1947 shall not be violated.
>
> (2) Any transfer of land in contravention of sub-section (1) shall be invalid.

15. General rules of succession in the case of female Hindus.

1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1), (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

[8] Section 43 of the MTAL Act places a restriction on transfer of land purchased or sold under the tenancy provisions of the Act. Such land cannot be transferred by sale, gift, exchange, mortgage, lease, or assignment without prior permission of the Collector. The Collector may grant such permission subject to conditions prescribed by the State Government. An exception is carved out where the land is mortgaged in favour of the Government or a registered co-operative society for the purpose of raising a loan for improvement of the land. A further exception is provided where ten years have elapsed from the date of purchase or sale. Even in such cases, transfer is permissible only if the seller pays nazarana to the Government, the purchaser is an agriculturist, the ceiling law is not violated, and the law relating to prevention of fragmentation is complied with. Any transfer made in breach of these conditions is rendered invalid.

[9] Section 15 of the Hindu Succession Act lays down the general rules of succession in the case of a female Hindu dying intestate. In the first order, the property devolves upon her sons and daughters and the husband. In their absence, it devolves upon the heirs of the husband. Thereafter, it devolves upon the mother and father, followed by the heirs of the father, and lastly upon the heirs of the mother. Sub-section (2) creates a special rule. Where the property is inherited by a female Hindu from her parents, and she dies without leaving any son or daughter, such property devolves upon the heirs of her father. Where the property is inherited from her husband or father-in-law, and she dies without leaving any son or daughter, such property devolves upon the

heirs of the husband, notwithstanding the general order of succession prescribed in sub-section (1).

[10] A conjoint reading of Section 43 of the MTAL Act and Section 15 of the Hindu Succession Act makes the legislative scheme clear. Section 43 places a statutory restriction on the manner in which ownership rights acquired under Section 32-G can be dealt with. The object is to prevent alienation of tenancy lands to strangers and to ensure that such lands remain with those for whose benefit the statute was enacted. For this reason, the provision restrains the owner from selling, gifting, exchanging, mortgaging, leasing, or assigning the land to third persons. The only exception implicit in the scheme is in favour of legal representatives, because succession by operation of law does not amount to a voluntary transfer.

[11] At the same time, the proviso to Section 43 reflects a conscious relaxation introduced by the Legislature. The proviso makes it clear that after completion of ten years from the date of purchase under Section 32-G, the absolute bar under sub-section (1) does not continue in the same rigid form. The Legislature has, therefore, balanced two competing interests. One is protection of tenancy land from immediate alienation. The other is recognition of full ownership rights after passage of reasonable time. This exemption after ten years is not automatic in the sense of unfettered freedom. It is subject to statutory conditions. Those conditions are expressly stated in the provision and cannot be ignored.

[12] Thus, the correct interpretation, supported by the plain language of the statute, is that Section 43 imposes a time-bound restriction. During the prohibited period, transfer to third parties is impermissible and any such act is invalid. After expiry of ten years, the embargo stands diluted to the extent provided by law. This interpretation flows directly from the text of Section 43 and does not require any external aid. It gives full effect to the object of the Act while respecting the legislative intent behind the later proviso.

[13] The judgment of the Supreme Court in Vinodchandra Sakarlal Kapadia, leaves no real ambiguity. It holds that the Act does not permit a tenant purchaser to transfer land by Will within ten years in favour of a person who is not legal representative. This conclusion flows directly from the statutory provisions and their authoritative interpretation by the Supreme Court.

[14] In Vinodchandra Sakarlal Kapadia, the Supreme Court has settled the legal position on two fundamental aspects. First, the Court has held that the word "assignment" used in tenancy laws is not narrow in its meaning. It does not apply only to transfers made during the lifetime of the owner. It also covers testamentary transfers. A Will, though it takes effect after death, is still a voluntary act by which property is sought to pass from one person to another. Second, the Court has clarified that the restriction on assignment is not a technical or procedural formality. It is a substantive prohibition enacted to protect the very purpose of tenancy reform legislation.

[15] The reasoning of the Supreme Court in paragraphs 23 and 24 makes this position explicit. The Court reiterated that where a statute prohibits assignment of tenancy or ownership rights, such rights cannot be passed on by Will to a stranger. This principle was not laid down for the first time in Vinodchandra Sakarlal Kapadia. It traces back to the decision in Bhavarlal Labhchand Shah, which has been consistently followed for decades. The Supreme Court further made it clear that the word "assignment" cannot have one meaning in Sections 14 and 27 of the Act and a different meaning in Section 43. The statute must be read as a coherent whole. Giving different meanings to the same expression would defeat legislative intent.

[16] The object behind Section 43 is explained in paragraphs 25 to 27 of the judgment. Ownership under Section 32G is not conferred in the same manner as ordinary ownership under general property law. It is a statutory right given to a cultivating tenant as part of a broader social reform. The purpose is to ensure that agricultural land remains with those who actually cultivate it. The law aims to prevent absentee ownership, speculative transfers, and concentration of land in the hands of non cultivators. Even after purchase, the tenant purchaser does not enjoy unrestricted freedom. He is under a continuing obligation to cultivate the land personally. He cannot deal with the land as he pleases. Any transfer is subject to control by the State.

[17] The Supreme Court has drawn a clear and important distinction between transfers made during the lifetime of the owner and transfers made by Will. In a transfer inter vivos, prior sanction of the authority is mandatory. This enables the State to verify whether the proposed transferee is an agriculturist, whether ceiling limits are respected, and whether the object of the Act will be preserved. A Will bypasses this entire process. It operates only after death. No authority gets an opportunity to examine the eligibility of the beneficiary at the relevant time. If such testamentary transfers were permitted during the restricted period, land could easily pass into the hands of strangers or non agriculturists. This would directly defeat the purpose of tenancy legislation. The Supreme Court has, therefore, rejected such an interpretation in clear terms.

[18] When these principles are applied to the present context, the legal position becomes straightforward. A tenant purchaser who acquires ownership under Section 32G cannot, within ten years from the date of such acquisition, bequeath the land by Will to a person who is not a legal heir by operation of law. Such a Will amounts to an assignment. It takes effect only on the death of the testator. If that death occurs within the prohibited period, Section 43 squarely applies. The statute renders such assignment invalid.

[19] The reasoning adopted in the above judgment, therefore, stands on firm legal footing. It is fully aligned with the principles laid down in Vinodchandra Sakarlal Kapadia. Both decisions proceed on the same statutory logic and social purpose. A testamentary disposition is a form of assignment. Section 43 applies to it with full force. The ten year restriction operates as a complete bar during its subsistence. Any Will in

favour of a stranger or a person who is not legal representative within that period is legally ineffective.

[20] The real issue that, therefore, falls for consideration is whether Section 43 of the MTAL Act operates as a bar against the alleged assignment in favour of the contesting respondent.

[21] In the facts of the present case, it is not in dispute that the registered Will was executed in the year 2000. However, in law, a Will does not operate from the date of its execution. It takes effect only upon the death of the testator. Parvatibai expired on 11 March 2016 and, therefore, the so-called assignment under the Will came into effect only on that date. It is also an admitted position that the order of the Tribunal, by which Parvatibai derived ownership rights under Section 32-G, was passed in the year 2012. Consequently, when the Will became operative in 2016, a period of ten years had not elapsed from the date on which ownership rights accrued to Parvatibai under the Tribunal's order. During this restricted period, Section 43(1) clearly prohibits assignment of such land in favour of any person other than a legal representative. The contesting respondent claims under the Will and not by operation of law as a legal heir. Such a transfer squarely falls within the mischief of Section 43(1) and is, therefore, expressly barred.

[22] The next issue that requires consideration is whether, even otherwise, the contesting respondents can claim the status of legal representatives under Section 15 of the Hindu Succession Act. This necessarily involves examining whether Section 15 applies at all to the facts of the present case.

[23] The record clearly shows that Parvatibai derived her rights in the land only through Mahadeo. Mahadeo was the tenant as on 1 April 1957 and on that basis Parvatibai, being his widow, was held entitled to the purchase certificate under Section 32-G of the MTAL Act. Her right in the property, therefore, flows from the property of her husband. In such a situation, succession is governed by Section 15 of the Hindu Succession Act. Clause (1) of Section 15 gives priority to the son, daughter, and husband. It is an admitted position that Parvatibai left behind none of them. In these circumstances, clause (2) of Section 15 comes into operation. Clause (2)(b) specifically provides that where a female Hindu has inherited property from her husband and dies without leaving any son or daughter, such property shall devolve upon the heirs of the husband. The registered Will relied upon by the contesting respondent itself records that the petitioners are cousins of Parvatibai's husband. This admission supports the claim that the petitioners fall within the category of heirs of the husband. Once the transfer by Will is rendered ineffective due to the bar under Section 43(1) of the MTAL Act, succession has to follow the statutory mandate under Section 15(2). On the plain application of this provision, the petitioners are entitled to succeed as legal representatives.

[24] The conclusion that follows from the above discussion is clear and unavoidable. The petitioners answer the description of legal representatives of deceased Parvatibai and are entitled to succeed to her immovable property. The contesting respondents cannot claim such status either under the Will or under the law of succession. The civil application, therefore, deserves to be allowed.

[25] The civil application, accordingly, allowed.

Writ Petition No.11467 of 2012:

[26] The writ petition challenges the judgment and order passed by the Maharashtra Revenue Tribunal, by which the Tribunal set aside the concurrent findings recorded by the Agricultural Lands Tribunal and the Sub-Divisional Officer. Those authorities had accepted the rights of the petitioners' predecessor as a tenant as on 1 April 1957. The Tribunal, by reversing those findings, altered the legal position which had stood in favour of the petitioners' predecessor.

[27] However, the legal position has materially changed in view of the findings recorded while deciding Civil Application (St.) No.21067 of 2016. By that order, the petitioners have been held to be the legal representative of Parvatibai. Once this status is recognised, the consequence is clear. Even if the judgment of the Tribunal is assumed to be correct on merits, the benefit flowing from that judgment cannot be denied to the petitioners. The Tribunal itself directed issuance of a purchase certificate under Section 32-G in favour of Parvatibai. The petitioners, having stepped into her shoes as legal representative, is entitled to succeed to that benefit.

[28] In this view of the matter, the writ petition does not require any further adjudication on merits. It is sufficient to declare that the petitioners, being the legal representatives of Parvatibai, are entitled to the purchase certificate directed to be issued under Section 32-G of the MTAL Act.

[29] The writ petition is disposed of accordingly.

[30] At this stage, learned Advocate for the contesting respondents sought a stay of this order. Having regard to the nature and effect of the order, it is appropriate to grant a limited protection. The operation of this order shall, therefore, remain stayed for a period of six weeks from today

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2026(1)MCJ22

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Abhay Ahuja)

Interim Application; Commercial Admiralty Suit No. 4910 of 2025; 11 of 2021

dated 12/12/2025

Carnival Plc; In Matter Between Irwin Edmund Sequeira & Ors

Versus

Sale Proceeds of Mv Karnika

MARITIME INTERVENTION

Code of Civil Procedure, 1908 Or. 1R. 10 - Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 Sec. 4 - Maritime Intervention - Applicant mortgagee sought intervention in Commercial Admiralty Suit concerning sale proceeds of vessel M.V. Karnika - Applicant claimed decree as mortgagee and sought impleadment to prevent exaggerated decree for plaintiff's wage claims - Plaintiff agreed to limited intervention - Court examined Rule 1086 of Original Side Rules and held applicant having maritime interest can intervene to limited extent of ensuring no excess decree - Applicant allowed to join as party defendant restricted to defences appropriate to competing maritime claimant - Application Allowed

Law Point: In Admiralty suits, any person having demonstrable interest in arrested vessel or sale proceeds may intervene under Rule 1086, but defences are limited to extent of claimant's maritime interest.

Acts Referred:

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

Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 Sec. 4

Counsel:

Prashant Pratap (Senior Advocate), Kaushik S Krishnaswamy, Prathamesh Kamat, Renata Partners, Ajai Fernandes, Motiwalla And Co

JUDGEMENT

Abhay Ahuja, J.- [1] By this Interim Application, the Applicant viz. Carnival PLC seeks intervention in Commercial Admiralty Suit No. 11 of 2021 and permission to be joined as party Defendant therein.

[2] Earlier reply has been filed on behalf of the Plaintiffs in the Suit, opposing the Intervention Application. On the 28th November, 2025, Mr. Pratap, learned Senior Counsel for the Applicant had submitted that no rejoinder is necessary in the matter as the Interim Applicant has a decree in its favour and are interested in the outcome of the Suit and that this Court may allow the Interim Application for intervention of the Applicant. This Court had adjourned the matter to be listed on 5th December, 2025 and however also permitted rejoinder, if any, to be filed and served by the next date. Thereafter, the matter was listed on 5th December, 2025, when this Court was informed that no rejoinder would be filed. On the said date, Mr. Prathamesh Kamat, learned Counsel for the Plaintiff, had opposed the intervention and tendered across the bar two decisions of this Court in the cases of Axis Trustee Services Ltd. in the matter between **Indian Oil Corporation Ltd. Vs. The Sale Proceeds of M. T. Prem Mala** [Order dated 24th January 2023 in Interim Application No. 969 of 2022 in Commercial Admiralty Suit No. 35 of 2020] ("Interim Application No. 969 of 2022") and The Board of Trustees of the Port of Mumbai in the matter between **Irwin Edmund Sequeira & Ors. Vs. M. V. Karnika** (IMO8521220) [Order dated 22nd March 2022 in

Interim Application No. 895 of 2021 in Commercial Admiralty Suit No. 11 of 2021] (Interim Application No. 895 of 2021) in support of his contentions.

[3] Today when the matter is called out, Mr. Kamat, learned Counsel appearing for the Plaintiff submits on instructions that while he has no objection to the intervention being allowed, however, the intervenor be allowed to intervene in the Suit for the limited purpose of demonstrating that the Plaintiff is not entitled to a decree in excess of the genuine and sustainable claim and only raise those defences which are appropriate to his character as the competing maritime lien holder/claimant. Drawing this Court's attention to paragraph 26 of the decision in Interim Application No. 895 of 202 (supra), Mr. Kamat submits that this Court has after considering Rule 1086 of the Bombay High Court (Original Side) Rules, 1980 ("Rule 1086"), clearly observed that if the Court is satisfied that the Applicant has an interest in the vessel or the sale proceeds, he can be allowed to intervene in the Suit for the limited purpose of demonstrating that the Plaintiff is not entitled to a decree in excess of the genuine and sustainable claim and that a Claimant who is allowed to intervene cannot definitely step into the shoes of the original Defendant, vessel and or its owner, much less take all the defences which are open to such Defendant. Mr. Kamat submits that the intervenor would be entitled to raise only those defences which are appropriate to his character as the competent maritime lien holder/Claimant. Mr. Kamat has in support also drawn this Court's attention to paragraph 27 (iii) of the order in the said decision to submit that although the Applicant was permitted to file written statement but was permitted to raise defences restricted to the extent indicated in paragraph 26 of the said decision. Mr. Kamat has also as noted above relied upon the decision in Interim Application No. 969 of 2022 (supra), and submits that while permitting intervention, the Court has relied upon the very same paragraph 26 and directed the Applicant therein to file written statement raised defences to the extent indicated in paragraph 26 of the decision in Interim Application No. 895 of 2021(supra).

[4] Mr. Kamat has also today tendered across the bar decision of this Court dated 19th July 2024 in the case of Global Radiance Ship Management PTE Ltd. in the matter between **Kroll Trustee Service Ltd. Vs. M. V. Aeon** (IMO-9576818) and Connected matters [Order dated 19th July 2024 in IA 4907/22 @ IAL 38845/22 and IA 1262/23 in COMAS 41/22] ("Interim Application No. 4907 of 2022 & Connected matters") and submits that after having considered the decisions rendered so far this Court allowed the intervention in the said matter clarifying in paragraph 63(v) that the Applicants are allowed to intervene in the Suit for the limited purpose demonstrating that the Plaintiff is not entitled to a decree in excess of a genuine and sustainable claim and to raise only those defences which are appropriate to their character as the competing maritime claimants.

[5] Mr. Kamat further submits that nowhere in Order 1 Rule 10 of the Civil Procedure Code, 1908 ("CPC"), it has been stated that the Court while directing filing of a written statement to a necessary and proper party, prohibited restriction of the scope of

the defence and that therefore, the interpretation of Rule 1086 as observed in the aforesaid decisions of this Court is tenable in law.

[6] On the other hand, Mr. Pratap, learned Senior Counsel appearing for the Applicant has submitted that the Applicant was the original registered owner of the vessel Pacific Jewel which name was subsequently changed to KARNIKA. That the Applicant sold the vessel to Essel Media and Entertainment Ltd. for USD 52.5 million and Essel in turn nominated Jalesh Cruise Mauritius Ltd. as Buyer to perform the Agreement for Sale. That a Credit Agreement dated 11th March, 2019 had been executed between the Applicant and Jalesh would pay the balance consideration amount in installments. As security, Jalesh mortgaged the vessel to the Applicant and a First Registered Mortgage dated 12th March, 2019 on the Defendant Vessel was executed and registered with the Registry of the Common Wealth of Bahamas on 12th March, 2019. However, in view of defaults committed by Jalesh in payment of the last five installments, the Applicant addressed a notice of default and demand on 30th March, 2020 and in response Jalesh accepted that they were in default and that USD 12 million was outstanding. Although Jalesh requested for deferment of payment and proposed installments, however, no payments were received. It has been submitted that the Defendant vessel in the meantime was arrested at the instance of another creditor pursuant to order dated 17th March, 2020 and was thereafter, auctioned and sold to M/s. NKD Maritime Limtied for USD 11,650,000/- pursuant to the order dated 28th October, 2020 in Sherrif's Report No. 53 of 2020 in Commercial Admiralty Suit (L) No. 3579 of 2020. Mr. Pratap, learned Senior Counsel, submits that the net sale proceeds of INR 85 Crore are lying in this Court.

[7] That the Applicant thereafter filed Commercial Admiralty Suit No. 33 of 2021 inter alia to enforce the mortgage on the vessel and for recovery of an amount of USD 12,000,000/- being the outstanding principal amount under the credit / loan agreement secured by the mortgage, together with further interest and costs. That by a Judgment and order dated 13th September, 2022 this Court has decreed the said Suit in favor of the Applicant for USD 12,972,981/- plus interest @ 8% per annum from the date of the said suit and costs.

[8] It has been submitted that the Applicant has a maritime claim against the Defendant Vessel under Section 4(1)(c) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017 ("Admiralty Act"), and had filed the suit in rem against the Defendant Vessel and its sale proceeds. That the Suit having been decreed by this Court on 13th September 2024, the Applicant as Mortgagee and Creditor of the Defendant Vessel has an interest in the vessel and the money representing the sale proceed of the vessel.

[9] Mr Pratap, learned Senior Counsel, submits that the Applicant being a competing maritime claimant with the Plaintiffs has an interest in the subject matter of the Suit that has been filed by the Plaintiffs. That if the Plaintiffs suit is undefended and the claim is not challenged, the Plaintiff will obtain a decree for sums they are not

entitled to and without proving their claim, which in turn would reduce the amounts that would be available for satisfaction of the decree obtained by the Applicant and therefore, this Application has been filed seeking to intervene in the Suit to be impleaded as party Defendant. Mr. Pratap submits that the Applicant being a party interested in the Defendant Vessel, now represented by the sale proceeds of the vessel, is entitled to intervene in the present Suit with the leave of this Court in accordance with Rule 1086.

[10] Mr. Pratap submits that the intervention is necessary to ensure that unjustified and exaggerated claims of the Plaintiff are not granted, more so, as the owners of the Defendant Vessel are not appearing before this Court to contest the claim of the Plaintiffs. Mr. Pratap submits that if the Applicant is not permitted to intervene, it is possible that the Plaintiffs will obtain the decree for the said claim without contest or proof even if there are legitimate defences to their claims. Learned Senior Counsel reiterates that any amount for which the Plaintiffs obtain a decree will reduce the amount available to the Applicant whose claim exceeds the net sale proceeds deposited in this Court. Mr. Pratap submits that even the Mumbai Port Trust has filed a suit for recovery of INR 53,18,24,381 plus interest @ 15% per annum from the date of proceedings. That the Port's claim is also higher than of the Applicant, although the Port authority is yet to obtain a decree as the claim is contested by the Applicant who was entitled to intervene the Port Suit by order dated 2nd August, 2022.

[11] Mr. Pratap submits that by order dated 28th March, 2025 passed by this Court in Commercial Admiralty Suit No. 33 of 2021, priorities of various claimants have been determined in relation to the Defendant Vessel, M.V Karnika, and as can be seen, the claim of the Plaintiffs is ranked higher in priority than that of the Applicant as the Plaintiffs have styled their claim as claim for wages even though the Plaintiffs had been paid by the P & I Club and P & I Club is not entitled to claim for maritime lien. Mr. Pratap submits that on merits also, part of the claim is for purported necessaries supplied to the vessel and cannot be recovered as wages or on priority as it is a maritime claim ranking below the claim of the Applicant. Mr. Pratap submits that therefore, in the event that the Plaintiffs succeed in the present Suit without contest by the Applicant, the Plaintiffs would be entitled to receive payment in respect of the entire claim first, in priority from the sale proceeds which they are not entitled to. Mr Pratap submits that the Applicant has also learnt that the Plaintiffs have amended their original claim and increased it from USD 341,552.82/- to USD 674,052/- and that is also a cause for concern if the Plaintiffs are granted the same without any opposition. Mr. Pratap submits that the same would not only affect the rights of the Applicant but also other creditors of the Defendant Vessel. That therefore, also the Applicant be permitted to intervene to ensure that no justifiable claim is granted to the Plaintiffs. Mr Pratap submits that as submitted, the independent claim of the Applicant has been decreed by order dated 13th September, 2022 and as such the Applicant has interest in the vessel and its sale proceeds.

[12] Mr. Pratap has submitted that therefore, this application be allowed.

[13] In support of his contentions, Mr. Pratap has relied upon the order dated 2nd August, 2022 in Interim Application No. 2544 of 2022 in Commercial Admiralty Suit No. 42 of 2021, where the Applicant has been permitted to intervene in the Commercial Admiralty Suit No. 42 of 2021 as party Defendant and to file written statement without being restricted to the extent indicated in paragraph 26 of the order dated 22nd March, 2022 in Interim Application No. 895 of 2021 (supra). Mr. Pratap submits that the Plaintiff in the said Suit had also advanced similar arguments as Mr. Kamat herein and after considering the said arguments as well as the order dated 22nd March, 2022 in Interim Application No. 895 of 2021 (supra) and in particular paragraph 26 and also after having quoted various paragraphs, has observed in paragraph 10 that the said observations are of no assistance in advancing the cause or the submission on behalf of the Plaintiff and permitted the Applicant herein to be impleaded as a party Defendant therein and to file written statement without any restrictions within a period of one month of being served with the copy of amended Plaint.

[14] In support Mr. Pratap has also relied upon the decision of this Court in Interim Application No. 4907 of 2022 & Connected matters (supra). Mr. Pratap has also relied upon the commentary on Admiralty Jurisdiction and Practice (5th Edition) by Nigel Meeson and John A. Kimbell and in particular to paragraphs 4.74, 4.75 and 4.76 to submit that there is no limit to the category of person who may have interest in the property under arrest or the proceeds of sale, or whose interests may be affected by an order sought or made and that if a person has an interest in the property under arrest or in the proceeds of sale in Court or whose interest are affected by any order sought or made, he may apply to the Court to be made a party to the claim. Mr. Pratap submits that the provision of Rule 1086 and the provisions as quoted in the said commentary on Admiralty Jurisdiction and Practice (5th Edition) by Nigel Meeson and John A. Kimbell are rules which reflect historic policy of the Admiralty Court that "if a person may be injured by a decree in the suit, he has a right to be heard as against the decree; although it may eventually turn out that he can derive no pecuniary benefit from the result of the Suit itself". Mr Pratap submits that obviously the right of a person who has been made a party under Rule 1086 is limited to the protection of his interest in the res and the court will not permit into raise extraneous issues. That an intervenor cannot stand in any better position than the Defendant and is therefore, only entitled to raise defences which the owner could have raised.

[15] Mr. Pratap submits that the plain language of Rule 1086 does not limit the scope of the defence and all it says is that a person who has interest in the ship or money but who is not a defendant, may with the leave of the Judge intervene in the Suit. Referring to Order 1 Rule 10 of the CPC, Mr. Pratap has submitted that where a Defendant is added, the Plaint is to be amended in such manner as may be necessary. Learned Senior Counsel submits that neither by Rule 1086 nor by Order 1 Rule 10 of the CPC nor by any of the statutory provision the Defendant's scope of defence can be limited.

[16] Mr. Kamat learned Counsel appearing for the Plaintiff in rejoinder while denying the submissions on the merits of the Plaintiff's claim, submits that in fact the Applicant is seeking to intervene at this belated stage to delay the judgment / decree of the Plaintiffs and also the Application for Summary Judgment preferred by the Plaintiffs.

[17] Mr. Kamat further submits that the commentary on Admiralty Jurisdiction and Practice (5th Edition) by Nigel Meeson and John A. Kimbell as referred to by Mr. Pratap has been extracted in paragraph 49 by this Court in its decision dated 19th July, 2024 in Interim Application No. 4907 of 2022 & Connected matters (supra) and after considering the same this Court has clarified in 63(v) of the said decision that that Applicants are allowed to intervene in the suit for limited purpose of demonstrating that the Plaintiff is not entitled to a decree in excess of a genuine and sustainable claim and to raise only those defences which are appropriate to their character as the competing maritime claimants. Mr. Kamat submits that therefore, this court may allow the application for intervention by restricting the Applicant to raise defences in the written statement to the extent indicated in paragraph 26 of the decision of this Court in Interim Application No. 895 of 2021 (supra).

[18] As regards the submission on behalf of the Plaintiffs that the intervention is belated and only to delay the judgment / decree of the Plaintiffs as well as the application for Summary Judgment preferred by the Plaintiffs, Mr. Pratap has submitted that Rule 1086 does not prescribe any limitation and the only criteria is that the party claiming intervention has to have an interest in the Vessel or the sale proceeds thereof. Mr. Pratap reiterates that not permitting intervention in the present Suit is necessary to ensure that unjustified and exaggerated claims of the Plaintiffs are not granted, more so since the owners of the Defendant Vessel are not appearing before this Court and the Plaintiffs may obtain a decree for sums claimed without contest or proof, even if there are legitimate defences to their claims which will reduce the amount available to the Applicant.

[19] As regards the commentary on Admiralty Jurisdiction and Practice (5th Edition) by Nigel Meeson and John S. Kimbell, Mr. Pratap learned Senior Counsel has submitted that although the same has been quoted in paragraph 49 of the decision in Interim Application No. 4907 of 2022 & Connected matters (supra), however, in paragraph 50 it has been clearly held that the true test to be applied is to assess whether the party claiming intervention has any 'interest' in the vessel or the sale proceeds. Mr. Pratap submits that therefore as held in the case of the very same Applicant in Interim Application No. 2544 of 2022 in Commercial Admiralty Suit No. 42 of 2021, this Court may allow the application and permit impleadment and filing of written statement without any restriction.

[20] I have heard the learned Senior Counsel for the Applicant and the learned Counsel for the Plaintiffs in the Suit.

[21] It is to be noted that Mr. Kamat, learned Counsel appearing for the Plaintiff has submitted that while he has no objection if the intervention is allowed, however, the Applicant be restricted to raise defences only to the extent indicated in paragraph 26 of the order dated 22nd March, 2022 in Interim Application No. 895 of 2021 (supra).

[22] This Court therefore proceeds on the basis that it is not in dispute that the Applicant is a person who has interest in the ship or the sale proceeds. In Interim Application No. 895 of 2021 (supra), this Court while considering the Interim Application of the Port Authority to intervene in the Suit has, after considering Rule 1086 and in the context of the arguments by the parties with respect to interse priority between the claims of the Plaintiffs and the Port Authority to decide an Intervention Application under Rule 1086, observed in paragraph 26 as under:-

> "26 The conspectus of aforesaid considerations is that in view of Rule 1086 of the Admiralty Rules, if the Court is satisfied that the applicant has an interest in the vessel or the sale proceeds, he can be allowed to intervene in the suit for the limited purpose of demonstrating that the plaintiff is not entitled to a decree in excess of the genuine and sustainable claim. In short, a claimant, who is allowed to intervene, cannot definitely step into the shoes of original defendant vessel and/or its owner, much less take all the defences which are open to such defendant. An intervener would be entitled to raise only those defences which are appropriate to his character as the competing maritime lien holder/ claimant. Thus, I am inclined to allow the application."
>
> (emphasis supplied)

[23] As can be seen, the Court in the above context has observed in view of Rule 1086, that if the Court is satisfied that the Applicant has an interest in the vessel or the sale proceeds, he can be allowed to intervene in the Suit for the limited purpose of demonstrating that the Plaintiff is not entitled to a decree in excess of a genuine and sustainable claim and thereby, raise only those defences which are appropriate to his character as the competing maritime lien holder / claimant. However, when similar arguments as in Interim Application No. 895 of 2021 (supra) were raised by the Plaintiff-Port Authority, while the Applicant was seeking to intervene in the **Port Authority** Suit [Interim Application No. 2544 of 2022 in Commercial Admiralty Suit No. 42 of 2021], as submitted by Mr. Pratap, learned Senior Counsel for the Applicant, after considering paragraph 26 of the decision in Interim Application No. 895 of 2021 (supra), this Court refused to entertain the said arguments and rejected the contention of the Plaintiff therein to restrict the Applicant to raise defences to the extent indicated in paragraph 26. For the sake of convenience paragraphs 7 to 10 of the said order are usefully extracted as under:-

> "7. In Interim Application No.895 of 2021 in Comm. Admiralty Suit No.11 of 2021, where the Plaintiff herein had sought impleadment, I had an occasion to

consider the import of the aforesaid Rules. It was, inter alia, observed as under:

15. Sub-clause (a) of Rule 1086 provides that where an action in rem is brought against a ship, which is under arrest, or the sale proceeds of the ship, (which is in deposit with the Court), a person, who has interest in that ship or sale proceeds may intervene in the suit, with the leave of the Judge, if he is not party defendant to the suit. On a plain reading, four postulates emerges. One, an action in rem must have been brought against the vessel. Two, the vessel must be either under arrest or, post its sale, the Court holds seisin over the sale proceeds of the ship. Three, the person who seeks to intervene must have an interest in the said vessel or its sale proceeds. From the point of view of the intervener, what has to be established is the existence of an interest in the vessel or the sale proceeds. Four, it is in the discretion of the Court to allow a party to intervene."

8. All the four aforesaid postulates seem to have been made out in the case at hand. The instant suit is an action in rem. The vessel, to which the Plaintiff claims to have rendered services, is sold and the action is practically against the sale proceeds of the said vessel. Interest of the Applicant in the subject matter of action in rem is self-evident. The Applicant claims to be the first mortgagee of the said vessel. The Applicant has also instituted a suit to enforce its rights as a mortgagee.

9. Mr. Fernandes, learned Counsel for the Plaintiff, however, banked upon the observations in paragraph Nos.25 and 26 of the aforesaid Order, which read as under:

25.The matter can be looked at from a slightly different perspective. Under Clause (e) of Rule 1087, the notice shall, inter alia, state that any person having claim against the ship or the proceeds of the sale thereof shall file a suit to prove his claim before the expiration of the specified period. In a given case, pursuant to notice, a claimant may institute the suit and have the admiralty claim proved against the ship or sale proceeds. If such person ranks low in priority and a person standing higher in priority gets a decree for a sum in excess of the entitlement, and is paid out, nothing would remain for distribution to such decree holder, who ranks low in priority. The situation gets accentuated where the claim is against the sale proceeds and there is nobody to defend the suit.

26. The conspectus of aforesaid consideration is that in view of Rule 1086 of the Admiralty Rules, if the Court is satisfied that the applicant has an interest in the vessel or the sale proceeds, he can be allowed to intervene in the suit for the limited purpose of demonstrating that the plaintiff is not entitled to a decree in excess of the genuine and sustainable claim. In short, a claimant,

who is allowed to intervene, cannot definitely step into the shoes of original defendant vessel and/or its owner, much less take all the defences which are open to such defendant. An intervener would be entitled to raise only those defences which are appropriate to his character as the competing maritime lien holder/ claimant. Thus, I am inclined to allow the application."

10. I am afraid the aforesaid observations are of no assistance in advancing the cause of the submission on behalf of the Plaintiff in the case at hand. In my considered view, the aforesaid reasons, if construed in correct perspective, lend support to the claim of the Applicant. I am, therefore, inclined to allow the Application. Hence, the following order:

ORDER

(i) The Application stands allowed in terms of prayer clause (a).

(ii) The Plaintiff shall implead the Applicant as a party Defendant to this Suit.

(iii) Necessary amendment be carried out within a period of two weeks and copy of the amended Plaint be served on the Defendants within a week thereafter.

(iv) The newly added defendant shall file Written Statement within a period of one month of being served with a copy of the amended plaint."

[24] Mr. Kamat has relied upon the decision in Interim Application No. 4907 of 2022 & Connected matters (supra) to submit that after considering the decision in Interim Application No. 895 of 2021 (supra) and also the commentary on Admiralty Jurisdiction and Practice (5th Edition) by Nigel Meesan and John A. Kimbell, this Court allowed intervention subject to a clarification that the intervention in the Suit is allowed for limited purpose of demonstrating that the Plaintiff is not entitled to a decree in excess of the genuine and sustainable claim and raise only those defences which are appropriate to their character as competent maritime claimants.

[25] Mr. Pratap, on the other hand, has submitted that it is only at the stage of trial that a Court would determine whether the intervening Defendant has raised the defences which are appropriate to his character as the competing maritime lien holder / Claimant.

[26] I am of the view that the said clarification is implied in every case where intervention is allowed where the intervenor is permitted to be impleaded as Defendant. The commentary on Admiralty Jurisdiction and Practice (5th Edition) by Nigel Meeson and John A. Kimbell, in paragraph 4.74 has clearly observed that the right of a person who has been made a party is limited to the protection of his interest in the res and the Court will not permit him to raise extraneous issues and that an intervenor cannot stand in any better position than the Defendant and is therefore, only entitled to raise defences which the owner could have raised. Paragraphs 4.74, 4.75 and 4.76 of the said commentary on Admiralty Jurisdiction and Practice (5th Edition) are usefully quoted as under:-

"Third parties interested in property under arrest:

4.74 Where a person who is not a party to the claim has an interest in the property under arrest, or the proceeds of sale in court, or whose interests are affected by any order sought or made he may apply to the court to be made a party to the claim. (CPR Part 61.8(7)). Such applications are usually heard by the Admiralty Registrar. This provision in the rules reflects the historic policy of the Admiralty Court that "if a person may be injured by a decree in a suit, he has a right to be heard as against the decree; although it may eventually turn out that he can derive no pecuniary benefit from the result of the suit itself (The "Dowthrope,1843 2 WmRob 73", at page 77, per Dr. Lushington). However, the right of a person who has been made a party under this provision is limited to the protection of his interest in the res and the court will not permit him to raise extraneous issues. (The "**Lord Strathcona (No.2)**, 1925 P 143" (Hill J). An intervener cannot stand in any better position than the defendant and is therefore only entitled to raise defences which the owner could have raised. In The **"Byzantion"**, 1922 12 LloydsRep 9at pages 11 12). Hill J described the position of the interveners as follows:

"Intervention may be for either or both of two purposes: (1) to defend the action either as to liability, or as to quantum, or both, and (2) to establish a prior claim to the res without defending the action. But where the intervener defends, he defends an action not against himself, but against the res; and, as there can be no liability of the res unless there is a personal liability of the owner, he defends an action against the owner. The questions on such a defence are, is the owner liable to the plaintiff, and has the plaintiff a right in rem against the ship? It follows that the intervener cannot set up defences unless they are defences which the owner could set up."

4.75 There is no limit to the category of person who may have an interest in the property under arrest or the proceeds of sale, or whose interests may be affected by an order sought or made but the following are examples of the type of persons who have been permitted to intervene:

(i) mortgagees; (The **"Gulf Venture"**, 1985 1 LloydsRep 131 (Sheen J).

(ii) time characters claiming ownership of bunkers on board; (The **"Saint Anna"**, 1980 1 LloydsRep 180 (Sheen J).

(iii) liquidator of owners; (The **"Acrux"**, 1961 1 LloydsRep 471 (Hewson J).

(iv) trustee in bankruptcy of owner; (The "Dowthorpe",1843 2 WmRob 73.

(v) charterers; (The **"Lord Strathcona" (No.2)**, 1925 P 143 (Hill J).

(vi) ship repairers; (The **"Byzantion"**, 1922 12 LloydsRep 9.)

(vii) harbour authority claiming statutory rights of detention and sale; (The **"Sea Spray"**, 1907 P 133; The **"Ousel"**, 1957 1 LloydsRep 151; The **"Queen of the South"**, 1968 P 449 (Brandon J))

(viii) underwriters of the ship under arrest; (The **"Regina del Mare"**, 1864 Br&Lush 315 (Dr. Lushington).

(ix) an adverse claimant against the property under arrest or the proceeds of sale. (Brown v The "Flora",1898 6 ExCR 133 (Canada)).

4.76. In addition to the power to permit intervention under CPR Rule 61.8(7), the court has power to allow intervention under the general provision of CPR Part 19.1. This power is very wide in its scope."

(emphasis supplied)

[27] In fact, in the decision of this Court dated 19th July, 2024 in Interim Application No. 4907 of 2022 & Connected matters (supra), after quoting the commentary on Admiralty Jurisdiction and Practice (5th Edition) by Nigel Meeson and John A. Kimbell, in paragraph 50 it has clearly been held that the entitlement to intervene cannot be adjudged only on the basis of the nature of the possible defences which the proposed intervenor may take and the true test to be applied is to assess whether the party claiming intervention has any interest in the vessel or the sale proceeds. Paragraph 50 of the said decision is usefully quoted as under:-

"50. A fair reading of the aforesaid passages would indicate that the category of persons, who may claim interest in the res, is not limited. Illustrative capacities of interested parties have been indicated. However, in my considered view, in the face of an express provision in the Rules, if viewed in the context of the nature of the action in rem, where the vessel is sold and the sale proceeds are held for the benefit of all the creditors (of course subject to priority), the entitlement to intervene cannot be adjudged only on the basis of the nature of the possible defences which the proposed intervener may take (depending upon contest or no contest by the original defendant). The true test to be applied is, to assess whether the party claiming intervention has any 'interest' in the vessel or the sale proceeds."

(emphasis supplied)

[28] Rule 1086 clearly provides that where a ship against which a suit in rem is brought is under arrest or money representing the proceeds of the sale of that ship is in Court, a person who has interest in that ship or money but who is not a defendant to the suit may with the leave of the Judge, intervene in the Suit. Rule 1086 of the Bombay High Court (Original Side) Rules, 1980 is usefully quoted as under "Rule 1086 Interveners

(a) Where a ship against which a suit in rem is brought is under arrest or money representing the proceeds of sale of that ship is in court, a person who

has interest in that ship or money but who is not defendant to the suit may, with the leave of the Judge, intervene in the suit.

(b) An application for grant of leave under this rule may be made ex-parte by an affidavit showing the interest of the applicant in the ship against which the suit is brought or in the money held in court.

(c) A person to whom leave is granted to intervene shall thereupon become a party to the suit and shall file an appearance in person or by vakalatnama within the period specified in the order granting leave. On filing such appearance or vakalatnama, the intervener shall be treated as if he were a defendant in the suit.

(d) The Judge may order that a person to whom he grants leave to intervene in a suit, shall, within such period as may be specified in the order, serve on every other party to the suit such pleading as may be specified. "

(emphasis supplied)

[29] As can be seen all that is required for intervention is that the person has to have interest in the ship or the money. There is no other qualification or restriction to the same. And as noted above that the Applicant has interest in the sale proceeds of the Defendant-Vessel is not at all in dispute.

[30] In the case of **Kroll Trustee Services Limited in the matter between Global Radiance Ship Management PTE Ltd. Vs. Sale Proceeds of MT Aeon** [Order dated 04th July 2025 in Interim Application No. 3703 of 2024 in Commercial Admiralty Suit No. 2 of 2023] ("Interim Application No. 3703 of 2024"), this Court has in the case of mortgagee having filed a suit for a claim under Section 4(1)(c) of the Admiralty Act held that the Applicant would be a person interested in the proceeds of the sale lying with the Prothonotary & Senior Master, the suit having been filed as a suit in rem and the vessel having been arrested earlier and the sale proceeds of auction sale of the vessel having been deposited and lying with the Prothonotary & Senior Master of this Court.

[31] In the facts of this case, the Applicant, as submitted above and which is not in dispute, is a decree holder having obtained decree dated 13th September 2022 of its claim as a mortgagee in Commercial Execution Admiralty Suit No. 33 of 2021 for USD 12,972,981 plus interest @ 8% p.a. and costs for a maritime claim under Section 4(1) (c) of the Admiralty Act having filed the suit in rem against the Defendant Vessel and its sale proceeds.

[32] Nowhere in the Admiralty Act or in the Bombay High Court (Original Side) Rules, 1980 relevant to the Admiralty jurisdiction or in the CPC there is any provision or scope for limiting the defence of an intervenor who would be impleaded as a Defendant in the Suit. It is implied that an intervenor be entitled to raise defences which are appropriate to his character as the competing maritime lien holder / claimant but whether

the defences raised meet this requirement, in my view, would have to be adjudicated by the Court after the filing of the written statement. I, therefore, agree with Mr. Pratap that it is only at the stage of trial that a Court would determine whether the intervening Defendant has raised the defences which are appropriate to his character as the competing maritime lien holder / Claimant. The true test to be applied, as rightly observed by this court in Interim Application No. 3703 of 2024 (supra), for considering the application for intervention is to assess whether the party claiming intervention has any interest in the vessel or the sale proceeds. That, I reiterate is the only test and no more.

[33] As regards Mr. Kamat's submissions that the intervention is belated and the Applicant is seeking to intervene at a belated stage and delay the judgment / decree of the Plaintiffs and also the application for Summary Judgment, I am of the view that the said submissions are not tenable, particularly in view of Rule 1086 which only requires the person seeking intervention to have an interest in the Vessel or in the sale proceeds and pertinently there is no time limitation prescribed for the same. Moreover, it is only at the stage of trial that this Court will decide whether the defences raised by the Applicant are appropriate to his character as an intervening Defendant, especially considering that the claim of the Applicant has been ranked below the claim of the Plaintiffs by order dated 28th March 2025 and despite the same being disputed by the Applicant that the Plaintiffs have styled their claim as a claim for wages even though the Plaintiffs have been paid by the P&I Club and the P&I Club is not entitled to claim a maritime lien.

[34] Ergo, in the facts of this case, as can be seen that the Applicant has already obtained the judgment and decree dated 13th September 2022 as a Mortgagee in Commercial Execution Admiralty Suit No. 33 of 2021 for USD 12,972,981 along with interest, in a suit in rem brought against the vessel / sale proceeds under Section 4(1)(c) of the Admirality Act, after its arrest on 17th March 2020, and the sale proceeds of the of the auctioned sale of INR 85 Crore have been deposited and are lying with the Prothonotary & Senior Master of this Court, the Applicant-Intervenor, admittedly having established the existence of an interest in the vessel or the sale proceeds, I am of the view that Carnival PLC, the Applicant-Intervenor, be allowed to intervene and impleaded as Defendant.

[35] Accordingly the following order is passed:-

ORDER

(i) The Application stands allowed in terms of prayer Clause (a), which reads thus:-

> "(a) allow this Application and permit the Applicant to intervene in Commercial Admiralty Suit No. 11 of 2021 and be joined as a party Defendant."

(ii) The Plaintiff shall implead the Applicant as a party Defendant to this Suit.

(iii) Necessary amendments be carried out within a period of two weeks and copy of the amended Plaint be served on the Defendants within a week thereafter and an appropriate affidavit of service be filed.

(iv) The newly added Defendant shall file written statement within a period of 30 days of being served with a copy of the amended Plaint

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2026(1)MCJ36

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Amit Borkar)

Writ Petition No 2623 of 2024 **dated 09/12/2025**

Shivneri Sahakari Bank Ltd

Versus

Rupee Cooperative Bank Ltd; Shree Swaroop Sying Pvt Ltd; Mukund Atmaram Pitre

TERRITORIAL JURISDICTION

Code of Civil Procedure, 1908 Sec. 122 - States Reorganisation Act, 1956 Sec. 51 - Bombay High Court (Appellate Side) Rules, 1960 Rule 3A - Territorial Jurisdiction - Issue raised whether writ petition under Article 227 arising from dispute originating in Kolhapur District should be heard at principal seat or Kolhapur Bench - Petition under Article 227 filed challenging order of Cooperative Appellate Court at Pune - Petitioner claimed matter to be heard at Bombay - Respondents relied on Rule 3A of Appellate Side Rules mandating matters from Kolhapur District to be heard at Kolhapur - Held that there is only one High Court exercising jurisdiction over entire State - Distribution between benches is administrative and binding - Rule 3A mandatory for allocation of business - Petition concerning dispute from Kolhapur District must be heard by Single Judge at Kolhapur - Petition ordered to be transferred to Kolhapur Bench - Directions issued to registry - Petition Transferred

Law Point: Under Rule 3A of Bombay High Court Appellate Side Rules, writ petitions arising from specified districts must be heard at corresponding bench, and territorial distribution of judicial work is binding though High Court remains one constitutional entity.

Acts Referred:

Code of Civil Procedure, 1908 Sec. 122

States Reorganisation Act, 1956 Sec. 51

Bombay High Court (Appellate Side) Rules, 1960 Rule 3A

Counsel:

A R Gole, Nitin Deshpande, Anjali S Shinde

JUDGEMENT

Amit Borkar, J.- [1] The issue that requires adjudication is, whether having regard to the statutory framework, the administrative notifications issued by the High Court, and Rule 3A of the Bombay High Court Appellate Side Rules, 1960, the present writ petition under Article 227, which arises from a dispute originating in Kolhapur District, is required to be heard and decided by the learned Single Judge at the Kolhapur Bench instead of the Court at the principal seat.

[2] The facts relevant to this issue are not in dispute. The Co operative Court No. 1 at Kolhapur dismissed Dispute No. 1539 of 2006. The Maharashtra State Cooperative Appellate Court, Mumbai, Pune Bench, allowed the appeal by judgment and order dated 10 February 2022 and thereby allowed the dispute. The letter of credit which formed the basis of the dispute was opened by Respondent No. 3 at the Kolhapur branch of the petitioner Bank. Respondent No. 1 carries on business at Kolhapur, though its registered office is at Pune. All relevant transactions which gave rise to the dispute took place in Kolhapur District. A circuit bench of this Court now sits at Kolhapur under the Notifications and the amended Rules referred to by the parties. On these facts, the parties have taken different positions as to jurisdiction.

[3] Mr. Gole, learned counsel for petitioner relies on the distinction between Articles 226 and 227 of the Constitution. It is contended that Article 226 clause (1) is concerned with the authority or person to whom the writ is to be issued, that is, the situs of the authority. Article 226 clause (2) is concerned with the place where the cause of action arises, wholly or in part. Clause (2) was brought on the statute book by the Constitution (Fifteenth Amendment) Act, 1963. According to the petitioner, this amendment imported the doctrine of cause of action into Article 226. It is further urged that Article 227 contains no such reference. Article 227 vests in every High Court the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. There is no express mention of cause of action. Therefore, according to the petitioner, in proceedings under Article 227, the High Court looks only at the situs of the subordinate Court or Tribunal whose order is impugned. The concept of cause of action, as understood in the Code of Civil Procedure, has no role in deciding territorial jurisdiction under Article 227. The petitioner then stresses that the present petition is expressly filed under Article 227 and not under Article 226. It is argued that once the petitioner has invoked only the supervisory jurisdiction, the tests evolved under Article 226(2) about cause of action and part of cause of action are not attracted. The High Court exercises superintendence over "all Courts and Tribunals in the State" and the only test, according to the petitioner, is the location of the Court or Tribunal which has passed the order subject to challenge.

[4] The petitioner further submits that the Kolhapur seat of this Court is only a circuit bench. It is not a permanent bench established under Section 51(2) of the States Reorganisation Act, 1956. Being a circuit bench, it remains only a part and extension of the principal seat at Bombay. Under Section 51(3) of the States Reorganisation Act, the

Chief Justice, with the approval of the Governor, may appoint other places where the Judges and Division Courts of the High Court may also sit. The Notification dated 1 August 2025 is issued in this background. It merely appoints Kolhapur as a place where the Judges may also sit. According to the petitioner, this does not alter the constitutional position that there is one High Court of Bombay and that the supervisory jurisdiction under Article 227 is exercised by the High Court as a whole.

[5] On the above foundation, the petitioner invokes the doctrine of merger. The submission is that once an appellate authority disposes of an appeal, the order of the original authority merges into the appellate order. What survives is only the appellate order. Therefore, in a petition under Article 227, what is challenged is the appellate order which contains within it the merged original order. The supervisory jurisdiction is thus attracted in relation to the appellate Court. On this reasoning, the petitioner contends that for a petition under Article 227, the focus must be on the appellate Court at Pune, which has passed the last order, and not on the original Co operative Court at Kolhapur.

[6] The petitioner then relies on the judgments in **Nasiruddin v. State Transport Appellate Tribunal**, 1975 2 SCC 671, and **Kusum Ingots & Alloys Ltd. v. Union of India**, 2004 6 SCC 254, and submits that these judgments have not been overruled and continue to hold the field. The later decisions in **Ambica Industries v. Commissioner of Central Excise**, 2007 6 SCC 769, and **Calcutta Gujarati Education Society v. Provident Fund Commr.**, 2020 19 SCC 380, are said to have considered Article 227 along with Article 226(2) but without clearly distinguishing Nasiruddin or Kusum Ingots. It is therefore argued that the principles in Nasiruddin and Kusum Ingots regarding cause of action and part cause of action cannot be pressed into service to rework the scheme of Article 227. The last submission for the petitioner is that under Article 227, the jurisdiction exists to ensure that the Courts and Tribunals remain within the bounds of their authority. In this limited supervisory jurisdiction, the High Court is concerned only with the correctness and legality of the impugned order, not with where any cause of action arose. On this logic, the bench which exercises superintendence over the appellate Court at Pune must decide the present petition.

[7] The respondent, through learned counsel Mr. Deshpande, has taken a different line of reasoning. He first draws attention to Section 51 of the States Reorganisation Act, 1956. Section 51(1) authorises the President, by notified order, to appoint the principal seat of the High Court for a new State. Section 51(2) provides for establishment of a permanent bench or benches at such other places as may be specified. Section 51(3) further provides that notwithstanding what is stated in sub sections (1) and (2), Judges and Division Courts of the High Court may also sit at such other places in the State as the Chief Justice may appoint with the approval of the Governor. According to the respondent, these provisions make it clear that whether it is the principal seat, a permanent bench under sub section (2) or a place of sitting under sub section (3), the Judges at all such places form part of the same High Court. They exercise the same jurisdiction. The difference is only about the place of sitting and the internal allocation

of business. The respondent then relies on the Notification dated 1 August 2025 issued by the Chief Justice, in consultation with the State Government, whereby Kolhapur is appointed as a place at which the Judges and Division Courts of this High Court may also sit with effect from 18 August 2025. By a subsequent Notification dated 28 August 2025, the Bombay High Court Appellate Side Rules, 1960 have been amended by the Bombay High Court Appellate Side (Amendment) Rules, 2025. By this amendment, Rule 3A has been inserted. Under this Rule, all appeals, applications and petitions, including petitions under Articles 226 and 227 of the Constitution, arising in the judicial districts of Kolhapur, Ratnagiri, Satara, Sangli, Sindhudurg and Solapur, which lie within the jurisdiction of the High Court of Bombay, "shall" be disposed of by a Single Judge sitting at Kolhapur. The respondent therefore submits that the question is not whether the High Court at Bombay has jurisdiction or the High Court at Kolhapur has jurisdiction. There is only one High Court. The question is which particular bench, as per the Rules framed by the High Court itself, will hear matters arising from a given judicial district. On the plain language of Rule 3A, all matters arising from Kolhapur District must be heard by the Single Judge at Kolhapur.

[8] The respondent then addresses the test for deciding where the writ petition "arose". According to him, one has to look at the dispute as a whole. The petitioner Bank issued a letter of credit to Opponent No. 3 from its Kolhapur branch. The disputant Bank made payment to Opponent No. 3 based on that letter of credit. Opponent No. 2 Bank refused to honour the letter of credit. All these events took place in Kolhapur District. The Co operative Court at Kolhapur tried the dispute and dismissed it. On these admitted facts, the respondent submits that the dispute clearly arose in Kolhapur District. It was rightly filed before the Co operative Court at Kolhapur. Therefore, the writ petition arising out of this dispute must, in terms of Rule 3A, be heard by the Single Judge at Kolhapur.

[9] On the legal position of benches and circuit benches, the respondent places reliance on **State of Maharashtra v. Narayan Shamrao Puranik**, 1982 3 SCC 519. In that case, the Supreme Court upheld the notification establishing a bench at Aurangabad. In paragraph 25 of the judgment, the Supreme Court observed that the Judges and Division Courts sitting at Aurangabad are Judges and Division Courts of the same High Court of Bombay. In paragraph 26, the Court referred with approval to the judgment of a Division Bench of this Court in Seth Manaji Dana v. CIT, Bombay, Civil Appeal No. 995 of 1957, decided on 22 July 1958, which held that Judges and Division Courts sitting at Nagpur function as Judges and Division Courts of the High Court at Bombay. From these authorities, the respondent submits that Judges sitting at Kolhapur are Judges of the High Court of Bombay. The Chief Justice, as master of the roster, is competent to assign writ petitions under Article 227 arising from Kolhapur District to the learned Single Judge sitting at Kolhapur. Once such assignment is made by Rule 3A and by the Notifications, a Single Judge sitting at Bombay cannot hear matters specifically entrusted to the Single Judge sitting at Kolhapur. The respondent also answers the

petitioner's attempt to invoke the doctrine of merger for purposes of territorial allocation under Article 227. He relies on Ambica Industries . In that case, the Supreme Court considered which High Court would have jurisdiction to entertain an appeal under Section 35G(1) of the Central Excise Act when the appellate tribunal exercised jurisdiction over more than one State. The Supreme Court referred to the Four Judge Bench decision in Sri Nasiruddin and also considered Article 227 and Article 226(2). The Court held that when an appellate authority exercises jurisdiction over tribunals in more than one State, the High Court which will act as the appellate forum is the High Court of the State in which the original authority is located. The Supreme Court clarified that neither Nasiruddin nor Kusum Ingots can be read to mean that only the High Court at the place where the appellate tribunal sits will have jurisdiction. A similar principle has been followed in NCDEX e Markets Ltd. v. Canara Bank,2025 SCCOnLineCal 7215. Further, in **Principal Commissioner of Income Tax 1, Chandigarh v. ABC Papers Ltd.**, 2022 9 SCC 1, the Supreme Court has held that appeals against the decisions of the Income Tax Appellate Tribunal must be filed in that High Court within whose territorial jurisdiction the assessing officer who passed the assessment order is situated. The focus is therefore on the situs of the original authority and not only on the location of the appellate tribunal. The respondent also cites **Navin Jain v. State Bank of India**, 2002 2 CalHN 294. In that case, an order of the Debt Recovery Appellate Tribunal at Patna was challenged under Article 227 before the Calcutta High Court. The learned single judge, after highlighting the distinction between Articles 226 and 227, held that where an appellate tribunal hears appeals from more than one original tribunal located in different States, an application under Article 227 challenging the appellate tribunal's order must lie before the High Court of the State within whose territory the original tribunal concerned in that particular case is situated. Similar views have been expressed in Siddharth S. Mukherjee v. Madhab Chand Mitter,2024 SCCOnLineCal 4285, and Rajkumari Thakur v. State of Madhya Pradesh,2024 SCCOnLineMP 8643. On the strength of these authorities, the respondent submits that even when one applies Article 227, the focus for territorial nexus is on the location of the original Court or Tribunal in that particular case. The subsequent notifications dated 1 August 2025 and 22 August 2025 must therefore be given full effect, as held in **Kedarnath Agrawal v. Dhanraji Devi**, 2004 8 SCC 76, which recognises the duty of the Court to take note of subsequent events having a bearing on the forum and the relief.

[10] On the basis of the facts placed on record and the submissions advanced by both sides, the following questions arise for consideration.

(a) Whether the present writ petition, though maintainable before the High Court of Bombay under Article 227, is required to be heard at a particular bench in view of the territorial distribution of judicial work.

(b) Whether Rule 3A of the Bombay High Court Appellate Side Rules, 1960, as inserted by the Amendment Rules of 2025, is mandatory in nature and governs the forum for hearing writ petitions arising from Kolhapur District.

(c) Whether the dispute giving rise to the present petition can be said to have "arisen in the judicial district of Kolhapur" within the meaning of Rule 3A, having regard to the location of the transactions and the original adjudicating authority.

(d) Whether the doctrine of merger assists the petitioner in contending that the appellate order passed at Pune determines the proper forum for the writ petition under Article 227.

(e) Whether the absence of the expression "cause of action" in Article 227 prevents the High Court from adopting a territorial criterion for internal allocation of work between benches.

(f) Whether the Notifications dated 1 August 2025 and 28 August 2025, and the insertion of Rule 3A, being subsequent procedural developments, must be given effect even to petitions filed earlier, in light of the principles recognised by the Supreme Court.

(g) Whether, in view of the law declared in Narayan Shamrao Puranik, Ambica Industries, ABC Papers, Navin Jain and Prakash Chand, this Court sitting at the principal seat can retain seisin of a matter which stands assigned to the Kolhapur bench by Rule and roster.

(h) Whether any right exists in the petitioner to insist that the petition be heard at the principal seat despite the territorial allocation made by the High Court.

[11] The first question that falls for determination is at whether the present writ petition, though maintainable before the High Court of Bombay under Article 227, is required to be heard at a particular bench in view of the territorial distribution of judicial work.

[12] There is only one High Court of Bombay for the entire State of Maharashtra and Goa. Section 51 of the States Reorganisation Act makes it clear that the High Court may sit at different places, but it remains one constitutional Court. Judges who sit at Kolhapur sit as Judges of the High Court of Bombay. They exercise the same powers under Articles 226 and 227 as the Judges who sit at the principal seat in Bombay. No distinction can be made in their authority or in the nature of jurisdiction they exercise. The difference between the principal seat, a permanent bench or a circuit bench is only for administrative purposes. These arrangements are made so that the work of the Court is conducted conveniently in different parts of the State. They help distribute the workload, reduce travel for litigants and ensure timely access to justice. These administrative arrangements do not divide the High Court into separate Courts nor do they reduce or enlarge the constitutional powers of any Judge sitting at any place of the High Court. Article 227 gives the High Court the authority to supervise all Courts and Tribunals functioning within the State. This power covers every district and every judicial body that operates under the territorial jurisdiction of the High Court. The power is wide and complete. It enables the High Court to ensure that subordinate Courts and Tribunals act within their lawful authority and follow the procedure laid down by law.

The Co operative Court at Kolhapur and the State Co operative Appellate Court at Pune function within the territorial limits of the State of Maharashtra. These bodies are, therefore, clearly subject to the supervisory control of the High Court of Bombay. No party has brought before this Court any provision of law or any precedent to show that these Courts fall outside the purview of Article 227. The present petition challenges the legality of orders passed by these very courts. Such a challenge squarely falls within the supervisory jurisdiction of the High Court. There is no doubt about the competence of the High Court of Bombay, as a constitutional Court, to entertain and examine the petition under Article 227.

[13] To answer the first question, the Court must look at the rules framed by the High Court itself and the administrative directions issued by the Hon'ble Chief Justice. These materials are reliable and have binding force. The Bombay High Court Appellate Side (Amendment) Rules, 2025 inserted Rule 3A into the existing Rules.

[14] Rule 3A reads as under: "All appeals, applications, references and petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution arising in the Judicial Districts of Kolhapur, Ratnagiri, Satara, Sangli, Sindhudurg and Solapur which lie to the High Court of Bombay shall be presented to the Registrar, High Court Circuit Bench at Kolhapur and shall be disposed of by the Judges sitting at Kolhapur."

[15] The language of this Rule states that all appeals, applications and petitions, including matters under Articles 226 and 227, which arise in the judicial districts of Kolhapur, Ratnagiri, Satara, Sangli, Sindhudurg and Solapur, shall be heard and disposed of by a Single Judge sitting at Kolhapur. The use of the word "shall" in Rule 3A shows that the Rule is mandatory in nature. It leaves no scope for discretion. It sets out a firm territorial arrangement for distribution of judicial work between the principal seat and the Kolhapur bench. This arrangement flows from the High Court's power Article 225 and Section 122 of Code of Civil Procedure to make rules regulating its own procedure. Therefore the territorial allocation made by Rule 3A binds this Court.

[16] Rule 3A of the Appellate Side Rules uses the phrase "arising in the judicial district of Kolhapur". This expression is not intended to expand or restrict the constitutional reach of Article 227. It is simply a tool for administrative allocation. It identifies which bench will hear matters with a clear territorial link to Kolhapur District. This phrase must be applied to the factual foundation of the case. The record shows credible evidence that all essential events took place in Kolhapur. Therefore, the present matter fits completely within the meaning of a dispute arising in Kolhapur District. The mere fact that an appeal was later filed and decided in Pune does not change the origin of the dispute. Territorial origin remains fixed and is determined by the facts that created the dispute, not by the place where an appeal is heard. For the purpose of Rule 3A, the place where the dispute began is decisive. On that basis, this writ petition must be treated as one arising from the judicial district of Kolhapur. Once the Court concludes that the dispute has arisen in Kolhapur District, the legal effect of Rule 3A becomes

automatic. Rule 3A states in clear terms that every petition under Article 226 or Article 227 arising from Kolhapur District shall be heard and decided by a Single Judge sitting at Kolhapur. The word "shall" leaves no scope for discretion. It creates a binding obligation on the Court to follow the territorial allocation laid down in the Rule. The record also shows that the Chief Justice, in the exercise of administrative powers as master of the roster, has assigned matters arising from Kolhapur District to the Kolhapur bench. These administrative directions are issued under the constitutional authority of the Chief Justice and hold binding force. The Supreme Court in Narayan Shamrao Puranik has held that Judges sitting at any bench or circuit bench are Judges of the same High Court. This principle was earlier recognised in the decision of this Court in Seth Manaji Dana. These judgments make it clear that although the High Court may sit at different places, the jurisdiction and powers of the Judges remain identical. What differs is only the internal distribution of work. Therefore, when the Rules and the roster assign a particular category of matters to a Judge sitting at Kolhapur, a Judge sitting at the principal seat cannot take over those matters on the ground that he also exercises the same constitutional jurisdiction. Doing so would defeat Rule 3A and disturb the administrative structure laid down by the High Court itself. The only interpretation supported by the Rules, the judicial precedents and the constitutional scheme is that petitions arising from Kolhapur District must be heard at Kolhapur and not at the principal seat.

[17] The petitioner argues that because Article 227 does not use the words "cause of action", the High Court cannot rely on the expression "arising in a district" for deciding which bench will hear a particular matter. This submission cannot be accepted on the basis of the constitutional text, the statutory framework, or the judicial materials placed before the Court. Article 227 gives the High Court supervisory authority over all Courts and Tribunals within the territories of the State. The focus of this Article is on territorial jurisdiction of the High Court as an institution. Once that territorial link is established, Article 227 does not restrict how the High Court distributes its internal work. The Constitution leaves it to the High Court to regulate its own procedure and the manner in which its jurisdiction is exercised. In exercise of this power, the High Court has framed its Appellate Side Rules. Rule 3A uses the phrase "arising in the judicial districts of ..." as a basis for allocating work between the principal seat and the Kolhapur bench. This expression does not reduce or qualify the constitutional jurisdiction of the High Court. It serves only one purpose. It identifies which bench will hear matters that have a clear territorial connection with certain districts. This is an administrative and procedural decision supported by the High Court's rule making authority. It does not take away any substantive right of a litigant. The absence of the phrase "cause of action" in Article 227 does not mean that the High Court cannot adopt territorial criteria for internal management of judicial business. The Rule fits within the framework of the High Court's administrative powers and therefore the petitioner's argument cannot be accepted.

[18] The petitioner places strong reliance on the doctrine of merger and argues that once the appellate Court passes its order, the original order merges into it and loses separate existence. On that basis, the petitioner contends that territorial allocation should depend only on the place where the appellate Court sits. This argument goes beyond what the doctrine of merger is intended to achieve and cannot be accepted. The doctrine of merger is a principle used in appellate law. It explains that when an appeal is decided, the appellate order becomes final for the issues decided and the original order does not survive independently for those purposes. The doctrine is meant to give finality to appellate decisions. It is not a rule for deciding which bench of the High Court should hear a writ petition.

[19] The Supreme Court, in Ambica Industries and later in ABC Papers, has clarified that when a tribunal hears appeals from more than one State, the High Court that has jurisdiction is not necessarily the High Court where the tribunal is located. Instead, jurisdiction is linked to the State in which the original authority is situated. This principle rests on the territorial nexus of the dispute, which is supported by statutory interpretation and consistent judicial reasoning. The same view has been applied in Navin Jain and other later judgments dealing with Article 227. These decisions hold that when an appellate tribunal exercises jurisdiction over original tribunals in different States, a challenge under Article 227 must be carried to the High Court of the State where the original tribunal in that specific case is located. When this principle is applied to the present case, the conclusion becomes clear. The Co operative Court at Kolhapur and the State Co operative Appellate Court at Pune both lie within the territorial limits of the State of Maharashtra. Both are under the superintendence of the High Court of Bombay. Therefore, the doctrine of merger cannot be used to ignore the location of the original Court and rely only on the place of the appellate Court for deciding the proper bench. Doing so would contradict the trend of judicial authority which consistently attaches importance to the situs of the original authority. Legal materials support only one interpretation. For territorial allocation between benches of the same High Court, the origin of the dispute and the district in which the original authority acted remain relevant factors.

[20] The undisputed facts make it clear that the dispute has its roots in Kolhapur District. The letter of credit that lies at the heart of the case was issued by the petitioner's Kolhapur branch. The payment arising from that letter of credit was made in Kolhapur. The refusal by the concerned bank to honour that letter of credit also took place in Kolhapur. Each material event that gave rise to the dispute occurred within Kolhapur District. Because the dispute originated in Kolhapur, the Co operative Court at Kolhapur rightly exercised jurisdiction and conducted the trial. The Appellate Court at Pune acted only because it was the designated appellate forum for decisions rendered by the Co operative Court at Kolhapur. The appellate proceedings did not shift the geographical origin of the dispute. They only formed a continuation of the same dispute that began in Kolhapur.

[21] The petitioner has placed reliance on the decisions in Nasiruddin and Kusum Ingots. These judgments deal with Article 226(2) and the doctrine of cause of action for deciding which High Court should hear a matter when more than one High Court may appear to have jurisdiction. These cases address inter State jurisdictional issues. They guide situations where the Courts of two different States may both be connected to the dispute. In the present case, no such question arises. There is only one High Court of Bombay. It sits at different places for administrative convenience. The matter does not involve a choice between two different High Courts. It involves only the internal question. Which bench of the same High Court should hear the petition. The test applied in Nasiruddin and Kusum Ingots for deciding between different High Courts is, therefore, not directly applicable here. For this internal allocation question, the more relevant guidance comes from the judgments cited by the respondent. The Supreme Court in Ambica Industries and ABC Papers has explained that even when an appellate tribunal functions at one place, jurisdiction remains tied to the place where the original authority acted. The same approach is followed in Navin Jain and later decisions concerning Article 227.

[22] When these principles are read together with the settled position in Narayan Shamrao Puranik, which recognises that all benches of the High Court form one judicial body, the conclusion becomes clear. The proper test in such cases is to identify the district where the original authority acted and then apply the territorial allocation made by the High Court's own Rules. Rule 3A adopts that very approach. It directs that matters arising in certain judicial districts must be heard at Kolhapur. Since the dispute in the present case originates from Kolhapur District, and credible legal authority supports allocating jurisdiction on that basis, the petitioner's reliance on Nasiruddin and Kusum Ingots does not change the outcome. The internal structure created by the High Court's Rules must govern the forum for hearing this petition. Applying this principle to the present case, the Notifications dated 1 August 2025 and 28 August 2025 and the insertion of Rule 3A are significant subsequent events. These Notifications designate Kolhapur as a place where Judges of this Court may sit and amend the Appellate Side Rules to require that all matters arising from specified districts, including Kolhapur, must be heard by a Single Judge sitting at Kolhapur. Even if the present petition was originally filed at the principal seat in Mumbai, the legal position changed once Rule 3A came into effect. From that point onward, the forum for hearing petitions under Articles 226 and 227 arising from Kolhapur District stood fixed by the Rule. No material has been placed before the Court to show that Rule 3A has been stayed, suspended or otherwise rendered inapplicable.

[23] In my view, the judgment in **State of Rajasthan v. Prakash Chand**, 1998 1 SCC 1, directly supports the manner in which Rule 3A operates and must be implemented. The Supreme Court has clearly held that the Chief Justice is the "master of the roster". It is the Chief Justice who has the exclusive authority to constitute benches, to decide which Judge will sit singly, which Judges will sit in a Division Bench, and

what work each bench will do. The Court has further held that individual Judges have no general jurisdiction over all cases. They can hear and decide only those cases which are allotted to them by or under the orders of the Chief Justice. Any assumption of work outside the roster fixed by the Chief Justice is without jurisdiction and violates judicial discipline. The Rajasthan High Court Rules considered in Prakash Chand are similar with the principles on which this High Court functions. There also, the Rules provided that Judges shall sit alone or in Division Courts and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions. The Supreme Court approved the consistent view of various High Courts that no Judge or Bench can assume jurisdiction in any case unless that case is placed before him or them under the orders of the Chief Justice.

[24] Read in this light, Rule 3A of the Bombay High Court Appellate Side Rules is nothing but a concrete expression of this same principle. Under Rule 3A, the High Court, acting through its rule-making power and under the administrative control of the Chief Justice, has decided that all appeals, applications and petitions, including those under Articles 226 and 227, arising from specified districts, shall be heard by a Single Judge sitting at Kolhapur. Once such a rule is in force, no Single Judge sitting at the principal seat can disregard it and retain or assume jurisdiction over a matter which, by Rule 3A, stands assigned to the Kolhapur bench.

[25] The Supreme Court in Prakash Chand also dealt with partheard matters, tied-up cases and transfers by the Chief Justice. It held that even a part-heard case can be withdrawn from a Single Judge and transferred to a Division Bench if the Rules so demand. The Chief Justice's power to make such transfers "from time to time" was recognised as continuing and plenary, and not exhausted once an initial allotment is made. This completely answers any suggestion that because a writ petition was originally filed, or even heard in part, at the principal seat, it must necessarily continue there. Applying the ratio of Prakash Chand, once the Chief Justice and the Rules have provided that cases "arising in the judicial district of Kolhapur" shall be heard at Kolhapur, that determination is binding. It is not open to a Single Judge at the principal seat to treat such a matter as "tied up" to himself contrary to Rule 3A. The judgment further makes it clear that neither counsel nor litigants have any right to demand that a particular Judge or a particular bench should hear their case. The Supreme Court approved the view that no litigant can question the jurisdiction of Judges to whom the Chief Justice has allotted work, and no litigant can claim, as a matter of right, that his petition be heard at a particular place or by a particular bench. In the context of Rule 3A, this means that a party cannot insist that a writ petition arising from Kolhapur District be heard at the principal seat at Bombay. Once Rule 3A says that such petitions "shall" be heard at Kolhapur, the parties must submit to that forum. Their right is to approach the High Court. They do not have a further right to choose the bench within the High Court.

[26] Taken together, the principles laid down in Prakash Chand fully support the operation of Rule 3A. They affirm that:

(i) The Chief Justice has exclusive authority to constitute benches and allocate work.

(ii) Judges can hear only those matters which are allotted to them under the roster.

(iii) Litigants have no right to choose the bench.

(iv) Even part-heard matters can be transferred if the Rules so require.

(v) Any attempt by a Single Judge to disregard the roster or to sit in judgment over the Chief Justice's administrative order is without jurisdiction.

[27] In the present case, once the dispute is found to arise in Kolhapur District, Rule 3A mandates that the writ petition must be heard by the Single Judge at Kolhapur. Prakash Chand, properly applied, reinforces that conclusion and leaves no room for any bench other than the Kolhapur bench to assume seisin of the matter contrary to Rule 3A. Since the dispute clearly arises from Kolhapur District, Rule 3A directly governs the forum. The petition must now be dealt with in accordance with that Rule, irrespective of where it was originally filed.

[28] In the result, I hold as follows.

[29] The High Court of Bombay, as a constitutional Court, has supervisory jurisdiction under Article 227 over both the Cooperative Court at Kolhapur and the State Co operative Appellate Court at Pune. The present petition is maintainable under Article 227. However, having regard to Section 51 of the States Reorganisation Act, the Notifications dated 1 August 2025 and 28 August 2025 and Rule 3A of the Bombay High Court Appellate Side Rules, 1960, all petitions under Articles 226 and 227 arising from disputes in Kolhapur District are required to be heard and disposed of by a Single Judge sitting at Kolhapur. The present dispute has arisen in Kolhapur District. The writ petition therefore "arises" in Kolhapur District within the meaning of Rule 3A. The doctrine of merger does not alter this position for the purpose of territorial allocation between benches of the same High Court. The concept of cause of action in Article 226(2) does not control the High Court's power to frame Rules for internal allocation of work under Article 227. The authorities cited on behalf of the respondent, including Narayan Shamrao Puranik, Ambica Industries, ABC Papers and Navin Jain, when read together, support the view that the forum is to be determined with reference to the location of the original authority and the High Court's own Rules.

[30] Accordingly, this Court, sitting at the principal seat, will not proceed to examine the merits of the petition. The office shall forthwith transmit the writ petition, together with all connected papers, to the Circuit Bench at Kolhapur for disposal in accordance with law.

[31] All contentions of the parties on the merits of the dispute are kept open to be urged before the learned Single Judge sitting at Kolhapur.

[32] I place on record my sincere appreciation for the valuable assistance rendered by learned counsel Mr. A. R. Gole for the petitioner and learned counsel Mr. N. P. Deshpande for the respondent. Both counsel have made thorough, well researched and

focused submissions which have materially assisted the Court in arriving at a proper legal determination

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2026(1)MCJ48

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: M S Sonak; Advait M Sethna)

Appeal; Notice No 116 of 2010; 1099 of 2009 **dated 08/12/2025**

Arun Kumar Ohri

Versus

Rajendra W Khanna; Mansi Khanna; Richa Khanna

EXECUTION OF DECREE

Code of Civil Procedure, 1908 Sec. 39, Sec. 2 - Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 Sec. 24, Sec. 47 - Execution of Decree - Appeal filed by judgment debtor against execution order under Rent Act - Appellant contended that Competent Authority had no jurisdiction to award damages and such order could not be executed through Civil Court - Respondent opposed stating delay caused in execution deprived decree holder of fruits of decree - Court observed that Section 24(2) of Rent Act clearly provides liability of licensee to pay damages at double rate when possession not delivered after expiry of license - Held that Competent Authority has jurisdiction to determine and award such damages and order can be executed in accordance with law - Court found that interpretation suggested by appellant would defeat object of Rent Act - Decree holder entitled to execute order - Execution to proceed without delay. - Appeals Dismissed

Law Point: Competent Authority under Rent Act has power to award and enforce damages under Section 24(2) against licensee overstaying in licensed premises and such order is executable through Civil Court under Code of Civil Procedure.

Acts Referred:

Code of Civil Procedure, 1908 Sec. 39, Sec. 2

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 Sec. 24, Sec. 47

Counsel:

Gaurang Mehta, Rhea Mehta, Dinky Pawar, Hemakshi Gandhi

JUDGEMENT

M. S. Sonak, J.- [1] Heard the learned Counsel for the parties.

[2] This Appeal is directed against Judgment and Order dated 19 December 2009 passed by the learned Single Judge (Coram: A. S. Oka, J, as His Lordship then was) of this Court making notice No. 1099 of 2009 absolute and allowing the execution of the

order dated 27 December 2004 of the Competent Authority passed under Chapter VII of the Maharashtra Rent Control Act, 1999 (Rent Act) inter alia awarding damages against the Appellant herein.

[3] In effect, the Appellant, who is, in a sense, a judgment debtor has, from 2004 onwards, has substantially succeeded in frustrating the execution of the order dated 27 December 2004 which, entirely consistent with the provisions of Section 24(2) of the Rent Act has directed the Appellant-Licensee to pay damages at double the rate of license the fee or charge of premises fixed under the agreement of license.

[4] Mr Mehta, at the outset, submitted that the amount in relation to which these execution proceedings are pending is hardly Rs. three to four lakhs. He submitted that the decree holders have already withdrawn some amount against the bank guarantee. He further submitted that the Appellant had issued cheques to pay this amount, but they were dishonoured. He submitted that ultimately, the Appellant has not only paid the amount reflected on the cheques but also a matching amount in the criminal prosecution. He submitted, therefore, that this was a fit case in which some settlement could be explored.

[5] While we are not opposed to any settlement, it was noted that several attempts had been made, all of which failed. The parties have been litigating for years. Even the amounts received by the decree holders, though seemingly small to the Appellant here, are against a bank guarantee they must have been servicing all these years. This is an appeal from 2010, so we saw no point in further postponing the hearing of this appeal.

[6] In **Satyawati vs. Rajender Singh & Anr**, 2013 9 SCC 491 the Hon'ble Supreme Court has held that there should not be an unreasonable delay in the execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of a successful litigant would be in vain. The Court has referred to several decisions which hold that judgment debtors do not abuse the process of the Court in a manner that makes the Courts of law instrumental in defrauding creditors who have obtained decrees in accordance with their rights. The Court also noted the proverbial observation by the Privy Council that the difficulty of a litigant in India commences after he obtains a decree. This appears to be one such case. The Appellant is determined to ensure that the decree holder (the original decree holder having already expired) does not obtain the fruits of the decree.

[7] The facts and circumstances which have led to the institution of this Appeal are clear from the learned Single Judge's impugned order dated 19 December 2009. Therefore, they are not repeated in this judgment and order.

[8] Mr Mehta contended that the Competent Authority under the Rent Act has jurisdiction to order the eviction of the licensee, but no authority to direct such licensee to pay any damages. He submitted that, for recovery of damages, the licensor will have to file proceedings before the Civil Court. Accordingly, he submitted that the Competent Authority's order, which is now wrongly treated as a decree, is wholly without

jurisdiction and therefore, incapable of being executed. He relied on **SushilMehta Vs. Gobind Ram Bohra**, 1990 1 SCC 193 **Isabella Johnson Vs. M. A. Susai**, 1991 1 SCC 494 and **Chiranjilal Shrilal Goenka Vs. Jagjit Singh & Ors**, 1993 2 SCC 5075 to support his argument.

[9] Mr Mehta submitted that, in any event, there is no machinery provided under the Rent Act for the enforcement of the Competent Authority's order awarding damages. According to him, this suggests that the Competent Authority has no jurisdiction to award such damages. He relies on Smt. Asmabi Ahmed Baba Shaikh & Anr. Vs. Smt. Rani Bhawat Singh through her Legal Heirs, Chamber Summons No 792 of 2009 disposed on 27 August 2009 and Fundacio Privada Intervida Vs. Additional Commissioner,2005 5 MhLJ 769 to support his proposition.

[10] In stark contrast to the above contention, Mr Mehta submits that the Competent Authority has the power to execute its own orders. Therefore, it was not justified in transferring its order for execution to the Civil Court, i.e., the learned Single Judge of this Court on the original side. Accordingly, he submitted that the order of transferring the decree or order is a nullity and the proceedings based thereon should be quashed and set aside.

[11] Mr. Mehta submits that the order dated 27 December 2004 made by the Competent Authority "is neither order nor a decree" within meaning of Section 2(14) and Section 2(2) of the Code of Civil Procedure, 1908 and therefore, the same could not have been transferred to a Civil Court i.e., this Court on the original side for enforcement by resorting to the provisions contained in Section 39 of the CPC. He relied on Prakash H Jain Vs. Ms. Maric Fernandes,2004 5 AllMR 1 (S.C) to support this contention.

[12] Mr Mehta submitted that even if it is assumed that the Competent Authority's order dated 27 December 2004 is an order under Section 2(14) of CPC, still, the same could not have been transferred for execution to this Court by resort to Section 39 of the CPC. He submitted that the Full Bench decision of this Court, relied upon by the learned Single Judge in the impugned judgment and order, concerns the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, and the same decision could not have been applied in the context of the provisions of the Maharashtra Rent Act.

[13] Mr Mehta contended that the Respondents, based on the order dated 27 December 2004 made by the Competent Authority, had attempted to commence insolvency proceedings against the Appellant. However, on the premise that such insolvency proceedings can be commenced only if the amount stated in a decree passed by a competent Civil Court is not paid, such proceedings were rejected. He submitted that this order estops the Respondents from contending that the Competent Authority's order was enforceable as an order or a decree of a Civil Court.

[14] Finally, Mr Mehta contended that the execution proceedings were barred by limitation and therefore should have been dismissed.

[15] Ms. Dinkey Pawar defended the impugned order based on the reasoning reflected therein. She submitted that the filing of this Appeal is an abuse of the process of the Court, and the Appellant ensured that the original decree holder does not get the fruits of a decree during her lifetime. She submitted that this Appeal may be dismissed with exemplary costs.

[16] The rival contentions now fall for our determination.

[17] Section 24 of the Rent Act is part of the chapter which deals with the special provisions for the recovery of possession in certain cases. It provides that the landlord is entitled to recover possession of the premises given on a license on the expiry of the license period by making an application to the Competent Authority. Section 24(2) provides that any licensee who does not deliver possession of the premises to the landlord on the expiry of the period of license and continues to be in possession of the licensed premises till the Competent Authority dispossesses him, shall be liable to pay damages at double the rate of licensed fee or charge of the premises fixed under the agreement of license.

[18] Thus, the liability of a licensee who overstays in the licensed premises to pay damages at double the rate of the licensed fee or charge of the premises fixed under the agreement of license is not and cannot be disputed.

[19] Mr. Mehta's only contention is that the licensor will have to approach the Civil Court separately for recovery of such damages quantified in Section 24(2) of the Rent Act. He submits that the Competent Authority, which has been given the powers to order the eviction of the licensee who has chosen to overstay, will not have the power or jurisdiction to make such licensee pay damages which are statutorily provided for under Section 24(2) of the Rent Act.

[20] Apart from the harsh consequences that would ensue if the Appellant's contentions were to be accepted, we note that the decision in Fundacio Privada Intervida (supra) relied upon by Mr. Mehta, in fact holds that the Competent Authority not only has the jurisdiction to determine and award damages as provided under Section 24(2) of the Rent Act but further, the duty to exercise such powers cannot be abdicated on the specious plea that during the pendency of the proceedings, the licensee whose term of license has expired, has, surrendered the possession of licensed premises to the licensor.

[21] This Court held that even if the licensee delivers possession before initiation of eviction proceedings under Section 24(1), the Competent Authority will still have the jurisdiction to entertain and determine the claim under Section 24(2) of the Rent Act. The impugned judgment and order have followed this decision, and we see no ground to adopt any different view.

[22] A licensee, who continues to occupy the licensed premises beyond the term for which it was granted, cannot insist that the proceedings for recovery of the damages statutorily prescribed under Section 24 (2) can be recovered only by filing some separate proceeding before the Civil Court. This means that after a licensor succeeds in obtaining

an eviction order under Section 24 (1) of the Rent Act, such licensor will again have to initiate proceedings before the Civil Court to recover the amount which the licensee is made payable under Section 24 (2) of the Rent Act. Such an onerous interpretation will frustrate the objective of providing special provisions to address issues arising between licensors and licensees expeditiously.

[23] Ultimately, we cannot forget that the legislature introduced the Special provisions because the licensors were entitled to some protection upon the expiration of the license period. The licensees, being very much aware that the Court process or proceeding before the Civil Court usually goes on for years, were emboldened to continue in the license premises beyond the expiry of the prescribed license period and that too, by paying only the license fees that may have been prescribed under the license agreement or many a times without paying anything at all.

[24] This was not just a prejudicial situation faced by the licensors; as a result, they were even wary of licensing their premises, fearing they might not be able to recover possession within a reasonable time. The potential licensees, desirous of obtaining licences, were also finding it challenging to secure premises, as licensors were unwilling to provide them. The legislature intervened to remedy this mischief in the housing sector by finding a remedy that might be fair to both parties.

[25] The provisions of Section 24 (4) were enacted to ensure that the licensee is aware of the liability to pay damages at double the license fee. This serves as a deterrent to licensees who overstayed on the licensed premises. If the Appellant's argument is accepted, then the legislative intent would be undermined. The purpose of enacting such specific provisions would also be defeated. A reckless licensee would benefit unfairly by exploiting the unfortunate delays in the law and the legal process. Such reckless litigants contribute to delays in the legal system. Therefore, an interpretation favouring such a plea cannot be sustained.

[26] The interpretation now proposed by Mr Mehta encourages mischief, which the law intends to suppress, by suppressing the remedy the law wants to advance. Accepting such an interpretation would conflict with the well-established rule of interpretation that any ambiguity in a statute should be interpreted to suppress mischief and promote the remedy. Here, there is no serious ambiguity in the statute. The appellant, to frustrate the licensors, the orders obtained by them from the competent authority in 2004, and the special and salutary provisions of the Rent Act, is bent on introducing some ambiguity.

[27] The learned Single Judge who decided Fundacio Privada Intervida (supra) and the view in the impugned judgment and order delivered by A. S. Oka J. (as His Lordship then was) rejects the Appellant's arguments now advanced. We see no good ground to take any different view and therefore, reject Mr Mehta's contention about the absence of jurisdiction or authority in the Competent Authority to award damages provided under Section 24 (2) of the Rent Act.

[28] The decisions in Sushil Mehta (supra), Isabella Johnson (supra) and Chiranjilal Goenka (supra), relied upon by Mr Mehta, only lay down that an issue of nullity can always be raised even during the execution proceedings. However, now that we find that the Competent Authority's order was legal, proper and within jurisdiction, there is no question of stalling the execution proceedings any further based on this plea of nullity allegedly affecting the Competent Authority's order.

[29] Mr Mehta has advanced contradictory submissions regarding the execution of the Competent Authority's order. On one hand, he contended that relying on Asmabi Shaikh (supra), he submitted that the Competent Authority has the power to execute its own orders, if necessary by force, and on the other hand he submitted that there is no machinery provided under the Rent Act for enforcement of the orders of the Competent Authority awarding damages under Section 24 (2). The decisions referred to by Mr. Mehta support neither of the propositions and the observations therein must be construed in the context of the issues raised and the facts involved.

[30] In Asmabi Shaikh (supra), the issue of execution of the Competent Authority's order awarding damages as provided under Section 24 (2) of the Rent Act was not even involved. The problem concerned the Competent Authority's powers to enforce its eviction order against the licensee. This is even though the licensor had applied to the Competent Authority for execution of its order to recover the decretal claim for payment of compensation. Subsequently, however, the execution application was amended to include a claim for recovery of possession.

[31] In the above context and by reference to Section 47 of the Maharashtra Rent Control Act, the learned Single Judge held that the Competent Authority, which has issued a warrant of possession, is not powerless if any party obstructs the execution of the order. Now this observation cannot be read as supporting the Appellant's case that the execution proceedings, which were initially filed before the Competent Authority, can never be transferred to some other Court for execution of the order or decree by invoking the provisions relating to transfer of decree or at least the principles analogous thereto.

[32] As noted earlier, Mr Mehta did contend that the legislature provided no machinery to enforce the Competent Authority's order awarding damages under Section 24 (2) of the Rent Act. Thus, whenever it is convenient, the Appellant urges that the execution proceedings transferred to this Court are incompetent because the Competent Authority has full powers to execute its own orders. However, in the same breath, the Appellant, who, it appears, is bent upon harassing the licensor or now the licensor's legal representative, has no qualms about raising a contradictory plea that the Competent Authority has no power to execute its orders for payment of damages in terms of Section 24 (2) of the Rent Act.

[33] In Fundacio Privada Intervida (supra) relied upon by Mr. Mehta, the learned Single Judge has held that a conjoint reading of Sections 24 and 40 of the Rent Act and

the scheme of the Rent Act would make it absolutely clear that the Competent Authority is not only entitled to recover possession of the premises or dispossess the licensee but also has the power to award compensation as contemplated under Section 24 (2) of the said Act. The power to determine and award damages or compensation is not only incidental to the power to evict but a specific duty coupled with a power to decide this liability, which is bestowed upon the Competent Authority. This decision also holds that the orders passed under the Rent Act are executable as if passed by the Civil Court as a decree.

[34] Now, the Appellant is deliberately trying to confuse the issue of whether a Court or an Authority has initial jurisdiction to execute a decree, and whether such a Court then orders the transfer of that decree to a Court that acquires jurisdiction to execute it. In any event, the ruling in Fundacio Privada Intervida (supra) speaks to the execution of orders issued by the Competent Authority as if they were decrees, exercised under the CPC by a Civil Court. This, to a great extent, answers Mr Mehta's contentions about the inapplicability of the transfer of decree provisions contained in the CPC.

[35] Prakash H. Jain (supra), relied upon by Mr Mehta, is an authority for the proposition that the Competent Authority under the Rent Act has no inherent power to condone delays in filing proceedings before it. However, the Hon'ble Supreme Court has held that this statement may not be entirely absolute because different provisions appear to have been made, conferring different authorities with varying degrees of powers in dealing with claims before such Authorities or Courts established for this purpose, as well as in relation to further avenues of remedies against the orders issued by the Original Authority. The decision states that the licensee to whom the summons is issued must contest the eviction petition by filing, within 30 days of service of the summons, an affidavit outlining the grounds for contesting the eviction application and seeking the leave of the Competent Authority to oppose the eviction. The legislature has also statutorily provided the consequences of failing to obtain such leave within the specified period. Considering that the primary aim of making substantive provisions is to regulate the relationship between licensors and licensees, the Hon'ble Supreme Court held that provisions for condoning delays or extending time limits should not be read into the Rent Act when a licensee defends against an eviction action after overstaying the terms set out in the license agreement.

[36] The argument that, because the insolvency proceedings initiated by the Respondents were dismissed since they were not based on a decree of a civil court, the Respondents are now estopped from contending that the Competent Authority's order was a decree liable to be transferred for execution to this Court, is misconceived. The dismissal was based on the decision in **Kishor K. Mehta Vs. HDFC Bank Ltd.**, 2008 1 MhLJ 451 which in turn relies on **Paramjeet Singh Patheja sV. ICDS Ltd.**, 2006 10 JT 41 SC . These decisions proceed based upon the Presidency Towns Insolvency Act, 1909. The observations therein are mainly in the context of the provisions of the

Insolvency Act, and they cannot assist the Appellant who seeks to obstruct the execution proceedings based upon several grounds, whether tenable or not.

[37] The learned Single Judge has correctly relied upon the decision of the Full Bench of this Court in **St. Ulai High School Vs. Devendraprasad Jagannath Singh**, 2007 1 MhLJ 597 in the context of ancillary and incidental powers of an authority or the Tribunal. The decision cannot be distinguished merely because it concerned the provisions of the Maharashtra Employees of Private Schools Act, 1977. Ultimately, the principle laid down is important and the principle was that the orders made by the School Tribunal can be enforced under the provisions of the CPC.

[38] The argument regarding paying double cheque amounts in proceedings under the Negotiable Instruments Act, 1881, has no bearing on the issues raised in this Appeal. There is no verifiable material produced to back this submission. No evidence has been presented regarding the correlation between the cheque amount and the satisfaction of the decretal amount. If such amounts were paid at all, they must have been paid solely to avoid imprisonment or other criminal or quasi-criminal liability under the Act. Therefore, given the background of this case, based merely on a submission across the Bar, this argument cannot be accepted.

[39] Nevertheless, the fact that the Appellant issued cheques but failed to arrange for his banks to honour them only demonstrates the extent to which the Appellant is willing to go to somehow or other deny the Respondents the modest sum of Rs. 3 to 4 Lakhs. It is all very well to raise multiple grounds and require the Courts to expend their most limited resource - time. However, it is an entirely different matter to expect the Courts to forget where the justice of the case truly lies.

[40] The argument about the alleged bar of limitation was introduced only in the written submission and never argued. In any event, we do not, in facts of this case see how such a bar is attracted. The Appellant, it appears, is bent on creating every possible hurdle without any sense of responsibility. As was noted by the Hon'ble Supreme Court in **Vijay Karia Vs. Prysmian Cavi E Sistemi SRL & Ors**, 2020 11 SCC 1 (para 112) even in this case, the Appellant appears to be indulging in a speculative litigation to tire the Respondents and force them to settle the matter or in the fond hope that by flinging a lot of mud in the form of raising all sorts of pleas, at least some of the mud so flung would stick. In Vijay Karia (supra), the Hon'ble Supreme Court dismissed the Appeals with INR 50 lakhs payable within 4 weeks.

[41] The learned Single Judge has considered several provisions of the Rent Act that address the contentions raised by Mr Mehta in this Appeal. Several decisions have also been considered. We have independently considered the merits of the contentions now advanced before us. However, we are still inclined to agree with the reasoning of the learned Single Judge as reflected in the impugned judgment and order under Appeal. This is in addition to the independent reasons now given by us in this order.

[42] The Appellant, by taking the most unfair advantage of the laws' delays, has succeeded in frustrating the execution of the 2004 orders for over two decades and appears confident in delaying payment to the Respondents even further. Unfortunately, we get the impression that this is not because the Appellant has no money to pay, as his Advocate also describes it, a paltry amount, but because he has the money to pay for litigation and profit from the law's delays. We clarify that we have not accepted the Appellant's estimation of the amount payable under the 2004 order. We have only noted the submission made by the Appellant's counsel.

[43] The Hon'ble Supreme Court has, time and again, made orders directing the expeditious disposal of execution proceedings. The Court has noted that if the decree holders are unable to obtain the fruits of their hard-earned decrees, frustration is bound to set in, affecting the administration of justice itself.

[44] While acknowledging that Mr Mehta, the learned Counsel for the Appellant, was clear, precise and even brief, just trying to do his best for the Appellant, we are satisfied that this is a fit case where the Appellant must pay costs of Rs. 50,000/- to the Respondents within two months along with the other amounts payable under the 2004 order, from the date of uploading of this order.

[45] In the result and for all the above reasons, we dismiss this Appeal with costs of Rs. 50,000/- as indicated above.

[46] If the Appellant has deposited any amounts in this Court, the Respondents are permitted to withdraw the same unconditionally. If the Respondents have already withdrawn some of the sum deposited against the Bank guarantees, the Registry is directed to take suitable steps for the discharge of such Bank guarantees.

[47] Necessary letters to this effect must be issued to the Respondents at the earliest, so that the Respondents do not have to pay any service charges to the Banks for keeping such bank guarantees alive.

[48] Suppose there are any balance amounts payable by the Appellant over and above the amounts deposited by the Appellant in this Court. In that case, the Appellant must pay the same to the Respondents within two months from the date of uploading of this order, failing which, the Respondents would be at liberty to take out appropriate applications in the execution proceedings before the learned Single Judge for the recovery of the same. We genuinely hope and trust that no such occasion arises because, for the last 21 years, the Appellant has succeeded in keeping the Respondents at bay.

[49] The Appellant must file a compliance report on the payment of the amounts under the 2004 order and costs of Rs 50,000/-, or the Respondents will once again be forced to take proceedings to recover this amount. We note that the argument about the adjustment of the amounts allegedly paid in the cheque-bouncing case has already been rejected by us. Such a compliance report must be filed by 16 January 2026, and an advance copy furnished to the learned Counsel for the Respondents.

[50] As noted earlier, Ms Meera R. Khanna, in whose favour the Competent Authority made the order of 27 December 2004, has already expired, and her legal representatives are now pursuing this matter.

[51] The Appeal is dismissed with costs, and the abovereferred directions are issued.

[52] All concerned must act on an authenticated copy of this order

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2026(1)MCJ57

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Sandeep V Marne)

Civil Revision Application No 27 of 2017, 29 of 2017 **dated 08/12/2025**

Kumar Beharay Properties Llp; Vidya Shrikrishna Devkule and Another

Versus

Rajesh Chandrakant Shinde and Others

REJECTION OF PLAINT

Code of Civil Procedure, 1908 Or. 7R. 11 - Limitation Act, 1963 Art. 54 - Rejection Of Plaint - Defendants filed revision against order rejecting applications seeking rejection of plaint under Order VII Rule 11 - Plaint sought specific performance of old MOU and cancellation of subsequent sale deeds - Defence contended that cause of action was cleverly drafted to avoid limitation and that documents being registered constituted notice to plaintiff - Plaintiff argued cause of action arose from recent discovery of father's Will and that limitation involved mixed questions of law and fact - Court observed that mechanical acceptance of pleaded cause of action not required and meaningful reading of plaint necessary to detect vexatious suits - Found that suit initiated after long delay using artful drafting could not be saved by claims of later discovery - Noted that limitation for specific performance begins from refusal or neglect of performance, not from alleged discovery - Held plaint barred by limitation and liable to be rejected - Trial court order unsustainable - Revision Applications Allowed

Law Point: A plaint showing artificial or illusory cause of action to avoid limitation under Article 54 of Limitation Act is liable for rejection under Order VII Rule 11 CPC - Court must make meaningful reading to prevent misuse through clever drafting.

Acts Referred:

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

Limitation Act, 1963 Art. 54

Counsel:

Vineet B Naik (Senior Advocate), Parinam Law Associates, Sukand Kulkarni, S B Khurjekar, Manisha Mane, Ashutosh Agarwal, Abhijit P Kulkarni, Shreyaas R Zarkar, Gourav Shahane

JUDGEMENT

Sandeep V. Marne, J.- [1] These Revision Applications are filed challenging the order dated 9 September 2016 passed by the 11th Civil Judge Senior Division, Pune rejecting Application at Exhibit 41 filed by Defendant No.10 and Application at Exhibit 85 filed by Defendants Nos.1 and 2 seeking rejection of Plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (the Code). Defendant No.10 is aggrieved by the impugned order and has filed Civil Revision Application No. 27 of 2017. Defendants Nos.1 and 2 are also aggrieved by rejection of application of Defendant No. 10 and have filed Civil Revision Application No. 29 of 2017.

[2] Land bearing Survey No. 69/5B/2, 69/8/1, 70/1 to 17A at Village-Kothrud admeasuring 1,37,790 sq.mtrs was sold by one Raju Maruti Shinde to Defendants Nos.1 and 2 (Vidya Devkule and Shakun Apte) by registered sale deed dated 19 July 1964. Land admeasuring 5,000 sq.mts was acquired by the National Highway Authority leaving net land of 1,32,790 sq.mtrs. On 4 January 1975, Defendants Nos.1 and 2 entered into Agreement for Sale with Pushpadant CHSL in respect of land admeasuring 8,362 sq.mtrs. The Agreement however remained in abeyance on account of provisions of Urban Land (Ceiling and Regulation) Act, 1976. On 5 September 1979 Defendants Nos.1 and 2 executed Development Agreement in favour of Mr. Arun C. Bankar and Mr. Vinod R. Dalal in their capacity as trustees of Badri Vishal Trust for development of property within five years. Defendants Nos.1 and 2 addressed notice dated 20 October 1984 to the said trustees contending that the Development Agreement had come to an end on account of non-completion of development within five years and the earnest money was forfeited. On 9 May 1986, Defendants Nos.1 and 2 entered into Development Agreement with M/s. Suvidh Enterprises. On 11 May 1989, Defendant Nos.1 and 2 entered into registered agreement with Defendant No.6 and towards part performance, possession of the land was handed over to Defendant No.6. Thereafter, Defendant Nos.1 and 2 conveyed area of 63,596 sq.mts out of the total land in favour of Defendants No.11 by registered Sale Deed dated 23 February 1993 by making Pushpadant CHSL and Defendant No.6 as confirming parties. Defendant No.11 secured possession of the conveyed land. Thereafter Defendant No.6 entered into an MOU with Defendant No.11 on 25 February 1993 in respect of the said conveyed land admeasuring 63,596 sq.mtrs under which Defendant No.11 assumed all obligations of Defendant Nos.1 and 2 under Agreement dated 11 May 1989. On 28 January 2009 a registered sale-deed was executed by Defendant Nos.1 and 2 in favour of Defendant No.6 in respect of the balance area of 74,294 sq.mtrs. This is how Defendant No. 6 acquired the entire suit property and remained in possession thereof. On 26 March 2013 registered sale-deed was executed by original Defendant No.11 in favour of Defendant No.10 in

respect of area of 44,487 sq.mtrs. Defendant No.6 converted itself from partnership firm to that of Limited Liability Partnership which is the name of Defendant No.10 (M/s. Kumar Behere Properties LLP). This is how Defendant No.10 claims possession of the entire land.

[3] On the other hand, Plaintiff claims that by MOU dated 15 January 1982 executed between Mr. Arun Bankar, Vinod Dalal and his father Late Chandrakant Shinde, rights in the suit property were created in favour of his father.

[4] In or around 1992, one Dhirajlal G. Shah on behalf of Badri Vishal Trust filed Special Civil Suit No. 494/1992 before the Civil Judge Senior Division, Pune for specific performance of Agreement dated 5 September 1979. In January 2008, a notice was addressed to Defendant Nos.1 and 2, Defendant Nos. 7, 6, Suvidh Enterprises and Dhirjalal Shah contending that Agreement dated 26 March 1982, Badri Vishal Trust had assigned its rights in portion of the property in favour of Mr. Arun Bankar and that Arun Bankar had passed away in 1984 leaving behind his wife and child. The notice challenged execution of various documents and stated that the wife of Mr. Arun Bankar was willing to perform her part of Agreement dated 26 March 1982. On 7 February 2014, the same advocate addressed notice referring to MOU dated 15 January 1982 executed between Mr. Arun Bankar, Vinod Dalal and father of the Plaintiff, Chandrakant Shinde. The notice was addressed on behalf of the Plaintiff- Rajesh Shinde.

[5] In the above background, Plaintiff instituted Special Civil Suit No. 650/2014 in the Court of Civil Judge Senior Division, Pune seeking specific performance of Agreement/MoU dated 15 January 1982 and seeking cancellation of Agreement dated 11 May 1989 executed in favour of Defendant No.6 and sale-deed dated 28 January 2009. Plaintiff also challenged sale deed dated 28 March 2013 executed in favour of Defendant No.10. Plaintiff has also sought injunctive relief to restrain Defendants from carrying out any construction or creating third party rights in the suit property. Plaintiff also prayed for alternate relief of damages in the sum of Rs.250 crores.

[6] Defendant No.10 filed application at Exhibit 41 seeking rejection of plaint under the provisions of Order VII Rule 11 of the Code contending that the suit was hopelessly barred by limitation. By impugned order dated 9 September 2016, the Trial Court has proceeded to reject the application. Defendant No.10 and Defendant No.1 and 2 have filed the present Revision Applications challenging the order dated 09 September 2016.

[7] Mr. Naik, the learned Senior Advocate appearing for the Applicant in CRA 27 of 2017/ Org. Defendant No.10 submits that the Trial Court has erred in rejecting the Application for rejection of Plaint ignoring the position that the suit of the Plaintiff is vexatious and hopelessly barred by limitation. That the trial Court has brushed aside the objection of limitation by recording generalized finding that limitation is a mixed question of law and fact. That in the present case, limitation is not a question of fact at all, as various prayers in the Plaint would leave no manner of doubt that all the prayers sought in the Plaint are barred by limitation. That the cause of action pleaded in para-19

of the Plaint is nothing but clever drafting. That mere discovery of alleged Will executed by Plaintiff's father on 23 May 2013 does not create a cause of action in favour of the Plaintiff to seek specific performance of MOU dated 15 January 1982 or for challenging various documents executed in the year 1989 onwards. Mr. Naik would submit that most of those documents are registered constituting sufficient notice to the world at large. He would rely upon judgment of the Apex Court in Smt. Uma Devi and Ors. Versus. Sri. Anand Kumar and Ors., SLP (C) No. 2137 of 2025 decided on 2 April 2025 in support of his contention that Plaintiff had the notice of registered sale deeds. He would submit that the during his lifetime, Chandrakant Shinde never initiated proceedings for specific performance of the alleged agreement executed in his favour and that therefore his son cannot file a vexatious suit merely on the basis of alleged discovery of his father's Will. He would rely upon judgment of the Apex Court in **Shri Mukund Bhavan Trust and Others. Versus. Shrimant Chhatrapati Udyan Raje Pratapsinh Maharaj Bhonsle and Another**, 2024 15 SCC 675 in support of his contention that the Court needs to make meaningful reading of the Plaint by dissecting the vices of clever drafting creating an illusion of cause of action. Mr. Naik would accordingly pray for setting aside the impugned order and for rejection of Plaint under Order VII Rule 11 of the Code.

[8] Mr. Sukand Kulkarni the learned counsel appearing for the Revision Applicant in CRA 29 of 2017 would adopt the submissions of Mr. Naik.

[9] Per-Contra, Mr. Abhijit Kulkarni, the learned counsel appearing for Resp.1/Plaintiff would oppose both the Revision Applications. He would submit that the suit is not restricted only to specific performance of the 1982 MOU. That the suit is filed seeking variety of prayers including prayer for injunction and possession. That even if the suit is held to be barred by limitation in respect of the prayers for specific performance, the other prayers for injunction and possession can still be considered and decided on merits. That Plaint can never be rejected in part. He would submit that even the prayer for specific performance of 1982 Agreement is within limitation as the cause of action for filing the suit is pleaded in para-19 of the Plaint to have accrued on 23 May 2013 when Plaintiff discovered Will executed by his father. That only contents of Plaint are required to be taken into consideration. Once Plaint discloses cause of action as having accrued on 23 May 2013, the Trial Court has to accept the said statement as correct and decide the issue of limitation accordingly. Any other defence sought to be raised by the Defendants can be considered only after consideration of evidence. That the Trial Court has correctly held that the issue of limitation in the present case is mixed question of law and fact. He would submit that the agreement executed in favour of Plaintiff's father on 15 January 1982 was condition upon securing ULC permission. That it was the duty of vendor to secure necessary permissions. That therefore the cause of action did not arise on the date of execution of the agreement and the same continued till it finally became clear that Defendants refused to perform their part of the agreement. In support of his contention that the issue of limitation cannot be decided without appreciation of evidence, Mr. Abhijit Kulkarni would rely upon judgments of the Apex

Court in P. Kumarakurubaran Versus. P. Narayanan and Others, Civil Appeal NO. 5622 of 2025 decided on 29 April 2025 and Karam Singh Versus. Amarjit Singh and Others, SLP (C) No. 3560 of 2023 decided on 15 October 2025. In support of his contention that the starting point of limitation has to be ascertained on facts of each case and that the plea of limitation cannot be decided as a abstract principle of law, divorced from facts, he would rely on judgment of the Apex Court in **Ramesh B Desai And Others Versus. Bipin Vadilal Mehta And Others**, 2006 5 SCC 638. That the case involves systematic grabbing of consideration amount and not recognizing the rights of Plaintiff's father. He would accordingly pray for dismissal of both the Revision Applications.

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

[11] Plaintiff has instituted Special Civil Suit No. 650 of 2014 in the Court of Civil Judge Senior Division, Pune seeking following prayers:-

[12] The cause of action for filing of the suit is pleaded in para-19 of the Plaint as under:-

[13] Plaintiff thus seeks specific performance of the MOU allegedly executed in favour of his father, late Chandrakant Shinde by Mr. Arun Bankar and Vinod Dalal on 15 January 1982. As observed above, Defendant Nos.1 and 2 are the original owners of the entire land and they executed Development Agreement with Mr. Bankar and Mr. Dalal in their capacity as Trustees of Badri Vishal Trust on 5 September 1979. Plaintiff claims that in pursuance of rights secured under the Development Agreement dated 5 September 1979, Mr. Bankar and Mr. Dalal executed MOU in favour of Plaintiffs father for the purpose of assignment of their interest in the land for consideration of Rs.5,00,000/-. While Rs.3,00,000/- was shown to have been paid on execution of the MOU, balance consideration was agreed to be paid after securing ULC permission. However, what was executed in favour of Mr. Bankar and Mr. Dalal was only Development Agreement which was apparently terminated by Defendant Nos.1 and 2 on 20 October 1984 complaining about non-completion of D.A. within the agreed period of 5 years. Thus, the rights of Mr. Bankar and Mr. Dalal were sought to be brought to an end vide termination notice dated 20 October 1984. It appears that Badri Vishal Trust has filed Special Civil Suit No. 494 of 1992 for specific performance of the Development Agreement dated 5 September 1979. Be that as it may, thereafter several transactions have taken place as under:

(I) 11 May 1989: Development Agreement in favour of Defendant No.6.

(II) 23 February 1993: Registered sale-deed between Defendant Nos.1 and 2 in favour of Defendant No.11 as confirmed by Defendant No.6 in respect of halfportion of land. Interestingly, Chandrakant Shinde was alive when this registered sale-deed dated 23 February 1993 was executed.

(III) 28 January 2009: Registered sale-deed executed by Defendant Nos.1 and 2 in favour of Defendant No.6 for balance area of land. Again, Chandrakant Shinde was alive when this transaction was effected.

(IV) 26 March 2013: Registered sale-deed executed by which Defendant No.11 sold half portion of land to Defendant No.10 which was converted as LLP/ Defendant No.6.

[14] Plaintiff claims that he discovered Will executed by his father on 23 May 2013, in which rights flowing out of MOU dated 15 January 1982 are allegedly bequeathed in favour by his father. Plaintiff served notice dated 7 February 2014 for specific performance of the MOU dated 15 January 1982 and has thereafter filed the present Suit.

[15] It is well settled legal position that while deciding application under Order VII Rule 11 of the Code, the Court has to consider only the pleadings in the Plaint and documents produced therewith. However mechanical reading of the averments in the plaint is not sufficient and what the Courts need to undertake is an exercise of meaningful reading of the averments in the entire Plaint. If after meaningful reading of the averments in the entire plaint, it can be gathered that there is real cause of action for filing the suit, as contradistinct from a mere illusion of cause of action and that the suit prima facie appears to be not barred by limitation or by any express provisions of law, the Court can proceed to reject the application under Order VII Rule 11 of the Code. The provision for rejection of the plaint under Order VII Rule 11 of the Code is made with the objective of throwing out vexatious litigation at the threshold rather than making the Defendant undergo the ordeal of a lengthy trial. Particularly when the Courts encounter a clever pleading in the plaint, about Plaintiff acquiring knowledge of an event on the pleaded date or about accrual of cause of action on the pleaded day, aimed essentially at saving the plaint from being rejected, the court is not bound to accept that statement as a gospel truth and retain the suit on its file. To paraphrase, mechanical reading of averment about cause of action is not expected for ruling in favour of retention of the plaint. If the suit is instituted after long delay, but the plaint therein is attempted to be saved by lawyer's drafting ingenuity, the court is not expected to accept the clever pleading on the face and to take the suit for trial. In such cases, where the suit appears to be vexatious, court needs to be cautious and must read the entire plaint meaningfully to find out whether the pleadings make the cleverly pleaded case of acquisition of knowledge even believable. If it can be gathered from reading of the averments in the entire plaint, and documents produced therewith, that the cause of action had arisen much earlier than the cleverly pleaded date, Court is not bound to accept the pleaded date and send parties to the ordeal of long trial. If accrual of cause of action can be gathered from pleadings, leading of evidence becomes unnecessary and in such cases, plaint cannot be retained by invoking the general principle of limitation being a mixed question of law and facts.

[16] At the same time, causally filed applications seeking rejection of plaint under Order VII Rule 11, aimed essentially at delaying the decision of the suit, equally need to be rejected in an expeditious manner once the Court is satisfied on a meaningful reading of the averments in the plaint, together with the documents produced therewith, that there is some cause of action for taking the suit to trial or that the suit is not barred by

express provision of law or that the ground of limitation raised by Defendant is either baseless or requires leading of evidence.

[17] I accordingly proceed to undertake the exercise of meaningful reading of the entire Plaint. After referring to the transaction of Development Agreement of Mr. Arun Bankar and Mr. Dalal and execution of MOU by them in favour of Plaintiff's father, Plaintiff has pleaded in para-6 that after execution of the MOU, Mr. Bankar and Mr. Dalal passed away and his father was incapacitated due to old age and passed away on 20 February 2013. Plaintiff has pleaded that his father did not share information relating to execution of MOU dated 15 January 1982 with the family members. After his death, Plaintiff discovered Will dated 11 September 2009 and acquired knowledge of execution of MOU dated 15 January 1982. He also discovered copy of the said MOU. Plaintiff thereafter pleads in para-9 of the Plaint that he approached the suit land and discovered that Defendant No.6 had commenced construction thereon and was constructing buildings of 11 floors. Plaintiff discovered execution of registered agreement dated 11 May 1989 in favour of Defendant No.6 by Defendant Nos.1 and 2. Plaintiff also discovered factum of execution of registered saledeed dated 28 January 2009 by Defendant Nos.1 and 2. Plaintiff pleaded complete ignorance of transactions executed between various Defendants.

[18] However, in para-13, Plaintiff pleads that wife of Mr. Bankar had executed the power of attorney in favour of the Plaintiff in 2007-08 to look after the court proceedings on behalf of her relating to the suit land. Plaintiff thus admits having dealt with disputes relating to suit land in capacity as constituted attorney of Mr. Bankar's wife. He however feigns ignorance about execution of MOU dated 15 January 1982 in favour of his father. Plaintiff claims that after acquisition of knowledge of execution of MOU dated 15 January 1982, he sent notice dated 7 February 2014 seeking specific performance of the said MOU and on account of refusal on the part of the Defendants to act of the notice, the suit is filed. This is the broad frame of Plaintiff's suit.

[19] Meaningful reading of the averments in the Plaint would make it abundantly clear that the Plaintiff has admitted the fact that the Development Agreement dated 11 May 1989 executed by Defendant Nos.1 and 2 in favour of Defendant No.6 is a registered instrument. He has specifically admitted the fact that what is executed on 28 January 2009 by Defendant No.1 and 2 is also registered instrument. By that sale-deed dated 28 January 2009, Defendant Nos.1 and 2 had sold half portion of the land in favour of Defendant No.6. The Plaint is however silent about another transaction in the form of registered saledeed dated 23 February 1993 by which Defendant No.11 acquired ownership in respect of half portion of the land from Defendant Nos.1 and 2 with consent of Defendant No.6. It is also an admitted position that all the three registered documents of Development Agreement dated 11 May 1989, sale-deeds dated 23 February 1993 and 28 January 2009 were executed when Plaintiff's father was alive. He admittedly did not raise any objection or initiated contemporaneous proceedings for cancellation of the above documents. Thus, the cause of action had arisen for Plaintiff's

father during his lifetime for filing suit seeking cancellation of registered instruments dated 11 May 1989, 23 February 1993 and 28 January 2009. Plaintiff's father however failed to file any proceedings during his lifetime.

[20] Since the three instruments of 11 May 1989, 23 February 1993 and 28 January 2009 are registered, it needs to be assumed that Plaintiffs' father had notice thereof. Here, the facts of the present case appear to be similar to the one before the Apex Court in **Uma Devi** (supra). In case before the Apex Court, Plaintiff had filed suit for partition in the year 2023 in which Defendants sought rejection of plaint under Order VII Rule 11 of the Code contending that he suit properties were already partitioned in the year 1968 through family settlement, which was given effect to vide revenue entries. It was further contended that based on such partition, some of the Defendants have sold the land vide registered sale-deeds executed in the year 1978. In the above factual background, the Apex Court referred to its judgment in **Suraj Lamp Industries Pvt. Ltd. Versus. State of Haryana and Another**, 2012 1 SCC 656 in which it is held that registration of a document gives notice to the world that the document has been executed. It further held in Suraj Lamps (supra) that registration provides safety and security to transactions relating to immovable property and gives publicity and public exposure to the documents. Registration provides information to people who may deal with the property as to the nature and extent of rights which persons may have, affecting that property. It enables people to find out whether any particular property in which they have any interest are subject to any legal obligations and liability and who are those persons claiming right, title and interest in the property. The Apex Court in **Uma Devi** has held in para-10 to 13 as under:-

> 10. The Trial Court, considering these facts, allowed the application under Order 7 Rule 11 CPC and dismissed the suit, finding no cause of action for filing the suit. However, the appellate court found that there were triable issues that required consideration. The appellate court was of the opinion that the plaintiffs had a legitimate claim over the joint family properties, and in the absence of any notice to the plaintiffs regarding the partition, the suit was remanded back to the Trial Court for fresh consideration.
>
> **11. The sole argument advanced by the respondents/plaintiffs is that the suit was only for partition, filed in the year 2023 and was within the limitation period as the limitation will be counted from the date of their knowledge of the sale deed.** However, upon examining the pleadings before the Trial Court and appellate court, it is evident that the plaintiff failed to address the crucial question of when they became aware of the registered sale deeds. If they had prior knowledge of the sale deeds, they failed to specify the exact date of such knowledge. Additionally, the pleadings suggest suppression of essential facts by the plaintiffs.

12. In the case at hand, partition took place way back in the year 1968, which is evident from the revenue record entries. The suit is filed in the year 2023, i.e. after a period of 55 years. Further, many of the family members had executed registered sale deeds in the year 1978. These sale deeds have been attached, and on perusal it is observed that these were in fact registered sale deeds. **A registered document provides a complete account of a transaction to any party interested in the property.** This Court in the case of **Suraj Lamp Industries Pvt. Ltd. v. State of Haryana & Anr**, 2012 1 SCC 656 held as under:

"Registration of a document gives notice to the world that such a document has been executed. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person(s) presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified".

13. Applying this settled principle of law, it can safely be assumed that the predecessors of the plaintiffs had notice of the registered sale deeds (executed in 1978), flowing from the partition that took place way back in 1968, by virtue of them being registered documents. In the lifetime of Mangalamma, these sale deeds have not been challenged, neither has partition been sought. Thus, the suit (filed in the year 2023) of the plaintiffs was prima facie barred by law. The plaintiffs cannot reignite their rights after sleeping on them for 45 years.

(emphasis added)

[21] Thus, in **Uma Devi**, the registered instruments were executed during lifetime of Mangalamma, who did not challenge the same nor sought partition. The suit filed by Plaintiffs after 45 years was held to be prima facie barred by limitation and the Apex

Court upheld rejection of plaint and dismissal of suit. As was the case before the Apex Court, Plaintiff in the present case is also attempting to reignite the case after his father slept over the same during his lifetime for 24 long years. Plaintiff's father had notice of registered instruments dated 11 May 1989, 23 February 1993 and 28 January 2009. During the lifetime of his father, the said registered instruments were not challenged. Thus, the suit filed by Plaintiff' after the death of his father would clearly barred by limitation as Plaintiff's father slept over the first registered Development Agreement dated 11 May 1989 for over 24 long years.

[22] Thus, Plaintiff's prayer for specific performance of MOU dated 15 January 1982 is clearly barred by limitation. Under Article 54 of the Limitation Act, 1963 the limitation for filing suit for specific performance is 3 years from the date fixed for performance and if no date is fixed, when the Plaintiff notices that the performance is refused. Even if it is assumed that MOU dated 15 January 1982 did not indicate any specific time for performance, Plaintiff's father clearly acquired knowledge of refusal of performance when registered Development Agreement dated 11 May 1989 was executed by Defendant Nos.1 and 2 with Defendant No.6, after terminating the Development Agreement executed in favour of Mr. Bankar and Mr. Dalal vide notice dated 20 October 1984. Through another registered instrument of 23 February 1993, Plaintiff's father once again acquired knowledge of refusal of performance. Plaintiff is not the person in whose name MOU dated 15 January 1982 is executed. His own pleadings indicate that the father did not disclose anything to him or to the family members about execution of MOU. Therefore, Plaintiff cannot and rightly has not pleaded that the father had no knowledge of execution of registered instruments. Plaintiff's alleged absence of knowledge about registered instruments is inconsequential. What he seeks to enforce is his father's right allegedly bequeathed to him under the alleged Will. Therefore, he ought to have demonstrated through pleadings as to when cause of action for father had accrued to file the suit. His father slept over the said MOU for over 31 long years till he passed away on 20 February 2013. He did not take any steps for specific performance of the said agreement. In that view of the matter, Plaintiff's suit for specific performance of the MOU dated 15 January 1982 is hopelessly barred by limitation.

[23] Mr. Abhijit Kulkarni submits that even if specific performance can be denied to the Plaintiff by reason of limitation, his other prayer for payment of damages needs to be decided on merits. I am unable to agree. The prayer for damages is nothing but alternate mode of performance of the MOU dated 15 January 1982. If the prayer for specific performance is barred by limitation there is no question of entertaining the prayer for damages by way of alternate performance. Similarly, the prayer for injunction flows out of the prayer for specific performance of MOU dated 15 Janaury 1982. The injunction is not sought on claim for possession. The Plaint does not contain an averment of Plaintiff's father being put in possession of any portion of land. On the other hand, Plaint contains an admission that Defendants were constructing 11 storey building

on the land when Plaintiff visited the same. Therefore, the prayer for injunction is not an independent or a standalone prayer which can be considered or decided sans the prayer for specific performance or sans the prayer for setting aside registered instruments.

[24] Thus, on meaningful reading of the Plaint as a whole, there is no manner of doubt that the suit instituted by the Plaintiff is a vexatious litigation which needs to be brought to an instant halt. In **Shri Mukund Bhavan Trust** (supra) the Apex Court has held that Courts cannot brush aside the issue of limitation under the pretext of the question of limitation being mixed question of law and fact. The Courts must undertake the exercise of meaningful reading of the Plaint and after disseminating the vices of clever drafting creating an illusion of cause of action, if the suit is found to be hopelessly time barred, the Plaint must be rejected under Order VII Rule 11 of the Code. The Apex Court has held in paras-24 and 41 as under:-

> 24. On a reading of the plaint averments, it is clear that the plaintiff was well acquainted with the counsel Mr Godge. If the plaintiff was already acquainted with Mr Godge, whom upon verification of the records from the status of the suit, we find to have entered appearance in the suit for the 20th respondent on 21-7-2005 itself, would have acquired knowledge much prior to 2-3-2007. We also find that Civil Application No. 1562 of 2006 was not filed by Mr Godge. Therefore, it is a clear case where the plaintiff has not approached the Court with clean hands. We have no hesitation to hold that 2-3-2007, is a fictional date, created only for the purpose of this suit. As such, the judgment in T. Arivandanam v. T.V. Satyapal 14 squarely becomes applicable.
>
> 41. However, the trial court erroneously dismissed the application filed by the appellants under Order 7 Rule 11(d) CPC. The High Court also erred in affirming the same, keeping the question of limitation open to be considered by the trial court after considering the evidence along with other issues, without deciding the core issue on the basis of the averments made by Respondent 1 in the plaint as mandated by Order 7 Rule 11(d) CPC. The spirit and intention of Order 7 Rule 11(d) CPC is only for the courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process. The courts by being reluctant only cause more harm to the defendants by forcing them to undergo the ordeal of leading evidence. Therefore, we hold that the plaint is liable to be rejected at the threshold.

[25] Recently in Dhananjay Shivram Mapare and Ors. Versus. Vilas Eknath Kapre and Ors., Civil Revision Application NO. 87 of 2019 decided on 11 November 2025 I have highlighted the need for nipping in the bud vexatious litigation. This Court has directed rejection of plaint by having recourse to the provisos of Order VII Rule 11 after noticing that the real intention behind filing of the suit was to bring the Defendants to settlement table. This Court considered the judgment of the Apex Court in **Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal representative**, 2020 7

SCC 366 **K. Akbar Ali Vs. Umar Khan**, 2021 14 SCC 51 and **Shree Mukund Bhavan Trust** (supra) and held in para-11 as under:-

The issue of consideration is if the Court notices that the suit is gross abuse of process of law and is filing for oblique purpose of forcing the Defendants for settlement in absence of any real cause of action, whether the Court would remain a mute spectator and allow the judicial process to be misused by a vexatious litigant. The Court is not supposed to blindly accept the averment in the pliant about accrual of cause of action. It must also necessarily enquire whether there is any cause of action for filing the suit. The concept of 'cause of action' serves as the cornerstone upon which a suit is built. The term 'cause of action' refers to the set of facts or circumstances that give rise to a legal claim, forming the basis for initiating the suit. The Court therefore must enquire whether the bundle of facts pleaded in the plaint make out Plaintiff's right to sue. For that purpose, reading of the plaint cannot be 'formal'. It needs to be 'meaningful'. This is because Plaint drafted by a lawyer is most likely to have an averment of accrual of cause of action. Such averment is not to be plainly accepted by formal reading of the plaint. The Court must satisfy itself that the cause of action pleaded is not a creation of fiction. If the Court makes a meaningful reading of the Plaint and comes to the conclusion that the suit is manifestly vexatious without exhibiting Plaintiff's real right to sue, such suit needs to be nipped in the bud instead of making the Defendants undergo the ordeal of the lengthy trial. These legal principles have been stated in various judgments of the Apex Court. It would be apposite to refer to few of them

[26] In the present case also, it is abundantly clear that the suit instituted by the Plaintiff is a vexatious litigation initiated under the hope of bringing Defendants to settlement as they had already commenced construction of 11 storey buildings on the land. Court's jurisdiction cannot be permitted to be abused for the purpose of filing of such a vexatious litigation which is ex-facie barred by limitation. The trial court has erred in not appreciating this position. In every case, the issue of limitation cannot be brushed aside holding that the same is a mixed question of law and fact. In the present case, it is difficult to comprehend as to how the issue of limitation would depend on leading of evidence. Plaintiff's father did not take any steps for specific performance of MOU dated 15 January 1982 during his lifetime for over 31 long years. After his death, the Plaintiff has instituted the suit which is hopelessly barred by limitation as Plaintiff's father must have secured notice of execution of several registered instruments during his lifetime. The prayer for cancellation of instruments of 11 May 1989 and 28 January 2009 is also barred by limitation. The prayer for cancellation of sale-deed dated 26 March 2013 is premised on challenge to the main instrument of 11 May 1989. If prayer for challenging Development Agreement dated 11 May 1989 is barred by limitation even the prayer for challenge to sale-deed dated 26 March 2013 would not survive.

[27] In that view of the matter, the Trial Court has clearly erred in not making meaningful reading of the Plaint and by going with the cleverly drafted averment in the Plaint about date of accrual of cause of action.

[28] What remains now is to deal with judgments cited by Mr. Abhijit Kulkarni.

(i) In **P. Kumarakurubaran** (supra), the issue before the Apex Court was about prior notice of transaction by the Plaintiff. In the facts of that case, the Apex Court held that Plaintiff had taken various steps immediately after becoming aware of registration of documents and thereafter filed a suit seeking declaration and consequential reliefs. In the facts and circumstances of that case, the Apex Court held that the question of limitation involved disputed facets and hinged on the date of knowledge of execution of transactions. The facts of the judgment in **P. Kumarakurubaran** are clearly distinguishable and the facts of the present case are more or less similar to the one involved in **Uma Devi** , where Plaintiff's father did not take any steps for specific performance of MOU dated 15 January 1982 for 31 long years nor challenged various registered instruments executed during his lifetime.

(ii) The judgment of the Apex Court in **Karam Singh** (supra) involved claim of title through succession which was resisted by the Defendants therein by relying on a Will. The Will was apparently not probated. The suit was not merely for declaration of Will being void but the same was also for possession. The Apex Court held that when the suit for possession of immovable property is based on title, the limitation period was 12 years under Article 65 of the Limitation Act. It is in the facts of that case that the Apex Court ruled that the Plaint in the suit could not be rejected on the ground of suit being barred by limitation. Thus, the facts in the case of **Karam Singh** are clearly distinguishable and do not have application to the facts of the present case.

(iii) The judgment in **Ramesh Desai** (supra)is relied on in support of the contention that in every case limitation cannot be decided as an abstract principle of law de-horse from facts. In case before the Apex Court, the Company Court had determined the question of limitation in filing company petition under Section 155 of the Companies Act, 2013 as a preliminary issue and had dismissed the petition as being barred by limitation. The Apex Court applied the principle of demurer and held that facts disclosed in the Company Petition did not indicate that the petition was barred by limitation. That Judge had referred to the affidavit in reply while deciding the issue of limitation at preliminary stage. In the facts of that case, the Apex Court held that the issue of limitation hinged on disputed questions of facts. The judgment therefore has no application to the facts of the present case.

[29] Considering the overall conspectus of the case, I am of the view that the Trial Court has erred in rejecting the Applications filed by Defendant No.10. The suit filed by the Plaintiff is ex-facie barred by limitation. It is a vexatious piece of litigation which must be nipped in its bud rather than making Defendants undergo the ordeal of lengthy trial. The land in question has already been developed and third-party rights of flat purchasers are created. Several innocent flat purchasers are residing in the flats constructed on the suit land. Plaintiff cannot be permitted to create an illusion of cause of action by clever drafting by raising th of averment of alleged disclosure of Will executed by his father on 23 May 2013 for the purpose of bringing the suit within limitation. The Trial Court ought to have undertaken meaningful reading of the entire Plaint for the purpose of ascertaining its real nature. No disputed questions of facts are involved in the suit for deciding the issue of limitation. The trial court therefore ought to have rejected the Plaint in the suit by having recourse to the provisions of Order VII Rule 11 of the Code.

[30] The impugned order passed by the Trial court is thus indefensible and liable to be set aside

[31] I accordingly proceed to pass the following order:

(I) The impugned order dated 9 September 2016 is set aside and Application at Exhibits-41 and 85 are allowed in terms of prayers made therein.

(ii) Accordingly, the Plaint in Special Civil Suit No. 650 of 2014 is rejected under provisions of Order VII Rule 11 of the Code.

[32] Both the Civil Revision Applications are **allowed** in above terms. In the facts and circumstances of the case, there shall be no order as to costs

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2026(1)MCJ70

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Madhav J Jamdar)

Writ Petition No 8010 of 2016 **dated 08/12/2025**

Mediwal Nagendra Dastgi; Sugamma Wd/o Nagendra Dastgir & Ors

Versus

Kshtriya Dnyati Sabha & Ors

EX PARTE DECREE CHALLENGE

Code of Civil Procedure, 1908 Or. 18 R. 2 - Ex Parte Decree Challenge - Petitioners challenged concurrent orders rejecting application to set aside decree passed after restoration of eviction suit - Both courts found defendants repeatedly served but absent despite several notices - Held that decree not ex parte but one under Order XVII Rule 2 CPC after parties led evidence - Contention regarding invalid service through female family member rejected as Bombay Amendment inconsistent with central amendment

and deemed repealed - Courts observed no sufficient cause shown for non-appearance - High Court held concurrent findings based on record and not amenable to supervisory interference - Petition Dismissed as Without Substance

Law Point: When defendants are duly served after restoration and fail to appear, decree passed under Order XVII Rule 2 CPC cannot be treated as ex parte, and Bombay Amendment restricting service to male members stands repealed by central amendment under Section 16 of CPC Amendment Act, 2002

Acts Referred:

Code of Civil Procedure, 1908 Or. 18R. 2

Counsel:

P J Thorat, Pranita Saboo, A C Mahimkar

JUDGEMENT

Madhav J. Jamdar, J.- [1] Heard Mr. Thorat, learned Counsel appearing for the Petitioners and Ms. Saboo, learned Counsel appearing for the Respondent No.1.

[2] The challenge in this Writ Petition is to the Judgment and Order dated 6th May 2016 passed by the learned Appellate Bench of the Small Causes Court, Mumbai in Misc. Appeal No.130 of 2014 in MARJI Application No.809 of 2013 and the Judgment and Order dated 25th February 2014 passed by the learned Judge, Small Causes Court, Mumbai in MARJI Application No.809 of 2013 in R.A.E. Suit No.3590 of 1990.

[3] The learned Trial Court decreed the said Suit filed by the Respondents by Judgment and Decree dated 20th December 2012. The Petitioner filed Marji Application No.809 of 2013 seeking setting aside the Judgment and Decree dated 20th December 2012 on the ground that the decree passed is ex parte decree. The learned Trial Court dismissed the said Marji Application by Order dated 25th February 2014 inter alia on the ground that said Judgment and Decree dated 20th December 2012 is not an exparte decree but decree passed under Order XVII, Rule 2 of the Code of Civil Procedure, 1908 ("**CPC**"). The said Order of learned Trial Court is confirmed by the learned Appellate Court. Both the Courts also held that inspite of service of notice on multiple occasions, after restoration of the suit, the Defendants failed to appear in the suit and the Defendants have not proved any sufficient cause for non-appearance.

[4] Before setting out the contentions raised by the learned Counsel appearing for the respective parties and consideration of the same, it is necessary to set out the relevant factual aspect. The relevant factual aspects are as under:

i. The RAE Suit No.3590 of 1990 has been filed by the Respondents/Plaintiffs-Kshtriya Dnyati Sabha, a registered Public Trust under the provisions of the Bombay Public Trust Act, 1950 and the Trustees of the said Trust against 9 Defendants i.e. persons from the same family i.e. Dastgir family who are the heirs and legal representatives of deceased original tenant - Mediwal Nagendra Dastgir. All the Defendants were represented in the suit by the same Advocate i.e. Advocate M. J.

Virjee. All the Defendants have filed their common written statement on 16th March 1992.

ii. The issues were framed in the said Suit on 27th January 1998.

iii. The evidence of the Plaintiffs i.e. Vinod Mastkar (PW-1) and Vijaya Shoof (PW-2) was completed on 28th May 2002. Thereafter, evidence of the Defendants - Sadashiv Madhiwal (DW-1) i.e. present Petitioner No.2 was closed on 7th October 2002.

iv. In the meanwhile, after the Plaintiff and Defendants led the evidence and evidence closer pursis has been filed, subsequently, the said Suit was dismissed for default on 9th February 2005. Thus, before the dismissal of the Suit for default both the parties have led their respective evidence.

v. The restoration application of the said suit filed by the Respondents-Plaintiffs was dismissed. The Defendants were served with the notice of restoration application, however, they failed to remain present. The appeal filed challenging the dismissal of restoration application was allowed. The present Petitioners i.e. Defendants/ Respondents in said Appeal, were served of notice of said Appeal, however, they failed to appear. Therefore, the learned Appellate Court although set aside order of learned Judge, Small Causes Court, Mumbai of dismissing restoration application of the suit and consequently restored the suit, directed learned Trial Court to issue notice to the Defendants.

vi. After the restoration of the Suit, in view of the order passed by the learned Appellate Court, the learned Trial Court issued notices to all the parties to the Suit directing them to appear on 22nd November 2011. Bailiff report shows that the Defendant No.9 personally accepted the notice and on behalf of Defendant Nos. 2 to 8 one Ramesh Mediwal who is near relative of the present Petitioners, had accepted the notice by putting signature on the notices. The Baillif report records that the Defendant No.1 has passed away.

vii. The Respondents filed application on 22nd November 2011 for carrying out amendment to the Plaint by deleting old trustees and adding new trustees. Notice of amendment application taken out for deleting old trustees and addition of new trustees was served on Defendant No. 6 to 9, on Defendant No. 2 to 4 through their brother, and notice was pasted in respect of Defendant No.5. This application was allowed on 21st June 2012.

viii. On 29th February 2012 the Respondents filed Application for bringing heirs and legal representatives of deceased Defendant No.1 on record and same was allowed on 5th May 2012. The Bailiff Report (Exhibit-55) concerning service on Defendant Nos.1(a) to 1(c) records that suit summons was served on Defendant No.1(a) i.e. mother of the Defendant Nos.1(b) and 1(c) and she has accepted service on behalf of Defendant Nos.1(b) and 1(c) also. As per the Petitioners' contention in the said application only the Defendant No. 1(a) was served and the Defendant Nos. 1(b) and 1(c) were not served in

view of the Bombay Amendment of Order 5, Rule 15, which specifically provides that service on male members of the Defendants' family is a good service.

ix. On 20th December 2012, the learned Trial Court decreed the suit directing the Petitioners to handover the possession of the suit premises to the Respondents. As recorded by the learned Appellate Court, roznama records that, as the Defendants failed to appear although served on several occasions the learned Trial Court heard the arguments advanced by the learned Advocate for the Plaintiffs and posted the matter for judgment to 20th December 2012. Accordingly, the learned Trial Judge decided the suit by its judgment and decree on 20th December 2012.

x. On 6th December 2013, the Petitioners filed Marji Application No.809 of 2013 before the learned Small Causes Court under Order IX Rule 13 of CPC for setting aside exparte decree dated 20th December 2012.

xi. The learned Trial Court dismissed the said Marji Application by Order dated 25th February 2014 inter alia on the ground that the Defendants have not proved any sufficient cause for non-appearance and also that said Judgment and Decree dated 20th December 2012 is not the ex-parte decree but decree passed under Order XVII, Rule 2 of the CPC.

xii. Miscellaneous Appeal No.130 of 2014 was filed by the Petitioners against the order dated 25th February 2014 before the learned Appellate Bench of the Small Causes Court, Mumbai and the same was dismissed by the learned Appellate Bench of the Small Causes Court, Mumbai, by Judgment and Decree dated 12th October 2015.

[5] The main contention raised by Mr. Thorat, learned Counsel appearing for the Petitioners is that the service on Defendant No.1(a) for Defendant Nos.1(b) and 1(c) of application to bring on record, heirs of the deceased Respondent No.1 is not good service as the Defendant No.1(a) is the mother of the Defendant Nos.1(b) and 1(c) and in view of the Bombay Amendment of Order 5, Rule 15, service on male members of the Defendants' family is good service and resultantly service on mother of Defendant Nos.1(b) and Defendant No.1(c) is not good service as far as Defendant Nos. 1(b) and 1(c) are concerned.. He therefore, submits that the interference in the impugned orders is warranted.

[6] Ms. Saboo, learned Counsel submits that all the Defendants were represented by same Advocate Mr. Virjee and his appearance is shown by the learned Trial Court and therefore, the decree is not ex-parte decree. Learned Counsel submits that both the Courts have concurrently held that inspite of service of notice after restoration of the suit on multiple occasions the Defendants failed to appear in the suit and the Defendants have not proved any sufficient cause for non-appearance. She further submits that in any case, both the Courts have rightly held that the decree is not ex-parte decree and decree passed is at the most covered by Order XVII, Rule 2 of C.P.C. She relies on the decision of the Supreme Court in the case of **B. Janakiramaiah Chetty v. A.K. Parthasarthi**, 2003 5 SCC 641 and more particularly, paragraph Nos.8 to 10 of the same. She further

submits that it is settled principle of law that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution of India is limited "to seeing that an inferior Court of Tribunal functions within the limits of its authority", and not to correct an error of law. In exercising this supervisory power, the High Court does not act as an Appellate Court or Tribunal. To support said contention she relies on the decision of the Supreme Court in the case of **Mohd. Yunus vs. Mohd. Mustaqim & Ors**, 1983 4 SCC 566 and more particularly, paragraph 7 of the same.

[7] Before consideration of the rival contentions and deciding the same, it is necessary to set out herein below the concurrent findings recorded by both the learned Trial Court and learned Appellate Court. They are as under:-

(i) Inspite of service of notice after restoration of the suit on multiple occasions, the Defendants failed to appear in the suit

(ii) The Defendants have not proved any sufficient cause for their non-appearance.

(iii) Said Judgment and Decree dated 20th December 2012 is not the ex-parte decree but decree passed under Order XVII, Rule 2 of the CPC.

[8] In view of above concurrent findings, the observations made in Paragraph Nos.15 to 18 in order dated 12th October 2015 passed by the learned Appellate Bench of Small Causes Court, Mumbai while dismissing the appeal filed by the present Petitioners are relevant and the same reads as under:

> "15. In order to resolve the controversy, it is first necessary have a reference to the facts involved in the original suit. Suffice to say that the said suit was recovery of possession of the suit premises from the defendants under Maharashtra Rent Control Act, 1999. **In response to the suit summons, all the defendants appeared in the said suit and also. filed their written statement. Issues came to be framed on 27.01.1998. Original Plaintiff No.5 and 9 examined themselves as (PW1 & 2). The defendants cross-examined them. Thereafter the plaintiff closed their evidence. Defendant No.2 examined himself on behalf of all the defendants as (DW-1) and he was crossexamined by the plaintiffs. Thereafter all the defendants closed their evidence. Finally, the matter was posted for final argument to 16.10.2002.**
>
> 16. Rozanama of the suit proceeding further shows that thereafter matter was adjourned from time to time and finally it was kept on 09.02.2005. However, on said date, defendant No.3 and his advocate were present but as the plaintiffs failed to appear, the said suit came to be dismissed for default. Thereafter, the plaintiffs took out Misc.Notice No.176 of 2005 under Order IX Rule IX of the Code of Civil Procedure, 1908 for restoration of the said suit, but the said notice came to be dismissed by the learned Trial Judge by its order dated 04.02.2006. Being aggrieved by it, the plaintiffs preferred Misc. Appeal No.513 of 2008, which came to be allowed by the Appellate Court by

its **judgment and order dated 01.08.2011 and the said suit came to be restored to its original file.** Copy of the said judgment and order passed in Appeal No.513 of 2008 shows that the **Appellate Court, while restoring the suit directed the learned Trial Judge to issue notices to all the defendants. Accordingly, as per the directions of the Hon'ble Appellate Court, the learned Trial Judge issued notices to both the parties on Court motion by passing specific order dated 16.09.2011.**

17. The said notices along with bailiff report dated 18.11.2011 are placed on record vide Exh. 44 colly. They show that the said notices came to be served on all the plaintiffs and also on all the defendants except defendant No.1. **The bailiff report dated 18.11.2011 clearly shows that the defendant no.9 in person has accepted the notice for himself and one Mr. Ramesh Mediwal who is the nearest relative has accepted the notices on behalf of defendant Nos. 2 to 8 by putting his signature on it. The bailiff also came to know that the defendant No. 1 has expired. Even, the notice of Misc. Notice No.176 of 2005, which was taken out by the plaintiffs for restoration of the suit was also served on all the defendants. As per the bailiff's report dated 18.8.2015, even the notice of the Appellate Court in Appeal No.513 of 2008 also came to be served on all the defendants, but, they failed to appear. Therefore, it is clear that the defendant Nos. 2 to 9 were served with notices and they were aware of the original suit. However, the defendants choose not to appear.**

18. Thereafter, the plaintiffs took out amendment application for bringing the new trustees on record by deleting the names of erstwhile trustees. Even the notices of the said application was also issued to all the defendants. The said notice was served on defendant No. 6 to 9 personally. The notice of defendant No. 2 to 4 came to be served on their brother and in respect of defendant no.5, it came to be pasted. The bailiff report to that effect is placed on record. Now this is the second time after the restoration of the suit, the defendants are made aware of the suit but non of the defendants appeared in the suit."

(Emphasis added)

Thus, the above discussion clearly shows that the Defendants were served after restoration of the Suit on multiple occasions, however, still none has appeared for the Defendants in the said Suit after restoration.

[9] Thus, various observations of the learned trial Court and the learned Appellate Court including above observations clearly shows that the concurrent findings recorded by both the Courts to the effect that inspite of service of notice after restoration of the suit on multiple occasions the Defendants failed to appear in the suit and the Defendants have not proved any sufficient cause for non-appearance are the findings recorded on the

basis of the material on record and therefore, the same does not require any interference in the writ jurisdiction of this Court.

[10] As already noted herein above, the main contention raised by Mr. Thorat, learned Counsel appearing for the Petitioners that the service on Defendant No.1(a) for Defendant Nos.1(b) and 1(c) of application to bring on record, heirs of the deceased Respondent No.1 is not good service as the Defendant No.1(a) is the mother of the Defendant Nos.1(b) and 1(c) and in view of the Bombay Amendment of Order 5, Rule 15, which specially provides that service on male members of the Defendants' family is good service, the said service is not good service as far as Defendant Nos. 1(b) and 1(c) are concerned.

[11] To appreciate the said contention, it is necessary to set out the Bombay Amendment of Order 5, Rule 15, which reads a under:

> **"[Bombay]**.- For the existing rule 15 and its marginal note, substitute the following as rule 15 and marginal note:-
>
> "15. Where service may be on male member of defendant's family.- When the defendant cannot for any reason be personally served and has no agent empowered to accept service of the summons on his behalf, service may be made **on any adult male member of the family of the defendant who is residing with him.**
>
> Explanation.-A servant is not a member of the family within the meaning of this rule."-(1-10-1983."

[12] The Order 5 Rule 15 of CPC as per the Central Legislation is as under:-

> **"15. Where service may be on an adult member of defendant's family.-** Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, **service may be made on any adult member of the family, whether male or female, who is residing with him."**
>
> (Emphasis added)

[13] Thus it is clear that the Central Legislation provides that service may be made on any adult family member of the family, whether male or female, who is residing with him, whereas the Bombay Amendment provides that service may be made on any adult male member of the family. Thus it is clear that there is conflict between the Central Legislation and the Bombay Amendment.

[14] In view of the above conflict between the Central Legislation and the Bombay Amendment, decision of the Division Bench of this Court in the matter between Rajkumar Sampatraoji Kuthe v. State of Maharashtra,2011 SCCOnLineBom 1249 is very relevant wherein, in Paragraph Nos.3 to 6, it has been held as follows:-

"3. In this regard, a reference may be made to section 16 to the Code of Civil Procedure (Amendment) Act, 2002, amending the Code of Civil Procedure 1908. Section 16(1) which is relevant, reads as follows:

> **"16. Repeal and savings.** (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except insofar as such amendment or provisions are consistent with the principal Act as amended by this Act, stand repealed." We find that the amendment made by Bombay High Court before the enactment of the Amendment Act, 2002 is inconsistent with the principal Act. We find that even the earlier amending Act namely Code of Civil Procedure (Amendment) Act, 1999 contained a provision identical to section 16 of the 2002 Act, reproduced supra. That provision, namely section 32 of the Code of Civil Procedure (Amendment) Act, 1999, reads as follows:
>
> **"32. Repeal and savings.-** (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed."

The effect of the Repeal and Savings clause contained in the Code of Civil Procedure (Amendment) Act, 1999 and the Code of Civil Procedure (Amendment) Act, 2002, is clearly to negate any amendment made by a State Legislature or a High Court, which is inconsistent with the principal Act for the obvious purpose of brining about uniformity in the Code of Civil Procedure throughout the Country.

4. Thus the restrictions placed by the Bombay Amendment that service of summons may be made only on an adult male member of the family residing with the defendant is inconsistent with Order V, Rule 15 of the Code of Civil Procedure, 1908, which permits service to be made on any adult male member of the family, whether male or female and must, therefore, give way to the provisions of the principal Act as enacted by the Parliament.

5. In **Ganpat Giri v. IInd Additional District Judge Badia**, 1986 1 SCC 615: AIR 1986 SC 589 the Supreme Court, in a similar situation, observed as follows:

> "10. It is thus seen that even though R. 72 was not amended by the Amending Act its retention in the form in which it was in the Code had been recommended by the Law Commission for the reasons given by it. Now reverting to S. 97 (1) of the Amending Act, the High Court was in error in holding that because no amendment had been made to R. 72 by the Amending Act, S. 97(1) had no effect on the Rule as it was in force in the State of Uttar Pradesh before the commencement of the Amending Act. As observed earlier, the effect of S. 97 (1) is that all local amendments made to any of the provisions of the Code either by a State Legislature or by a High Court which

were inconsistent with the Code as amended by the Amending Act stood repealed irrespective of the fact whether the corresponding provision in the Code had been amended or modified by the Amending Act and that was subject only to what was found in subsec. (2) of S. 97. Sub-Sec. (3) of S. 97 provides that save as otherwise provided in sub-sec. (2) the provisions of the Code as amended by the Amending Act shall apply to every suit, proceeding appeal or application pending at the commencement of the Amending Act or instituted or filed after such commencement notwithstanding the fact that the right or cause of action in pursuance of which such suit, proceeding appeal or application is instituted or filed had been acquired or had accrued before such commencement. Sub-sec. (3) of S. 97 sets at rest doubts, if any, by making the Code as amended by the Amending Act applicable to all proceedings referred to therein subject to sub-sec. (2) of S. 97."

6. In view of above, the subordinate courts are directed to ignore the restrictions contained in Order V, Rule 15 of the Code of Civil Procedure, as amended by the Bombay High Court with effect from 1-10-1983, which requires service to be done only on adult male member of the family and instead follow Rule 15 of Order V of Code of Civil Procedure 1908 as enacted by Parliament, which reads as follows:

"15. Where service may be on an adult member of defendant's family.- Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, **service may be made on any adult member of the family, whether male or female, who is residing with him.**

Explanation.- A servant is not a member of the family within the meaning of this rule." Order accordingly."

(Emphasis added)

[15] The Division Bench of this Court has held that the effect of the Repeal and Savings clause contained in the Code of Civil Procedure (Amendment) Act, 1999 and the Code of Civil Procedure (Amendment) Act, 2002, is clearly to negate any amendment made by a State Legislature or a High Court, which is inconsistent with the principal Act for the purpose of brining about uniformity in the Code of Civil Procedure throughout the Country. The Division Bench further observed that the restrictions placed by the Bombay Amendment that service of summons may be made only on an adult male member of the family residing with the defendant is inconsistent with Order V, Rule 15 of the Code of Civil Procedure, 1908, which permits service to be made on any adult male member of the family, whether male or female and must, therefore, give way to the provisions of the principal Act as enacted by the Parliament. In view of this discussion, the Division Bench of this Court specifically directed all the Courts in

Maharashtra to ignore the restrictions contained in Order V, Rule 15 of the Code of Civil Procedure, as amended by the Bombay High Court with effect from 1-10-1983, which requires service to be done only on adult male member of the family and instead follow Rule 15 of Order V of Code of Civil Procedure 1908 as enacted by Parliament.

[16] Thus, in view of the law laid down by the Division Bench there is no substance in the contention raised by Mr. Thorat, learned Counsel appearing for the Petitioners.

[17] It is significant to note that in addition to the above findings, both the Courts have held that the decree is not ex-parte decree in view of the provision of Order XVII Rule 2 of CPC. Order XVII Rule 2 of CPC reads as under:-

"2. Procedure if parties fail to appear on day fixed.-

Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

[Explanation.- Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion proceed with the case as if such party were present.]"

(Emphasis added)

[18] The above Explanation to Order XVII Rule 2 has been inserted by amendment by Act 104 of 1976 which has come into effect from 1st February 1977. Statement of Objects and Reasons for adding above explanation to Order XII Rule 2 of C.P.C. are as follows:-

"Objects and Reasons. - Clause 71 Sub-clause (ii).- Rule 2 provides for the procedure to be adopted where parties fail to appear on a day fixed. At present three courses are open to the Court, namely:-

(a) to act under Order IX, though it is not bound to do so;

(b) to grant further adjournment; or

(c) to make such other order as it deems fit.

The words "such other order" have been differently interpreted by different High Courts. In view of the obscurity of the present position, a new Explanation is being added to the rule to make the position clear by empowering the Court to proceed with a case even in the absence of a party where evidence or a substantial portion of the evidence of such party has already been recorded. [Statement of Objects and Reasons (Bill) Gazette of India, Ext., dt. 8-4-1974, Pt. II, S.2, p.319.]"

(Emphasis added)

[19] Thus the intention of the legislature in adding said Explanation to Order XVII Rule 2 is very clear. The said explanation is added for empowering the Court to proceed with a case even in absence of party where evidence or substantial portion of evidence of such party has already been recorded. Thus, the explanation to Order XVII Rule 2 is very clear which provides that where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.

[20] The Supreme Court in the case of B. Janakiramaiah Chetty (supra) in paragraph 8 to 10 has held as under:

> "8. The Explanation permits the court in its discretion to proceed with a case where substantial portion of evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned. As the provision itself shows, discretionary power given to the court is to be exercised in a given circumstance. For application of the provision, the court has to satisfy itself that: (a) substantial portion of the evidence of any party has been already recorded; (b) such party has failed to appear on any day; and (c) the day is one to which the hearing of the suit is adjourned. Rule 2 permits the court to adopt any of the modes provided in Order 9 or to make such order as he thinks fit when on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear. The Explanation is in the nature of an exception to the general power given under the rule, conferring discretion on the court to act under the specified circumstance i.e. where evidence or a substantial portion of evidence of any party has been already recorded and such party fails to appear on the date to which hearing of the suit has been adjourned. If such is the factual situation, the court may in its discretion deem as if such party was present. Under Order 9 Rule 3 the court may make an order directing that the suit be dismissed when neither party appears when the suit is called on for hearing. There are other provisions for dismissal of the suit contained in Rules 2, 6 and 8. We are primarily concerned with a situation covered by Rule 6. The crucial words in the Explanation are "proceed with the case". Therefore, on the facts it has to be seen in each case as to whether the Explanation was applied by the court or not.
>
> 9. In Rule 2, the expression used is "make such order as it thinks fit", as an alternative to adopting one of the modes directed in that behalf by Order 9. Under Order 17 Rule 3(b), the only course open to the court is to proceed under Rule 2, when a party is absent. Explanation thereto gives a discretion to the court to proceed under Rule 3 even if a party is absent. But such a course can be adopted only when the absentee party has already led evidence or a

substantial part thereof. If the position is not so, the court has no option but to proceed as provided in Rule 2. Rules 2 and 3 operate in different and distinct sets of circumstances. Rule 2 applies when an adjournment has been generally granted and not for any special purpose. On the other hand, Rule 3 operates where the adjournment has been given for one of the purposes mentioned in the rule. While Rule 2 speaks of disposal of the suit in one of the specified modes, Rule 3 empowers the court to decide the suit forthwith. The basic distinction between the two rules, however, is that in the former, any party has failed to appear at the hearing, while in the latter the party though present has committed any one or more of the enumerated defaults. **Combined effect of the Explanation to Rule 2 and Rule 3 is that a discretion has been conferred on the court. The power conferred is permissive and not mandatory. The Explanation is in the nature of a deeming provision, when under given circumstances, the absentee party is deemed to be present.**

10. **The crucial expression in the Explanation is "where the evidence or a substantial portion of the evidence of a party". There is a positive purpose in this legislative expression. It obviously means that the evidence on record is sufficient to substantiate the absentee party's stand and for disposal of the suit. The absentee party is deemed to be present for this obvious purpose. The court while acting under the Explanation may proceed with the case if that prima facie is the position. The court has to be satisfied on the facts of each case about this requisite aspect. It would be also imperative for the court to record its satisfaction in that perspective. It cannot be said that the requirement of substantial portion of the evidence or the evidence having been led for applying the Explanation is without any purpose. If the evidence on record is sufficient for disposal of the suit, there is no need for adjourning the suit or deferring the decision."**

[21] Thus, the Supreme Court has held that the Explanation permits the Court in its discretion to proceed with a case where substantial portion of evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned. The provision itself shows, discretionary power given to the court is to be exercised in a given circumstance.

[22] The Supreme Court has held that the Explanation is in the nature of an exception to the general power given under the rule, conferring discretion on the court to act under the specified circumstance i.e. where evidence or a substantial portion of evidence of any party has been already recorded and such party fails to appear on the date to which hearing of the suit has been adjourned. If such is the factual situation, the court may in its discretion deem as if such party was present. The crucial expression in the Explanation is "where the evidence or a substantial portion of the evidence of a

party". There is a positive purpose in this legislative expression. It obviously means that the evidence on record is sufficient to substantiate the absentee party's stand and for disposal of the suit. The absentee party is deemed to be present for this obvious purpose. The court while acting under the Explanation may proceed with the case if that prima facie is the position. The court has to be satisfied on the facts of each case about this requisite aspect.

[23] In the present case, admittedly, the issues were framed in the said Suit on 27th January 1998. The evidence of the Plaintiffs i.e. Vinod Mastkar (PW-1) and Vijaya Shoof (PW-2) was completed on 28th May 2002. Thereafter, evidence of the Defendants - Sadashiv Madhiwal (DW-1) i.e. present Petitioner No.2 was closed on 7th October 2002. In the meanwhile, after the Plaintiff and Defendants led the evidence and evidence closer pursis has been filed, subsequently, the said Suit was dismissed for default on 9th February 2005. Thus, before the dismissal of the Suit for default both the parties have led their respective evidence. The material on record clearly shows that all the Defendants were served before and after restoration of the suit on number of occasions. The learned Trial Court issued notice to all the parties to the Suit directing them to appear on 22nd November 2011 after the restoration of the Suit. Bailiff report shows that the Defendant No.9 personally accepted the notice and on behalf of Defendant Nos. 2 to 8 one Ramesh Mediwal who is near relative of the present Petitioners, had accepted the notice by putting signature on the notices. The Baillif report records that the Defendant No.1 has passed away. The Respondents filed application on 22nd November 2011 for carrying out amendment to the Plaint by deleting old trustees and adding new trustees. Notice of amendment application taken out for deleting old trustees and addition of new trustees was served on Defendant No. 6 to 9, on Defendant No. 2 to 4 through their brother, and notice was pasted in respect of Defendant No.5. This application was allowed on 21st June 2012. On 29th February 2012 the Respondents filed Application for bringing heirs and legal representatives of deceased Defendant No.1 on record and same was allowed on 5th May 2012. As per the Petitioners' contention in the said application only the Defendant No. 1(a) was served and the Defendant Nos. 1(b) and 1(c) were not served in view of bailiff's report(Exhibit-55). The said Bailiff Report (Exhibit-55) concerning service of Defendant Nos.1(a) to 1(c) records that suit summons was served on Defendant No.1(a) i.e. mother of the Defendant Nos.1(b) and 1(c) and she has accepted service on behalf of Defendant Nos.1(b) and 1(c) also. The Defendant No.1(a) is the mother of the Defendant No.1(b) and Defendant No.1(c). As already by giving detailed reasons it has been recorded that the said service on the Defendant No.1(a)-mother who accepted service on behalf of her sons i.e. Defendant Nos.1(b) and Defendant No.1(c) is good service. Therefore, it is clear that the defendant Nos. 2 to 9 and the Defendant Nos. 1(a) to 1(c) were served with notices and they were aware of the suit. However, they chose not to appear. Thus, no interference in the impugned Judgment and Orders is warranted in the facts and circumstances.

[24] One more aspect which is required to be taken into consideration is that the Bailiff report being Exhibit-55 regarding service of suit summons upon the Defendant Nos.1(a) to 1(c) was not to be found in the record and the same was not traceable. The learned Appellate Court directed to the Registrar of the Small Causes Court to enquire into the conduct of the concerned staff member having custody of the proceeding at the relevant time and submit report to the Appellate Court and immediately on the very next day of issuance of notice to the concerned clerk, she handed over missing report at Exhibit-55 to the Registrar of the Small Causes Court. Thus, it is obvious that the said report was missing at the instance of the present Petitioners as the said report would have established that the Defendant Nos.1(a) to 1(c) were served. This conduct of the Petitioners is very relevant as the impugned orders are challenged by filing Writ Petition under Article 227 of the Constitution of India. The relevant observations concerning this aspect of the learned Appellate Court are to be found in Paragraph Nos.15 and 16 of the impugned Order of the learned Appellate Court which is reproduced herein below:-

> "15. So far as this aspect is considered, admittedly, the report Exhibit 55 regarding the service of Suit summons upon all these Defendant Nos.l(a) to 1(c) was not on record, though, it was noted in the proceeding that the Suit summons is served. In absence of document on record the Learned Trial Judge has relied upon the noting in the proceeding and after considering almost all the attending circumstances and the very conduct of the Advocate for the Defendants held that the Suit summons are served upon all the Defendants, but, specifically and certainly the findings about report of service of Suit summons was not recorded by him. Obviously, for the reason that it was missing.
>
> 16. After concluding the hearing this matter and after going through the record of the Suit proceeding, we also found that there is reference of the service of the Suit summons upon the Defendant Nos.1(b) and 1(c) but report of Bailiff was not appearing on record. By that time this Court has directed the Registrar of this Court to enquire in this regard by issuing Notice to the concern staff members having custody of the proceeding at the relevant time and directed him to enquire and report within given period. Accordingly, Registrar issued Notice to the concerned clerk who at the very next day of issuance of Notice/Memo to her handed over the missing report Exhibit 55 to the Registrar of this Court who in turn submitted before this Court, along with explanation of clerk concerned and her report. In this way, missing report Exhibit 55 is placed on record."
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> (Emphasis added)

[25] The above position on record shows that the Petitioners have not approached the Court with clean hands, as the Baillif report recording that the Defendant Nos.1(a) to

1(c) were served, was not traceable and immediately after the notice is issued to the concerned clerk the same report was produced by the said clerk immediately on the next date. Thus, it is very clear that at the instance of the Petitioners the said report was made untraceable from the record and as soon as the learned Appellate Court issued notice to the concerned Clerk, immediately, on the very next day, the report was made available to the learned Appellate Court. Thus, apart from merits even the said aspect on record clearly shows that the Petitioners are not entitled for any reliefs under the jurisdiction of this Court under Article 227 of the Constitution of India.

[26] In view of the above factual position on record, it is relevant to see observations of the Supreme Court in **Mohd. Yunus** (supra) on which the Ms. Saboo, learned Counsel of the Respondents has relied. The relevant paragraph No.7 of said decision reads as under:

> "7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior court or tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an appellate court or tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."
>
> (Emphasis added)

[27] Thus, the Supreme Court has held that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior court or tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. It if further held that in exercising the supervisory power under Article 227, the High Court does not act as an appellate court or tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.

[28] The above observations of the Supreme Court are squarely applicable to the present case.

[29] Thus, in the facts and circumstances of the case, no interference under Article 227 of the Constitution of India is warranted. In view of the conduct of the Petitioner, the Writ Petition is dismissed with costs of Rs.10,000/-

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2026(1)MCJ85

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Milind N Jadhav)

Interim Application; Suit No 3243 of 2025; 4005 of 2025; 23 of 2025 **dated 03/12/2025**

Niket Mehta; In The Matter Between: Lilavati Kirtilal Mehta Medical Trust

Versus

Niket Mehta.

MAINTAINABILITY OF SUIT

Code of Civil Procedure, 1908 Or. 7R. 11 - Bombay Public Trusts Act, 1950 Sec. 50, Sec. 80, Sec. 51 - Indian Trusts Act, 1882 Sec. 51 - Maintainability of Suit - Defendant sought rejection of plaint under Order VII Rule 11(d) of CPC contending that suit by Public Trust for recovery against former trustee barred for want of Charity Commissioner's consent under Sections 50 and 51 of Bombay Public Trusts Act - Plaintiffs claimed defendant was trespasser and not valid trustee - Defendant argued that pleadings and documents admitted he was trustee and hence consent mandatory - Plaintiffs contended occupation was illegal and suit maintainable without such consent - Court observed plaint itself acknowledged defendant's status as trustee during contentious period and claim arose out of alleged breach of trustee duties - Held suit clearly governed by Sections 50 and 51 of Bombay Public Trusts Act - Absence of prior permission from Charity Commissioner rendered suit not maintainable - Plaint rejected under Order VII Rule 11(d) of CPC - Suit rejected

Law Point: Where cause of action arises from acts of a person as trustee of public trust, consent of Charity Commissioner under Sections 50 and 51 of Bombay Public Trusts Act is mandatory before institution of suit; absence of such consent renders plaint liable to rejection under Order VII Rule 11(d) of CPC.

Acts Referred:

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

Bombay Public Trusts Act, 1950 Sec. 50, Sec. 80, Sec. 51

Indian Trusts Act, 1882 Sec. 51

Counsel:

Atul Damle (Senior Advocate), Dakshesh Vyas, Abhishek Prabhu, Jyoti Ghag, Shailesh, Ankit Singhal, Pankaj Sawant (Senior Advocate), Aloukik R Pai, Saharsh Sakhare, Priyanka Rammurthy

JUDGEMENT

Milind N. Jadhav, J.- [1] Heard Mr. Damle, learned Senior Advocate for Plaintiffs and Mr. Sawant, learned Senior Advocate for Defendant.

[2] This Application is filed by Defendant for rejection of the Suit plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (for short 'CPC')on the

ground that suit is barred under Section 80 of the Maharashtra Public Trusts Act, 1950 (for short '**MPT Act**') for Plaintiffs having failed to comply with the statutory and mandatory provisions of Section 50 and 51 thereof before institution of the Suit proceedings. Parties are referred to as Plaintiffs and Defendant for convenience.

[3] Briefly stated, Plaintiff No.1 is a Public Trust amenable to the provisions of the MPT Act. Plaintiff Nos.2, 3 and 4 are the present Trustees of Plaintiff No.1 - Trust. Suit is filed on 19.12.2024 for recovery of Rs.17,20,88,896/- from Defendant who according to Plaintiffs' own case as pleaded in the Suit plaint was a permanent Trustee of Plaintiff No.1 - Trust from the year 2001 till 14.12.2023. The recovery of the above amount in the Suit proceedings is sought towards compensation for use by Defendant one Flat No.7 admeasuring 2849.66 sq. ft. on the 12th floor of Plaintiff No.1- Trust's hospital building as his residence from January 2007 to April 2015 and for use of office admeasuring 360 sq. ft. on the 3rd floor, A - Wing of Plaintiff No.1 - Trust's hospital building from January 2007 to January 2009 (for short "**the suit properties**"). Suit seeks recovery of proceeds due to the Trust for me of the aforementioned twin properties which are admittedly Trust properties.

[4] Mr. Sawant, learned Senior Advocate for Defendant makes the following submissions in support of Application for seeking rejection of the Suit plaint under Order VII Rule 11(d) of CPC:-

i. He would submit that Plaintiffs have admitted in the Suit plaint that Defendant was a Trustee of Plaintiff No.1 - Trust; that several documents appended as Exhibits to the Suit plaint admit and acknowledge that Defendant was a permanent Trustee of the Trust from 2001 to 2023; that it is not pleaded in the Suit plaint that entry of Defendant in the twin suit properties for the contentious period was without knowledge of Plaintiff No.1 - Trust or its Trustees; that it is not Plaintiffs' case that Defendant claimed the suit properties adversely to the Trust neither Defendant has ever denied title of Plaintiff No.1 - Trust to the suit properties and most importantly on Plaintiffs' own showing which is borne out from the averments / pleadings in the Suit plaint and Exhibits annexed thereto, Defendant was admittedly in occupation and possession of the suit properties during the aforesaid tenure in his capacity as Trustee of Plaintiff No.1 - Trust as he was overlooking the affairs of the Trust.

ii. In support of his above submissions he has drawn my attention to the pleadings contained in paragraph Nos.2, 3, 10, 13 and 15 of the suit plaint to contend that Plaintiff No.1 - Trust has clearly admitted in the suit plaint that defendant is an erstwhile (illegal) trustee of the trust, that he was in (illegal) occupation of suit properties from the year 2007 to 2015, that Suit is filed for recovery of compensation with interest from Defendant for illegally occupying the Trust properties during the above period as erstwhile (illegal) Trustee, that according to Plaintiffs the Defendant during this period as Trustee took undue advantage of his position and unlawfully occupied the suit properties; that the erstwhile Board of Trustee did not take any action against Defendant inspite of his such wrongdoing and his failure to vacate the suit properties and Defendant

was admittedly in possession of the suit properties in contravention to law as the same is Public Trust property.

iii. While relying upon the provisions of Section 51 of Indian Trust Act, 1882 in further support of Defendant's case regarding Plaintiff No.1 - Trust having acknowledged that he was a Trustee / permanent Trustee of Plaintiff No.1 - Trust, my attention is drawn to Exhibit "D" at page No.147, Exhibit "L-1" at page No.221, Exhibit "I" page No.226, Exhibit "O" at page No.249 and Exhibit "S" at page No.298 which are Exhibits annexed to the Suit plaint. These are letters / correspondence addressed by Plaintiff No.1 - Trust and pleadings filed in the Supreme Court and this Court wherein Plaintiff No.1 - Trust has acknowledged Defendant to be the permanent Trustee / Trustee of Plaintiff No.1 - Trust / member of Board of Trustee of Plaintiff No.1 - Trust

4.1. As a sequitur of the above submissions on facts, Mr. Sawant would submit that since the Suit proceedings is filed on the basis of the aforesaid case made out by Plaintiffs for recovery of compensation from Defendant being an erstwhile Trustee of Plaintiff No.1 - Trust, the Suit as framed is clearly covered by the provisions of Sections 50 (i) and 50 (ii) of MPT Act and most specifically covered by Clauses "a", "f" and "q" of the MPT Act. He would submit that there can be no doubt whatsoever for the Suit to be covered by the above provisions on the basis of the pleadings and Exhibits annexed to the Suit plaint and if that be so then under Section 51 of the MPT Act consent of the Charity Commissioner is mandatory before filing of such a Suit proceeding and most importantly the Charity Commissioner would be a proper and necessary party to such a Suit proceeding under Section 51(3) of the MPT Act.

4.2. He would submit that Defendant has never denied the title of Plaintiff No.1 - Trust to the suit properties and even according to Plaintiffs, he was admittedly occupying the suit properties in his capacity as Trustee. He would submit that in paragraph No.15 Plaintiffs have pleaded breach of duties by Defendant acting as Trustee under Section 51 of Indian Trusts Act, 1882. He would submit that in these facts which are clearly and prima facie borne out from the Suit plaint and Exhibits thereto the Suit is not maintainable for want of permission of the Charity Commissioner in accordance with the provisions of Sections 50 and 51 of the MPT Act. That apart, he would submit that the present Suit as filed is vexatious in nature, seeking alleged unagreed compensation for a period more than 18 years ago and is filed merely to harass and pressurise the Defendant and to drain his resources. He would submit that the Suit is barred by limitation but he does not press the same, since it would be mixed question of facts and law.

4.3. In view of the aforesaid submissions, he would persuade the Court to dismiss the Suit plaint on the ground of non-maintainability for not having obtained the statutory consent of the Charity Commissioner for filing the present Suit in view of the cause of action invoked therein.

[5] PER CONTRA, Mr. Damle, learned Senior Advocate for Plaintiffs opposes the Application on the ground that Advocate for Defendant is completely erroneous in understanding the scope and object of Order VII Rule 11(d) of CPC for seeking dismissal of the present suit. He would submit that averments made in the Suit plaint are required to be read harmoniously to understand its underlying meaning and according to him the Suit plaint does not suffer from any defect, much less the rigours of Section 50 of MPT Act.

5.1. At the threshold, he would submit that consent of the Charity Commissioner for filing the present Suit proceeding is not required since it is Plaintiffs' specific case in the Suit plaint that Defendant is / was a trespasser in the suit properties and was not occupying the same as a validly appointed Trustee of Plaintiff No.1 - Trust during the contentious period. He would submit that by a well reasoned order dated 14.12.2023 passed by the Assistant Charity Commissioner in a Change Report filed by Plaintiff No.1 - Trust it is held that Defendant was never a validly appointed Trustee of the Plaintiff No.1 - Trust, hence, he would submit that as a consequence thereof, possession of Defendant of the suit properties during the contentious period was illegal as he was in illegal occupation thereof and therefore the Trust is within its right to file the present suit without obtaining consent of the Charity Commissioner.

5.2. He would vehemently argue that case of Plaintiffs is that Defendant is guilty of usurpation of Trust properties as a trespasser and therefore even if he claimed to be a Trustee, Plaintiff No.1 - Trust does not require permission of the Charity Commissioner to file the suit in the facts of this case. He would persuade me to read the contents of paragraph No.51 of the Suit plaint which crystallites the case of Plaintiffs' against the Defendant. He would submit that there was no nexus or privity of contract between the Trust and Defendant to enable him to use and occupy the suit properties in any capacity, neither there was any legal or jural relationship between the parties.

5.3. He would submit that Defendant abused his position as Trustee and usurped the Trust properties for his personal use illegally without there being any legal relationship and thus he was always a trespasser on the suit properties. He would fairly submit that the New Board of Trustee took over Management of the Trust only in the year 2023 and unearthed substantial misappropriation of Trust funds and illegal activities committed by Defendant alongwith the erstwhile illegal Trustees of Plaintiff No.1 - Trust.

5.4. He would submit that in the preliminary Audit Report it is reflected that Defendant alongwith the erstwhile illegal Trustees of the Trust usurped Trust funds of more than Rs.1700 - 1800 crores and in one such instance of misappropriation, FIR is registered against them. He would submit that such necessary averments are made in the Suit plaint. He would submit that occupation of suit properties by Defendant has been held to be illegal by the Supreme Court in its order dated 11.05.2015 and it has been held that Defendant is liable to pay compensation for the use and occupation of the suit properties which he agreed to vacate.

5.5. He would persuade me to read the relevant paragraph in the order dated 11.05.2015 in SLP (C) No.3772 of 2014 wherein it is recorded that Defendant has agreed to pay the market rate and maintenance charges for retaining possession of the suit properties. He would submit that despite this order, Defendant did not comply with the same which led to passing of a further order dated 21.01.2016 directing compliance of the earlier order to either vacate the suit properties by clearing the arrears and hand over peaceful possession or if wanting to continue in possession then pay monthly compensation at the rate determined by the Interim Board. He would submit that Defendant's statement is recorded in this order that he wanted to clear the arrears and vacate the suit premises which he ultimately vacated.

5.6. Mr. Damle has also invited my attention to Exhibits appended to the Suit plaint at page Nos.147, 221, 226, and the opinion at page No.230 to contend that the Defendant was in occupation of the Suit properties illegally during the contentious period for which recovery of compensation is sought for by the Trust. He would submit that since Defendant's occupation was admittedly illegal and unauthorized, permission of the Charity Commissioner is not required to file the Recovery Suit.

5.7. He would submit that the above relevant fact of unauthorised occupation came to light only recently due to the fraud and suppression by Defendant. He would submit that merely on the basis of the defence taken by Defendant, the Suit plaint cannot be rejected and the entire Suit plaint alongwith its Exhibits will have to be read holistically for maintainability of the Suit without permission from the Charity Commissioner. On the issue of limitation, he would submit that the factual disputes and discovery of cause of action are mixed questions of facts and law and they will have to be adjudicated in trial. He would submit that application under Order VII Rule 11(d) of CPC is nothing but a delaying tactic and abuse of the due process of law which should not be encouraged by the Court in the present case.

5.8. He would submit that Suit filed by Plaintiff No.1 - Trust does not seek administrative reliefs for example removal of Trustee or challenge to the Scheme of the Trust and hence the Suit is maintainable without seeking consent of the Charity Commissioner. He would submit that the suit seeks compensation for illegal occupation of Plaintiff No.1 - Trust's suit properties by an illegally appointed Trustee (Defendant) which is a civil wrong and therefore the Defendant cannot shield himself behind the cloak of Section 50 and 51 of the MPT Act.

5.9. He would submit that it is settled position of law that for filing a Suit against a person who is in adverse possession of the Trust properties as a trespasser, licensee or tenant, consent of the Charity Commissioner is not required for institution of such a Suit. He would submit that in the present case, Suit has been instituted by Plaintiff No.1 - Trust against an illegally appointed Trustee for recovery of compensation for unauthorised occupation of the Trust properties by him.

5.10. He would submit that Defendant's contention that he occupied the suit properties in his capacity as Trustee is factually incorrect and legally untenable. He has drawn my attention to the order dated 14.12.2023 passed by the Assistant Charity Commissioner whereby the Change Report filed by Defendant was rejected and he was found to be an illegally appointed Trustee. He would therefore submit that Defendant's possession was never lawful and his liability to compensate Plaintiff No.1 - Trust arises as an unauthorized occupant / trespasser of the suit properties and not having occupied them in a fiduciary capacity. In support of his submissions, he has referred to and relied upon the decision of this Court (Coram: Sandeep V. Marne, J.) in the case of Shri Hari Ashram, (through its Trustee) Vs. Vijay Jayantilal Patel and Anr, Interim Application No.4436 of 2025 in Suit No.13 of 2025, decided on 03.10.2025.

5.11. He would submit that the prayer of Defendant in Interim Application under Order VII Rule 11(d) of the CPC is baseless and pleadings in the Suit plaint are only relevant, necessary and are duly supported by material on record. Hence, he would urge the Court to dismiss the Interim Application filed by Defendant in the interest of justice.

[6] I have heard, Mr. Damle, learned Senior Advocate for Plaintiffs and Mr. Sawant, learned Senior Advocate for Defendant and with their able assistance perused the Suit plaint and its Exhibits. Submissions made by both the learned Advocates at the bar have received due consideration of the Court.

[7] In proceedings under Order VII Rule 11 of CPC, the Court will have to see the averments made in the Suit plaint and the material appended as Exhibits to the Suit plaint for determination of the Application of Defendant. Plaintiff - Trust has filed the present Suit against Defendant and its case as pleaded in the arguments before me is that Defendant was always a trespasser and unauthorized occupant of the suit properties and by virtue of his position as a Trustee without having any relationship or brevity between the Trust and himself abused his position and enjoyed the suit properties. This is the thrust and conclusion of Plaintiffs' case as argued and found in paragraph No.15 of the Suit plaint to which my attention is drawn to by Mr. Damle. However what is stated in the Suit plaint by Plaintiffs qua the cause of action against Defendant needs to be looked into. Excerpts of six paragraphs in the Suit plaint are relevant in this context.

[8] In paragraph No.2 of the Suit plaint, Plaintiffs have averred as follows:-

> "2. ... The Defendant is an erstwhile illegal trustee of the said Trust, whose Change Report came to be rejected by the Ltd. Asst. Charity Commissioner vide Order dated 14.12.2023, thereby, removing the Defendant from the Trust and rejecting all the claims of the Defendant over the trusteeship or the Management of the said Trust".

8.1. In paragraph No.4 of the Suit plaint, Plaintiffs have averred as follows:-

> "4. The Suit is preferred, inter alia, by the Plaintiffs, to seek Recovery of Compensation along with interest till date from the Defendant, as the

Defendant caused unprecedented losses to the Trust to him illegally occupying the said Trust's Property during his tenure as an erstwhile illegal trustee."

8.2. In paragraph No.6 of the Suit plaint, Plaintiffs have averred as follows:-

"6. Thereafter, vide a Criminal Conspiracy hatched by Mr. Vijay Mehta, the defendant and other erstwhile trustees, came to be illegally appointed as Trustees of LKMM Trust and these individuals kept on reappointing themselves and creating several layers of appointment by filing multiple Change Reports which were challenged by the Plaintiff No. 1. ..."

8.3. In paragraph No.10 of the Suit plaint, Plaintiffs have averred as follows:-

"10. Plaintiffs state that, the Defendant during his tenure, taking undue advantage of his position was unlawfully occupying (i) Flat No.7 admeasuring 2849.66 sq. feet, on the 12th floor of Lilavati Hospital and Research Centre as his residence and (ii) Office admeasuring 360 sq. feet on 3rd Floor of Lilavati Hospital and Research Centre (hereinafter referred to as the 'said premises') since 2007, as well as an office on the 3rd floor of the hospital since 20.1.2009."

8.4. In paragraph No.15 of the Suit plaint, Plaintiffs have averred as follows:-

"15. That the Defendant was admittedly in possession and occupation of the 12th Floor of the Lilavati Hospital ("**said property**") from 2007 to 2018, which is in complete contravention to the law, as the same is a public trust property.

It is further submitted that the Defendant's act of occupying the said property for personal use was teeth of Section 51 of the Indian Trusts Act, 1882 which is reproduced herein below:

"51. Trustee may not use trust-property for his own profit.

- A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.""

8.5. And in paragraph No.51 of the Suit plaint, Plaintiffs have averred as follows:-

"50. ... The Plaintiffs submit that there was no legal or jural relationship between the Trust and the Defendant of either a landlord/tenant or licensor/licensee. It is submitted that the said Mr. Niket Mehta abused his position as a Trustee and usurped the property of the Trust and hence no legal relationship has ever been created between the Trust and him and the Defendant i.e., Niket Mehta was always a trespasser upon the said premises."

[9] These are the fundamental averments on the basis of which the Suit is premised by Plaintiff No.1 - Trust. In support of these averments, Plaintiffs have relied upon several Exhibits which are annexed to the Suit plaint. Six Exhibits are relevant for the

purpose of considering the present Application filed by Defendant under Order VII Rule 11 of CPC.

[10] First such Exhibit is Exhibit 'D' appended at page No.147 of the Suit plaint. This is a letter issued by the Trust which is dated 30.03.2009 during the contentious period when Defendant was in occupation of the suit properties. It is addressed to Defendant and below the Defendant's name he is addressed as "permanent Trustee".

This letter is issued in reply to the letter of Defendant dated 02.02.2009. It is addressed by Plaintiff No.1 - Trust to Defendant for the limited purpose of dealing with his letter dated 02.02.2009 as it records his occupation on the 12th floor of Lilavati Hospital building. It calls upon the Defendant to vacate the said premises and denies the case of Defendant of occupation. However what is intriguing is that Defendant No.1 is addressed as "permanent Trustee" of the Trust in this letter.

10.1. Next, Exhibit is Exhibit 'L-1' appended at page No.221 of the Suit plaint. This is a letter dated 15.09.2017 issued by Plaintiff No.1 - Trust to 9 individuals who are nomenclatured as Trustees of Plaintiff No.1 - Trust. Out of the 9 Trustees, Trustee at Sr. No.5 is the Defendant before me. This letter is addressed after the order is passed by the Supreme Court in respect of occupation of the suit premises by Defendant for his residential purposes calling upon him to vacate the same.

10.2. Once again what is intriguing is the fact that Defendant has been addressed to as "Trustee" of Plaintiff No.1 - Trust. In this letter, opinion received by the Trust is also quoted, copy of which is appended at Annexure - II - page No.230 of the Suit Plaint wherein reference to the Defendant is as a "Trustee".

10.3. Next relevant document for consideration is appended at Annexure - I - page No.226 of the Suit plaint. This is a letter dated 15.09.2017 addressed by the Secretary to Government of India (Retd) S. Lakshminarayanan, who is Principal Advisor to the Board of Trustees of Lilavati Hospital and Research Centre to Defendant wherein he has been described as Member of the Board of Trustees of Lilavati Kirtilal Mehta Medical Trust. In the said letter in unnumbered paragraph No.2, it is stated as follows:- "As a respectable Trustee, you should understand that violation of the Hon'ble directives of Supreme Court of India can land you in very serious difficulties and the highest court of the land, if brought to their notice, may hold you guilty for 'Contempt of Court'.'

10.4. Next, relevant Exhibit for consideration is the synopsis of the Contempt Petition filed against Defendant for committing civil contempt arising out of the order dated 21.01.2016 passed by the Supreme Court. In paragraph No.9 Defendant is referred to as being a Trustee.

10.5. Next, relevant document is letter dated 20.01.2009 addressed on behalf of Plaintiff No.1 - Trust appended at Exhibit 'S' - page No.298 of the Suit plaint wherein in paragraph No.2 while addressing the Defendant it is stated that,

> "...though you may have been discharging your obligations as a Trustee of the Trust generally and as authorised by the Board of Trustees, as a Trustee of a

Public Charitable Trust, you could not have and cannot occupy and continue occupation of a part of the 12th floor of the Hospital for your and your family's accommodation and thereby derive personal benefit from the property belonging to the Trust." The said letter also describes the Defendant as permanent Trustee of Plaintiff No.1 - Trust.

[11] In the context of the above contents of the Suit plaint which are prima facie clear and unambiguous and the Exhibits referred to hereinabove, it is prima facie evident that Defendant has been described and considered as a Trustee / permanent Trustee of Plaintiff No.1 - Trust for invoking action against him for recovery of compensation for his occupation of the suit properties belonging to the Trust during the contentious period.

[12] In the above context, provision of Section 50 of the MPT Act therefore become relevant. Section 50 of the MPT Act reads as under:-

"[50. Suit by or against or relating to public trusts or trustees or others.-

In any case,-

(i) where it is alleged that there is a breach of a public trust, negligence, misapplication or misconduct on the part of a trustee or trustees,

[(ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from a trustee, ex-trustee, alienee or any other person but not a person holding adversely to the public trust, trespasser, licensee or tenant,]

(iii) where the direction of the Court is deemed necessary for the administration of any public trust, or

(iv) for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof, the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit whether contentions or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs:-

(a) an order for the recovery of the possession of such property or proceeds thereof;

(b) the removal of any trustee or manager;

(c) the appointment of a new trustee or manager;

(d) vesting any property in a trustee;

(e) a direction for taking accounts and making certain enquiries;

(f) an order directing the trustees or others to pay to the trust the loss caused to the same by their breach of trust, negligence, misapplication, misconduct or wilful default;

(g) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(h) * * *

(i) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged or in any manner alienated on such terms and conditions as the court may deem necessary;

(j) the settlement of a scheme, or variations or alterations in a scheme already settled;

(k) an order for amalgamation of two or more trusts by framing a common scheme for the same;

(l) an order for winding up of any trust and applying the funds for other charitable purposes;

(m) an order for handing over of one trust to the trustees of some other trust and deregistering such trust;

(n) an order exonerating the trustees from technical breaches, etc;

(o) an order varying, altering, amending or superseding any instrument of trust;

(p) declaration or denying any right in favour of or against a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases; or

(q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid relief or is necessary in the interest of the trust:

Provided that, no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust, except in conformity with the provisions thereof:

Provided further that, the Charity Commissioner may instead of instituting a suit make an application to the Court for a variation or alteration in a scheme already settled:

Provided also that, the provisions of this section and other consequential provisions shall apply to all public trusts, whether registered or not or exempted from the provisions of this Act under sub-section (4) of section 1].

[Explanation.- In this section, "Court" means, in the Greater Mumbai, the City Civil Court and elsewhere, the District Court.]."

[13] The title of Section 50 as can be seen from the above provision pertains to 'Suit by or against or relating to public trusts or trustees or others'. It states that where it is alleged that there is a breach of a public trust, negligence, misapplication or misconduct on the part of a public trustee or trustees and where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from a trustee, ex-trustee, alienee or any other person but not a person holding adversely to the public trust, trespasser, licensee or tenant or for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof, the Charity

Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in Section 51 may institute a suit whether contentions or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate to obtain a decree for the reliefs stated therein. Out of the said reliefs, clauses 'a', 'e', 'f', 'g' and 'p' would squarely apply to the case of Plaintiffs seeking compensation alongwith interest in respect of the suit properties belonging to the Trust from the Defendant.

[14] Once Plaintiffs have described the Defendant as a Trustee / permanent Trustee in the Suit plaint itself as also on the basis of the supporting documents referred to and relied upon in the Suit plaint, there can be no manner of doubt that the Suit filed by the Plaintiffs is on behalf of Plaintiff No.1 - Trust for recovery of compensation from Defendant in his capacity as the erstwhile Trustee of Plaintiff No.1 - Trust and he having occupied the suit properties. Defendant is categorically described and addressed to as Trustee / permanent Trustee / erstwhile Trustee in the Suit plaint pleadings by the Plaintiffs. Hence, the submissions advanced by Mr. Damle, learned Senior Advocate that in paragraph No.15, it is case of Plaintiffs that Defendant is a rank trespasser should only be considered as a sequitur and hence Defendant would be covered by the later part of Sub-clause 2 of Section 50 cannot be countenanced. If the averments made in the Suit plaint as described and alluded to hereinabove are read holistically alongwith the Exhibits appended thereto, it is prima facie clear and evident from a plain reading of the Suit plaint that the Suit is filed by Plaintiffs for recovery of compensation from the Defendant in respect of the Trust properties which were occupied by the Defendant in his capacity as a Trustee during the contentious period.

[15] Once such a case is made out in the Suit plaint that Defendant was a Trustee / permanent Trustee / erstwhile Trustee of Plaintiff No.1 - Trust, then the Suit as filed by Plaintiffs is clearly amenable to the provisions of Section 50 of the MPT Act. The occupation of the suit properties by Defendant during the contentious period for which recovery of compensation is sought is admittedly on the basis of Plaintiffs' case as he being a Trustee of Plaintiff No.1 - Trust and he having misused his position as a Trustee. Though it is argued across the bar that occupation of suit properties by Defendant was as a trespass, the averments made in the Suit plaint and the averments in the various Exhibits which are alluded hereinabove do not justify the submissions made across the bar that it is the case of Plaintiffs that Defendant was a rank trespasser on the suit properties. If that be so then there was no need for Plaintiff No.1 - Trust and Trustees on behalf of the Trust to address the Defendant as a Trustee / permanent Trustee / erstwhile Trustee in the pleadings contained in the Suit plaint as also in various Exhibits which are referred to herein above. Section 51 of the MPT Act hence become relevant in this context and it reads thus:-

"51. Consent of Charity Commissioner for institution of suit.-

(1) If the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. [If the Charity Commissioner after hearing the parties and making such enquiries (if any) as he thinks fit is satisfied that there is a prima facie case, he] may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal.

[(2) If the Charity Commissioner refuses his consent to the institution of the suit under sub-section (1), the persons applying for such consent may file an appeal to the Court, as if such order was an order passed by the District Court from which an appeal lies, within sixty days from the date date of the said order, which shall otherwise be final.]

(3) In every suit filed by persons having interest in any trust under section 50, the Charity Commissioner shall be a necessary party."

[16] The aforesaid Section states that consent of the Charity Commissioner for institution of suit is required. It states that if the persons having an interest in any public trust intend to file a suit of the nature specified under Section 50, they shall apply to the Charity Commissioner in writing for his consent and after hearing the parties and making such enquiries (if any), the Charity Commissioner may within a period of six months from the date on which the Application is made, grant or refuse his consent to the institution of such suit. Once it is prima facie seen from the averments in the Suit plaint that Plaintiff No.1 - Trust have described Defendant as a Trustee / Ex-Trustee / erstwhile Trustee / permanent Trustee of the Trust, then in the same breath, Plaintiffs cannot contend that Defendant will have to be construed as a rank trespasser. The letter dated 20.01.2009 appended at page No.298 and alluded to hereinabove addresses the Defendant as permanent Trustee of Plaintiff No.1 - Trust and in paragraph No.2 which states that "though you have been discharging your obligations as a Trustee of the Trust generally and authorised by the Board of Trustees, as a Trustee of of a Public Charitable Trust, you could not have and cannot occupy and continue occupation of a part of the 12th floor of the Lilavati Hospital building for you and your family's accommodation and thereby derive personal benefit from the property belonging to the Trust."

[17] The aforesaid letters / Exhibits addressed to Defendant clearly show that according to Plaintiff No.1 - Trust, Defendant was acknowledged to have been discharging his obligations as a Trustee of the Trust generally and as authorised by the Board of Trustees and the only objection against him pertained to his occupation of the suit properties for which steps were taken.

[18] In view of the above prima facie observations, findings and considering applicability of the provisions of Sections 50 and 51 of the MPT Act to the Suit plaint and the facts and circumstances of the present case wherein Defendant has

unambiguously been described as Trustee / erstwhile Trustee / permanent Trustee for occupation of the suit properties and Plaintiffs desiring recovery of compensation from Defendant for his occupation of the suit properties as a Trustee / permanent Trustee / erstwhile Trustee, the consent of Charity Commissioner is required and without that having been obtained, there is non-compliance of the provisions of Section 50 read with Section 51 of MPT Act by Plaintiffs.

[19] In that view of the matter, Interim Application No.3243 of 2025 filed by Defendant under Order VII Rule 11(d) of CPC on the grounds set out in the Application succeeds as it is concluded that the Suit ought to have been filed only after obtaining permission of the Charity Commissioner under Sections 50 and 51 of the MPT Act.

[20] In view of the above, Interim Application No.3243 of 2025 stands allowed in terms of prayer clause 'a'. Suit plaint stands rejected.

[21] Pending Interim Application No.4005 of 2025 is accordingly disposed

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2026(1)MCJ97

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: M M Sathaye)

Civil Revision Application; Interim Application; Civil Application No 308 of 2011, 835 of 2014; 11935 of 2025, 13549 of 2023, 12750 of 2024, 11598 of 2025; 273 of 2011 **dated 28/11/2025**

State Trading Corporation of India Ltd

Versus

Ravinder Singh Indersingh Sehgal; Smita Ravinder Singh Sehgal (Deceased); Alankar Ramesh Joshi; Master Arnav Alankar Joshi; Master Arjan Joshi; Gazala Singh Sehgal; Godavaridevi Agarwal

MESNE PROFIT DETERMINATION

Code of Civil Procedure, 1908 Sec. 2, Or. 41 R. 27 - Contract Act, 1872 Sec. 74, Sec. 73 - Mesne Profit Determination - State Trading Corporation filed revision challenging concurrent findings awarding mesne profits to landlords after eviction - Landlords sought compensation for wrongful possession of office premises - STC contended that clause in lease deed fixed Rs.12 per sq.ft per month as maximum rate and no higher mesne profits can be claimed - Landlords argued clause did not restrict claim and mesne profits depend on market rate - STC also moved for considering additional documents discovered later asserting it functioned as government agency - Tenants objected to reopening matter citing constructive res judicata and concluded interpretation in prior judgment - Court observed that concurrent findings based on evidence cannot be interfered in limited revisional jurisdiction under Sec.115 CPC - Found that clause did not restrict right to claim mesne profits for wrongful possession

and fresh evidence sought was irrelevant - Held that applications for additional documents and revision petitions devoid of merit - Orders of appellate and trial courts upheld granting mesne profits to landlords - Revision Applications Dismissed

Law Point: Mesne profits for wrongful possession are independent of contractual rent-Lease clause limiting compensation cannot restrict judicial determination of profits for unlawful occupation-Revisional court cannot reappreciate concurrent findings of fact.

Acts Referred:

Code of Civil Procedure, 1908 Sec. 2, Or. 41R. 27

Contract Act, 1872 Sec. 74, Sec. 73

Counsel:

Anil Singh (Senior Advocate), Dhaval Shethia, Adarsh Vyas, Jyoti Dhanure, Apurva C Gudewar, Aditya Kawad, Prathamesh Bhargude, Dhanvanti Kharva, Sonia, Akash Shah, Ravinder Singh Sehgal

JUDGEMENT

M. M. Sathaye, J.- [1] These Civil Revision Applications raise identical questions of law in respect of same lessee - State Trading Corporation of India Ltd. ('STC' for short) involving different lessors/landlords and therefore are being disposed of together.

[2] The Civil Revision Application No. 308 of 2011 is filed by STC challenging the impugned judgment and order dated 11/01/2011 passed in the Appeal No. 177 of 2010 and Cross objection No. 28 of 2010 by the Appellate Bench of Small Causes Court at Mumbai, thereby dismissing both the appeal and the cross-objections, thereby confirming the judgment and order dated 08/02/2010 passed in Mesne Profit Application No. 1 of 2006 filed by the Ravindra Singh Indersingh Sehgal and others directing the STC to pay the mesne profit in respect of the suit premises @ Rs.90/- per sq.ft per month (p.sq.ft.p.m.) with effect from 01/01/2002 until the receipt of possession alongwith interest @ 6% per annum. Thus, the STC is before this Court challenging the concurrent findings of facts and law. The Suit premises involved is office no. 607, admeasuring 275 sq.ft. on 6th Floor of Maker Chamber No. IV, Nariman Point, Mumbai.

[3] The Civil Revision Application No. 835 of 2014 is filed by the STC challenging the judgment and order dated 07/05/2014 passed in Appeal No. 119 of 2013 by the Appellate Bench of Small Causes Court at Mumbai, modifying the order passed in Mesne Profit Application no. 49 of 2010 dated 14/12/2012 by the Small Causes Court at Mumbai, reducing mesne profits from Rs.150/- p.sq.ft.p.m. to Rs. 100/- p.sq.ft.p.m. alongwith interest @ 6% per month from 01/10/2003 to 31/10/2010. The suit premises involved in this case is office no 601, admeasuring 1000 sq.ft on the 6th floor of the same building. Same impugned order is challenged by lessor / landlady by filing Civil Revision Application No. 929 of 2014 seeking mesne profit at enhanced rate as granted

by the Trial Court. Thus, CRA/835/2014 and CRA/929/2014 are arising out of the same impugned judgment and order.

[4] In both matters, the decree passed in favour of landlord/lessor granting eviction of STC has attained finality upto the Hon'ble Supreme Court and there is no dispute about it. There is also no dispute that STC has handed over the possession of the suit premises to the respective landlord/lessor, on 05.10.2011 to Ravinder Singh Indersingh Sehgal and on 08.11.2019 to Godavaridevi Agrawal.

[5] The controversy involved is in narrow compass which is revolving around the interpretation of the Clause 15 of the lease-deed involved. The STC was inducted in the suit premises under lease-deed executed with respective landlords containing same clause 15, which is reproduced and considered in the paragraphs to follow.

SUBMISSIONS

[6] Senior Advocate Mr. Anil Singh appearing for the STC made following submissions.

6/1. That the clause 15 operating between the parties is not challenged by any landlord / lessor and the same is binding.

6/2. That it is a basic rule of interpretation that every word in the clause has to be given meaning. That entire clause 15 will have to be read together.

6/3. That the Court cannot rewrite the contract between the parties, who are governed by a pure commercial contract and as such the clause will have to be strictly interpreted.

6/4. That only interpretation possible is that Rs.12/- p.sq.ft.p.m. can be taken as an upper limit and no amount beyond such agreed compensation can be granted.

6/5. Relying on the various documents annexed to the IA/11935/2025 in CRA/308/2011, IA/11598/2025 in CRA/835/2014 and IA/11620/2025 in CRA/929/2014, he submitted that after judgment was passed learned judge of this Court in STC vs. Neelam Choudhary (CRA/111/2019, Order dated 16.10.2024), the corporation has found out various important documents which are annexed to the Applications which show that STC was not making profit and was providing services to the State Government, as per directions of the Central Government. He submitted that this fact has direct bearing on the aspect of mesne profit and must be considered by this Court.

6/6. That various other landlords had filed eviction proceedings and mesne profit applications which have resulted into various rates being granted in different proceedings. That the word 'mesne profit' is not included in the clause 15 rightly as a higher rate than the rate on which the property was leased (Rs.7/-, Rs.8/- and Rs.9/- p.sq. ft.p.m) has been agreed.

6/7. He relied upon section 74 of the Indian Contract Act, 1872 to submit that nothing more than contractually agreed rate can be given to the lessor/ landlord.

6/6. He relied upon the order of the Hon'ble Supreme Court which was passed in Special Leave Petition (SLP) (Civil) Diary No. 13990 of 2025 dated 08/09/2025 where the Hon'ble Supreme Court has clarified that it shall be open for STC to raise all the legal contention available to it in law in any other similar matters. He submits that this order was passed in SLP challenging the order of learned Single Judge of this Court in the **Review Petition No. 1/2025 in STC vs. Neelam Choudhary.** He submitted that therefore the STC has liberty to agitate all legal issues including the aspect of availability of documents recently found, which are produced alongwith Interim Applications. He submitted that in view of the Supreme Court order, the view taken by learned single Judge in **STC vs. Neelam Choudhary**, is not applicable to any other case. He relied on following judgments in support of his submission:

(a) Venkataraman Krishnamurthy and Another vs. Lodha Crown Buildmart Private Limited, 2024 4 SCC 230.

(b) Life Insurance Corporation of India and Another Vs. Dharam Vir Anand, 1998 7 SCC 348.

(c) Rajasthan State Industrial Development and Investment Corporation and Another vs. Diamond & Gem Development Corporation Limited and Another, 2013 5 SCC 470.

(d) Humayun Dhanrajgir & Ors. vs. Ezra Aboody,2008 SCCOnLineBom 420.

(e) Kailash Nath Associates vs. Delhi Development Authority & Anr, 2015 4 SCC 136.

(f) Lucy Kochuvareed Vs. P. Mariappa Gounder And Others, 1979 3 SCC 150.

(g) Hindustan Steel (Private) Ltd. Vs. Shrimati Usha Rani Gupta And Another,1967 SCCOnLineDel 70.

[7] On the other hand, Mr. Bhargude learned counsel for Respondent No. 1 in CRA/835/2014 and Petitioner in CRA/929/2014 (Godavari Devi Agrawal), submitted as under.

7/1. That the Interim Applications filed by STC for relying on additional documents, are nothing but Review Petition filed earlier before the learned Single Judge, which are already considered and the review has been rejected.

7/2. That the order of the Hon'ble Supreme Court granting permission to STC cannot be interpreted to mean that STC is permitted to re-argue the entire matter. That even the Hon'ble Supreme Court has clarified that STC can raise 'all legal contentions available in law' and therefore contentions which are not available in law cannot be raised.

7/3. That interpretation of Clause 15 of the Lease Deed is already concluded in the earlier judgment of this Court in STC Vs. Neelam Choudhary and no fresh arguments can be entertained about interpretation.

7/4. That the order passed in STC Vs. Neelam Choudhary amounts to constructive res judicata both for Interim Applications for additional documents and for the Revision Application. That it is necessary that the adjudication is consistent about Clause 15.

7/5. That the provisions of Order XLI Rule 27 of Civil Procedure Code, 1908 ('CPC' for short) relied upon by STC cannot be applied because the said provisions apply to appeal under section 96 of CPC and not to revision under Section 115 of the CPC.

7/6. That the Appellate Bench was not justified in reducing the rate from Rs. 150/- p.sq.ft.p.m. to Rs. 100/- p.sq.ft.p.m.

7/7. That the manner in which STC has attempted to delay the proceedings right from eviction proceedings and thereafter present proceedings, the conduct is not befitting of a corporation who claims to work under direction of Central Government.

7/8. That the landlady is about 80 years old as on today and therefore sought dismissal of the revision application filed by STC and prayed for allowing her Revision Application granting mesne profits @Rs. 150/- p.sq.ft.p.m. He relied on various judgments in support of this case, including the following:

(i) **K. B. Lahoti & Company and Others Vs. Champalal Vithuram Jajoo (deceased) by his L.Rs. Chandrakant Champalal Jajoo and Others**, 2020 5 MhLJ 196.

(ii) **State Trading Corporation of India Ltd. vs. The Commercial Tax Officer and Others**, 1963 AIR(SC) 1811.

(iii) **Martin And Harris Private Limited And Another Vs. Rajendra Mehta And Others**, 2022 8 SCC 527.

[8] Mr. Sehgal appearing in person as Respondent in CRA No. 308 of 2011 submitted as under.

8/1. That the conduct of STC in obstructing the execution filed by landlord for recovery of possession, is duly recorded in the judgment of the Trial Court, and it must be taken note of.

8/2. That the words 'mesne profits' are missing in Clause 15 and it is without prejudice to other rights and remedies.

8/3. That the rate of Rs. 12 p.sq.ft.p.m. stated in the Clause 15 will not make any difference and mesne profits will have to be considered independently. That wrongful possession is the essence of claim for mesne profits.

8/4. That admittedly STC has not led any independent evidence about mesne profits.

8/5. That under the guise of revision under Section 115 of CPC, STC is trying to argue the case like an appeal, which cannot be permitted.

8/6. That STC has been held as not a Government of India undertaking, as per the judgment in AIR 1963 Supreme Court 1811.

8/7. That no interference is required in the concurrent findings of fact in the limited jurisdiction under Section 115 of CPC and reappreciation of evidence is not permitted.

8/8. That once a learned Single Judge of this court has taken a view interpreting Clause 15 in STC Vs. Neelam Choudhary, there is no scope for further interference.

8/9. He prayed for exemplary costs to be imposed upon STC. He relied upon various judgments / case law in support of his submissions including the following:

(i) **State Trading Corporation of India Ltd. vs. The Commercial Tax Officer and Others**, 1963 AIR(SC) 1811

(ii) **Masjid Kacha Tank, Nahan Vs. Tuffail Mohammed**, 1991 Supp2 SCC 270.

[9] Learned counsel for both sides have urged that if this Court does not agree with the interpretation of Clause 15 as made in **STC Vs. Neelam Choudhary**, then the matter may be referred to the Division Bench under a reference.

REASONS AND CONCLUSIONS

[10] I have considered the rival submissions and perused the record.

[11] Since the Hon'ble Supreme Court has clarified in order dated 08/09/2025, that STC can raise all legal contentions available to it in any other similar matters, learned Senior Advocate for STC has argued the present similar matters all over again, especially about interpretation of Clause 15. Since the arguments are raised under clarification granted by the Hon'ble Supreme Court, this Court is respectfully bound to consider the same.

[12] At the outset, it is necessary to note that fundamentally, 'compensation for loss or damage', 'penalty', and 'mesne profits' are different concepts in their origin, legal nature and purpose, though in a given case or under peculiar set of facts, their paths may cross each-other. 'Compensation for loss or damage' is provided under section 73 the Indian Contract Act, 1872. 'Penalty' is provided under section 74 thereof. 'Mesne profits' is provided under section 2(12) of the CPC. For ready reference, the aforesaid provisions are re-iterated below:-

"73. Compensation for loss or damage caused by breach of contract - When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract - When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled

to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation - In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account."

"74. Compensation for breach of contract where penalty stipulated for - When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.- A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.- When any person enters into any bail-bond, recognizance or other instrument of the same nature, or under the provisions of any law, or under the orders of the [Central Government] or of any [State Government], gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.- A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested."

"2(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession."

[emphasis supplied]

[13] Therefore, compensation for loss or damage is an outcome of breach of contract, being entitlement of a party suffering breach. Penalty is an entitlement of a party complaining breach, whether or not actual damage or loss is proved. Penalty includes stipulation of increased interest. Mesne profits necessarily arise from 'wrongful possession' and it has no essential connection with breach of contract. Mesne Profits are to be assesed on the basis of 'profits actually received or might have received with ordinary diligence, with interest, from person in wrongful possession'. Having understood thus, now I proceed to apply above legal principles to the facts of the present case.

[14] The said Clause No. 15 is not challenged by either party including STC and therefore it is binding on STC. Let us now consider the Clause 15 by which parties are governed, which is reproduced below:

"15. If the Leasee shall punctually pay the amounts payable by the Lessee to the Lessor under the Lease and if the Lessee shall have duly performed the obligation on the part of the lessee to be performed within 6 months prior to the expiry of the period of 9 years and nine months of the said Lease the Lessee shall have option to renew the Lease a further period of 5 years six months but on such renewal, the rental payable by the Lessee shall be calculated at the rate of 8 per sq. foot per month (such rent also being net rent as herein provided) and on the other terms and conditions excluding the payment of deposit as herein contained. The Lessee in that case shall not be under any obligation to make any deposit and/or advance rent for the renewal period. The Renewal Lease shall also contain provisions for the renewal of the lease for further period of 4 years and 9 nine months by the Lessee on the same terms and conditions as herein contained but rent in that event for the further period of 4 years and 9 months shall be calculated at the rate of Rs.9 per sq. foot per month and such lease shall not contain the provisions for renewal the intension of the parties being that the lessee shall have a right to occupy the said premises for total of 20 years from the date of possession. If the Lessee shall not vacate the said premises and after the period of 20 years the Lessor shall without prejudice to his other rights and remedies, and charges, damages and/or compensation from the Lessee for such unauthorised use at the rate of 12/- per square foot per month and/or outgoings as set out in clause 5(b) and 5(c) and the Lessee shall pay the Lessor."

[emphasis supplied]

[15] Plain reading of the said clause indicates that if STC being lessee does not vacate the premises after the period of 20 years, then STC shall pay to the lessor/landlord an amount @ Rs.12/- p.sq.ft.p.m. This is however, without prejudice to the lessor's other rights and remedies and charges, damages and/or compensation from the lessee/STC for such unauthorized use. First rent agreed was Rs. 7/- p.sq.ft.p.m. The said Clause contemplated about renewal of lease for a particular period of time and consecutive renewal and consequent agreed increase in rent from Rs.7/- p.sq.ft.p.m. to Rs.8/- p.sq.ft.p.m. and thereafter to Rs.9/- p.sq.ft.p.m. It also provided that STC can not occupy the premises after maximum permissible period of 20 years from the date of possession. It is not in dispute that the maximum period provided - 20 years have already expired and thereafter the eviction proceedings have culminated in favour of the lessor/landlord upto the Hon'ble Supreme Court.

[16] From the very reading of the clause as explained above, a sum is named for unauthorized occupation and therefore it is clearly 'by way of penalty' in my opinion. Section 74 of the Indian Contract Act provides that whether or not actual damages or loss is proved, the sum named is payable in case of breach. I find Clause 15 squarely falling under Section 74 of the Indian Contract Act.

[17] The clause itself contemplates that the amount @ Rs.12/- p.sq.ft.p.m. is payable 'without prejudice to the lessors' other rights and remedies and charges, damages and/or compensation from the lessee'. This is an express agreement between the parties.

Therefore STC cannot be permitted to contend that the compensation payable to the lessee/landlord cannot be more than @ Rs. 12/- p.sq.ft.p.m. or that it is an upper limit. Therefore since a sum is named under contract as payable in case of breach, coupled with 'without prejudice clause', it cannot be accepted that the amount of Rs.12/- p.sq.ft.p.m. is the maximum amount payable towards compensation or damages. Such sum named is payable on breach, irrespective of proof of actual damage or loss.

[18] The Learned Senior Advocate for STC has himself argued that every word in the terms of the contract has to be given meaning. If that be so, the words 'without prejudice to other rights and remedies and charges, damages and/or compensation from the lessee' will have to be given meaning and in my view, no other meaning / interpretation is possible.

[19] There is one more reason for coming to such conclusion. The words 'mesne profit' are not included in Clause 15 and therefore parties by agreement have kept mesne profit out of consideration under Clause 15. For this reason also, Clause 15 and sum named therein @ Rs. 12/- p.sq.ft.p.m. cannot be held as amount of maximum mesne profit.

[20] The interpretation suggested by learned counsel for STC of Section 74 of Contract Act that nothing more can be given to the lessor, whether or not they prove actual loss or damages, is erroneous as already indicated above.

[21] For all the reasons above, I hold that said clause 15 does not limit the landlord's right to seek higher mesne profits and mesne profits are out of the purview of clause 15.

[22] Let us now consider various judgments relied upon by STC. The judgment of **Venkataraman Krishnamurthy** (supra) is relied upon in support of the argument that once parties commit themselves to a written contract, the same would be binding upon them and in the event such a written contract provides for a consequence in the event of breach, and then such consequences must follow and if resisted it would be legally enforceable. There is no dispute about this proposition of law and therefore in the present case, Clause 15 as it operates between the parties is being considered.

[23] The judgment of **LIC Vs. Dharam Vir Anand** (supra) is relied upon in support of the submission that in construing a particular clause of contract, it is only reasonable that words and terms used therein must be given effect to and one part of the contract cannot be made otiose by interpreting the other part of the contract. It is submitted that when parties have agreed to the terms, it is impermissible to hold that a particular term of contract was never intended to be acted upon. There is no dispute about this proposition of law also. All the terms and conditions agreed under Clause 15 operating between parties are being considered and given effect to.

[24] The judgment of **Rajasthan State Industrial Development (supra)** is relied upon to contend that a party cannot claim anything more than what is covered by terms of contract and contract being a creature of agreement between the parties, it has to be interpreted by giving literal meaning unless there is some ambiguity. Of course a party

cannot claim anything more than what is covered by the terms of contract. However in the present case, there is no ambiguity about what is agreed by the parties under Clause 15.

[25] The judgment of **Humayun Dhanrajgir (supra)** is relied upon, to enlighten the Court about concept of mesne profits. Para 22 and 23 of the said judgment is really useful in the facts of the present case, which read as under:

"22. The dissection of the aforesaid definition reveals that wrongful possession of the person is the very essence for the claim for mesne profits.

THE MEASURE OF MESNE PROFIT:

23. The measure of 'Mesne profits' is not what the landlord had lost by not being able to get possession, but what the user of the property meant to the defendant who was in wrongful possession. In other words, the basis for determining the quantum of mesne profit is: what the defendant might with ordinary diligence have received from the property. The person in wrongful possession cannot be heard to say that he has not utilized the property, made no profits, no rent is being derived from the property in dispute as such not liable to pay mesne profit. At the same time person in wrongful possession is not liable to realize highest possible rates of rent or profit. A plain reading of the definition of mesne profit would leave no manner of doubt that the real test to be applied is, not what the plaintiff decree holder had lost or would have earned by letting out or using the property himself, but what the person in wrongful possession, namely, with ordinary diligence would have received from it. The wrongful possession of defendant is the very essence of a claim for mesne profits . The very foundation of the defendant's liability to pay the mesne profit goes with actual possession of the land. That is to say, generally the person in wrongful possession and enjoyment of the immovable property is liable to pay mesne profits. Thus the claim for mesne profits is virtually the claim for damages and has to be assessed by proper exercise of judicial discretion."

[emphasis supplied]

[26] It is therefore clear that the person in wrongful possession cannot be heard to say that he has not utilized the property or he has not made profits or no rent is being derived from the property and therefore not liable to pay mesne profits. This judgment in fact directly supports the case of the lessors/landlords. In the present case, by filing various Interim Applications, STC is claiming on the basis of various documents sought to be produced at revision stage, that STC was not making any profits and it was providing services to State Government as per directions of the Central Government. In the teeth of what is observed by this Court in **Humayun Dhanrajgir (supra)**, reproduced above, STC cannot be heard to contend that it was not making profit. Therefore even if the above Interim Applications seeking permission to produce and rely upon additional documents are considered on merits, even then, it will not help STC, because admittedly it was in wrongful possession during the concerned period for which

mesne profits are being assessed. In this respect, it is important to note that wrongful possession of the party is the very essence for the claim made for mesne profits as is asserted by this Court in the above judgment. This Court has to be alive to the scope of this Court's revisional jurisdiction, so far as the re-appreciation of evidence is concerned, as explained in **Masjid Kacha Tank, Nahan (supra)** by Hon'bl Supreme Court and para 29 of K. B. Lahoti & Company and Others (supra) by this Court, relying upon the judgment of the Hon'ble Supreme Court in **Raja Lakshmi Dyeing Works vs. Rangaswamy Chettiar**, 1980 4 SCC 259

[27] The next judgment relied upon by STC in the case of **Kailash Nath Associates Vs. Delhi Development Authority (supra)** in support of the argument that where sum is named in a contract as liquidated damages or penalties, the party complaining breach cannot receive more than such liquidated amount which is the upper limit. Since it is already held that mesne profits are out of purview of clause 15, the said judgment will not advance the case of STC.

[28] The judgment of **Lucy Kochuvareed Vs. P. Mariappa (supra)** is referred in support of the arguments that mesne profit can be awarded only for 3 years. It is not argued that the mesne profit applications are filed belatedly. No details are pointed out for such submission.

[29] Lastly, the judgment of **Hindustan Steel (Private) Ltd. Vs. Shrimati Usha Rani Gupta (supra)** is relied upon in support of the argument that only double amount was given by the court. In the present case there is no such issue involved about double-amount payment and therefore it is not helpful to STC.

[30] In **STC Vs. Commercial Tax Officer (supra)**, the 9 Judges Bench of the Hon'ble Supreme Court was considering whether STC was a department of Government and in Para 89(2) of the said judgment, after considering various aspects about STC, the Hon'ble Supreme Court has authoritatively concluded that STC is not a department or organ of the Government of India. In that view of the matter, the argument of STC that it was not earning profit and working under directions of the Government and therefore has not earned any profits, is rejected.

[31] It must be noted that my learned brother - Single Judge of this Court has considered identically placed parties in the judgment of STC Vs. Neelam Choudhary. The Learned Single Judge has considered same Clause 15 and has held that the compensation of Rs. 12/- p.sq.ft.p.m. cannot be the maximum amount for mesne profits. The Learned Single Judge has considered the words 'without prejudice to other rights and remedies and charges damages and or compensation from lessee' and has held that the said clause does not affect the right of the Lessor - Landlord to claim higher amount by way of mesne profits. The Learned Single Judge has also held that the amount specified in the said clause is not towards mesne profits. This judgment was admittedly challenged by STC in the Hon'ble Supreme Court, and admittedly the challenge has failed and the Special Leave to Appeal (C) No. 31033 of 2024 has been dismissed on

15.01.2025. It is also admitted position that STC had filed Review Petition 1 of 2025 in this Court seeking review of the order of the Single Judge on the basis of various agreements and documents relied upon by the STC. Admittedly by order dated 12.03.2025, the review has been rejected. It is further admitted that the rejection of review was again challenged by STC in Hon'ble Supreme Court by filing SLP Civil Diary No. 13990 of 2025, which has been dismissed on 08.09.2025. Not only this but the review filed by the STC of the order of the Supreme Court dated 15.01.2025 arising out of main order of the learned Single Judge, has also been dismissed on 23.09.2025. Therefore it is clear that all efforts of STC to challenge the order of the learned Single Judge in **STC Vs. Neelam Choudhary** have failed.

[32] I agree with the view taken by the Learned Single Judge in the case of STC Vs. Neelam Choudhary, albeit for my own independent reasons, indicated above.

[33] In **Martin And Harris Private Limited And Another** (supra), the Hon'ble Supreme Court has held that basis of determination of mesne profit depends upon facts and circumstances of each case, considering the place where the property is situated including location and nature of premises. There is no dispute about the physical location of the suit premises. It is situated at Nariman Point, Mumbai and the whole building is used for various commercial activities. Considering the relevant period for which the mesne profit are being assessed, the commercial worth of the suit premises was definitely such as to justify the rate of Rs.150/- p.sq.ft.p.m. The reason given by the Appellate Court (in Godavaridevi's case) for its reduction is based on the possible fluctuation of rates. However, considering that in the present case the concerned period is from 01/10/2003 to 31/10/2010, and comparable period from September 2003 to December 2007 is already considered by this Court in STC Vs. Neelam Choudhary (supra), granting Rs.150/- p.sq.ft.p.m., in order to maintain judicial discipline and consistency, it is necessary to interfere in the impugned Order to the extent of bringing it at par. Accordingly, the amount granted by the Trial Court in Godavari devi's case is found to be reasonable. Therefore the Petitioner in CRA/929/2014 (Godavaridevi Agrawal) is entitled to compensation of Rs.150/- p.sq.ft.p.m. and CRA/929/2014 must succeed to that extent.

[34] In the result, the **revision applications are disposed of** by passing following order:

(a) CRA/308/2011 and CRA/835/2014 filed by STC are dismissed. No order as to costs.

(b) CRA/929/2014 is allowed, setting aside the judgment and order dated 07/05/2014 passed in Appeal No. 119 of 2013 by the Appellate Bench of Small Causes Court at Mumbai, thereby confirming the order passed in Mesne Profit Application no. 49 of 2010 dated 14/12/2012 by the Small Causes Court at Mumbai.

(c) Respondents in CRA No. 308/2011 and 835/2014 are permitted to withdraw the amounts deposited by STC in this Court or Small Causes Court, as the case may

be, with accrued interest, if any. This withdrawal will be subject to final adjustment that may be arrived at in pending Execution Applications for recovery of mesne profits.

(d) In view of disposal of Civil Revision Applications all the pending interim / civil applications are also disposed of in above terms.

[35] At this stage, learned counsel for the STC prays for continuation of the interim protection. Considering the facts and circumstances narrated above and the fact that the decree of eviction has attained finality long ago, the request for continuation of interim relief is rejected.

[36] All concerned to act on duly authenticated or digitally signed copy of this order

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2026(1)MCJ109

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Gauri Godse)

Application (L); Election Petition No 24466 of 2025; 18 of 2025 **dated 20/11/2025**

Anna Dadu Bansode; In Matter Between Sulakshana Raju Dhar

Versus

Anna Dadu Bansode; Tiif Returning Officer; Chief Electoral Officer of Maharashtra; Election Commission of India; District Election Officer

ELECTION PETITION REJECTION

Code of Civil Procedure, 1908 Or. 6R. 15, Or. 7R. 11 - Representation of The People Act, 1951 Sec. 100, Sec. 82, Sec. 83, Sec. 81, Sec. 86 - Conduct of Elections Rules, 1961 Rule 94A, Rule 4A, Rule 93 - Election Petition Rejection - Returned candidate sought rejection of election petition under Order VII Rule 11 CPC alleging absence of material facts and improper verification - Petitioner alleged suppression of property details and false affidavit in nomination - Court examined pleadings and found petition disclosed triable issues supported by documents including objections raised before election authority - Held that verification complied with Sec.83 of Representation of People Act and allegations regarding affidavit, nomination irregularities and EVM functioning warranted evidence - Observed threshold rejection improper when pleadings reveal material facts supporting cause of action - Application under Order VII Rule 11 dismissed and election petition retained for trial - Application Dismissed

Law Point: Election petition not liable to rejection when pleadings disclose material facts forming triable issues; verification defects curable if petition substantially complies with Sec.83 of Representation of People Act.

Acts Referred:

Code of Civil Procedure, 1908 Or. 6R. 15, Or. 7R. 11

Representation of The People Act, 1951 Sec. 100, Sec. 82, Sec. 83, Sec. 81, Sec. 86

Conduct of Elections Rules, 1961 Rule 94A, Rule 4A, Rule 93

Counsel:

Tejas Deshmukh, Mayur Govind Sanap, Mikhil Chate, Sneha Bhange, Swapnil L Sangle, Divya Verma, Naira Jeejebhoy, Arun Panickar, Vinay Nair, Tanmay Pawar

JUDGEMENT

Gauri Godse, J.- [1] BASIC FACTS:

1. This application is filed by respondent no.1, under Order VII Rule 11 of the Civil Procedure Code, 1908 ('CPC'), for rejection of the election petition. The election petition is filed to challenge the election of the applicant as a member of the Maharashtra Legislative Assembly from 206 (PimpriS.C.) Assembly Constituency in the election held on 20th November 2024. The applicant was declared elected on 23rd November 2024. The petitioner had also contested the said election and secured the second-highest votes.

SUBMISSIONS ON BEHALF OF THE APPLICANT:

[2] The applicant, i.e., the successful candidate, has raised an objection that no meaningful cause of action is pleaded in the election petition. Learned counsel for the applicant referred to the relevant averments in the petition to support his submissions that the petition is filed on vague allegations. In paragraph 6 of the petition, the petitioner has raised objections to the information regarding the applicant's assets, as stated in Form 26, alleging that a false affidavit was filed. Copies of the 7/12 extracts are attached to the petition to allege that the applicant has concealed that he jointly owned agricultural land bearing Gat No. 1593, where his and his family members' names appear in the 7/12 extract as shareholders of the society that owns the land. It is further alleged that when the applicant contested the election to the said constituency in the years 2009, 2014, and 2019, the liability of his spouse is seen from past affidavits. However, in the affidavit filed at the time of the present election, the applicant had made a false statement on oath, as the liability shown in the earlier affidavits is not explained. Learned counsel for the applicant submits that the existing liability of the applicant's spouse is not alleged, and the earlier forms are not annexed to the petition. Hence, there cannot be a fishing inquiry in the election petition.

[3] Learned counsel for the applicant points out the allegations made in paragraphs 27 to 31 of the petition and submits that the allegations are vague and would not constitute any of the grounds for setting aside the applicant's election. The verification clause in the election petition is not as per the prescribed format contemplated under Section 83(1)(c) of the Representation of the People Act, 1951 ('of the 1951 Act'), read with Order VI Rule 15 of the CPC. Considering the nature of the allegations in the petition, the petitioner was under an obligation to specify the paragraph number of the petition separately, stating which paragraphs are based on personal knowledge and which on information. The petitioner was also under an obligation to disclose the source of personal knowledge. According to the learned counsel for the applicant, all the

allegations made in the petition cannot be based on personal knowledge, and thus, it was necessary for the petitioner to disclose the source of knowledge.

[4] To support his submissions, learned counsel for the applicant relied upon the decision of the Hon'ble Apex Court in the case of **Jyoti Basu and Ors Vs. Debi Ghosal and Ors**, 1982 1 SCC 691. He relied on paragraph 8 of the judgment to support his submission that the election petition is neither an action at common law nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply, but only those rules which the statute makes apply. It is a special jurisdiction, and as such, it must always be exercised in accordance with the statute that created it. Learned counsel for the applicant thus submits that Section 81, which prescribes the filing of the election petition, is to be strictly adhered to.

[5] On a similar proposition, learned counsel for the applicant relied upon the decision of the Hon'ble Apex Court in the case of **Hari Shanker Jain Vs. Sonia Gandhi**, 2001 8 SCC 233. He points out that the Hon'ble Apex Court in the said decision held that the petition which is hopelessly vague and completely bald in the allegations made and if the allegations are not possible within the personal knowledge of the petitioner but still verified as true to the knowledge without indicating the source would amount to pleadings without disclosing any cause of action and thus, would be liable to be rejected at the threshold.

[6] Learned counsel for the applicant also relied on the decision of the Hon'ble Apex Court in the case of Karim Uddin Barbhuiya Vs. Aminul Haque Laskar and Ors,2024 SCCOnLineSC 509. He submits that the Hon'ble Apex Court held that if the allegations contained in the petition did not set out the requirement of Sections 81 and 83 of the 1951 Act, the pleadings are liable to be struck out, and the election petition is liable to be rejected at the threshold. On a similar proposition of law, the learned counsel for the applicant also relied upon the decision of the Hon'ble Apex Court in the case of Kanimozhi Karunanidhi Vs. A. Santhana Kumar,2023 SCCOnlineSC 573. Learned counsel for the applicant, therefore, submits that the election petition deserves to be rejected at the threshold for non-compliance with Sections 81(1) and 83 read with Section 61 of the 1951 Act. Learned counsel for the applicant submitted that this Court, in the decision of Anil Subhash Sawant Vs. Samadhan Mahadeo Autade and Others,2025 SCCOnlineBom 2719 held that allegations in respect of the functioning of EVM machines, merely based on conjectures and apprehensions, and without any clarity as to how and in which manner, it has resulted in an incorrect practice or an irregularity materially affecting the result of the election, would be liable to be rejected at the threshold.

[7] Learned counsel for the applicant further submits that the election petition suffers from defects of a substantial nature that cannot be cured. The petitioner neither states a concise statement of the material facts nor provides full particulars of the alleged corrupt practice. The petition has not been verified in accordance with the provisions of the CPC. Hence, there is a substantial defect in verification that cannot be cured. He

further submits that there is a substantial defect in the affidavit required to be filed under the proviso to Section 83(1) of the 1951 Act, read with Rule 94 A of the Conduct of the Election Rules and Form No. 25 prescribed under the Rules. Hence, in view of the defects in the petition that cannot be cured, the petition cannot be said to be filed based on the disclosure of a meaningful cause of action.

[8] Learned counsel for the applicant further submitted that the right to dispute the election, not being a common law right, the statutory right has to be confined to the provisions of the 1951 Act and the rules framed thereunder. Thus, if the statutory mandates are not complied with, the petition deserves to be rejected at the threshold. Learned counsel for the applicant submitted that the election petition is bereft of material facts and full particulars of the corrupt practices. None of the grounds specified under Section 100 of the 1951 Act is pleaded as contemplated by Section 81 of the 1951 Act. Hence, in view of the well-settled legal principles in the decisions of the Hon'ble Apex Court, the petition is liable to be rejected at the threshold.

[9] All the allegations in the election petition are regarding corrupt practice as contemplated under Section 100(1)(b) of the 1951 Act, hence, learned counsel for the applicant referred to paragraphs 6 and 7 of the petition and submitted that in the absence of any material particulars to support the allegations as contemplated under Section 100 of the 1951 Act, the election petition based on vague allegations would not constitute any meaningful cause of action. Learned counsel for the applicant, therefore, submits that the election petition deserves to be rejected at the threshold.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

[10] Learned counsel for the petitioner submits that the allegations in the election petition are based on material particulars pleaded, which would warrant a trial. Paragraphs 28 and 23 disclose the source of the allegations as the petitioner's personal knowledge and observations. The petitioner has also pleaded that her request for further particulars under the Right to Information Act was denied. Hence, the particulars pleaded in the petition are based on her personal observations during the election and thus, the verification clause states that the contents are based on her personal knowledge. Learned counsel for the petitioner relied upon the letter dated 1st January 2025, issued to the District Election Officer under Rule 93 of the Conduct of Election Rules, 1961, for supplying copies of Form No. 17-C, pertaining to all polling booths in the constituency and supplying all complete recordings pertaining to the election process. However, her application was replied to on 2nd January 2025, and the information was denied. Both copies of the reply and letter are annexed to the petition to support her pleadings regarding the allegations made in the petition.

[11] Learned counsel for the petitioner submitted that all the documents referred to in the petition are annexed to the petition and are separately verified as required under Section 83(2) of the 1951 Act. Form No. 25, as required under the Rules, is duly verified and filed along with the election petition.

[12] Learned counsel for the petitioner referred to the various averments in the election petition and submitted that the material facts are pleaded and that all the particulars are not necessary as the petitioner would lead evidence to support the material facts that are pleaded. To support her submissions, learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case of **Virender Nath Gautam Vs. Satpal Singh and Ors**, 2007 3 SCC 617. She submitted that the Hon'ble Apex Court held that the expression "material facts" is neither defined under the Act nor in the Code. The Hon'ble Apex Court held that what particulars could be said to be "material facts" would depend upon the facts of each case, and no rule of universal application can be laid down. It is, however, essential that all basic and primary facts which must be proved at the trial must be pleaded by the party to establish the existence of a cause of action or defence, and that they are material facts and must be stated in the pleading by the party. She thus submits that the Hon'ble Apex Court held that the particulars are required to be complete to ensure the conduct of a fair trial that would not take the opposite party by surprise. Hence, once the material facts are pleaded, the particulars can be brought on record in the trial through evidence.

[13] On a similar proposition, learned counsel for the applicant also relied upon the decision of the Hon'ble Apex Court in the case of **Ashraf Kokkur Vs. K.V. Abdul Khader and Others**, 2015 1 SCC 129. She submits that in the present case, the pleadings, if taken as a whole, would clearly show that they constitute the material facts so as to pose a triable issue. Hence, as held by the Hon'ble Apex Court in the said decision, the present petition, which contains basic pleadings that would warrant a trial, cannot be rejected at the threshold.

[14] Learned counsel for the petitioner submits that the petition also raised grounds and objections on the nominations. The petitioner had raised objections to the nomination of the applicant. A copy of the objections raised at the time of accepting nomination is relied upon by the petitioner, and the same is annexed to the petition. All the particulars with regard to the objections raised on nominations are pleaded in paragraph 8 of the petition as contemplated under Section 100 (1)(d)(i) of the 1951 Act.

[15] Learned counsel for the petitioner further submitted that the petition also contains allegations about the EVM machines. Hence, in view of the allegations on the EVM machine, a forensic assessment would be necessary, and thus, a trial would be warranted in the petition. To support her submissions on the requirement of the forensic assessment, learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case of Balwan Singh Vs. Lakshmi Narain and Others,1960 SCCOnLineSC 281.

[16] With reference to the submissions made on behalf of the applicant by relying upon the decision of the Hon'ble Apex Court in the case of **Anil Subhash Sawant**, learned counsel for the petitioner submitted that no personal allegations were made in the facts of the said case, and the allegations were based solely on the EVM machines. Hence, the legal principles settled in the said decision would not apply to the facts of the

present case, where personal allegations are also made, in addition to those regarding the EVM machines. Learned counsel for the petitioner, therefore, submits that the present petition would warrant a trial, and the facts pleaded to support the allegations are sufficient to warrant the trial. In view of the well-settled legal principles regarding want of sufficient pleadings, the material particulars would be proved by the petitioner at the time of trial. She therefore submits that the petition cannot be rejected at the threshold under Order VII, Rule 11 of the CPC.

CONSIDERATION OF THE SUBMISSIONS:

[17] I have carefully perused the pleadings in the petition and the supporting documents. The allegations in the petition are twofold. Firstly, the allegations are personal, pertaining to the suppression of material facts regarding the applicant's properties and financial liabilities. The allegations are pleaded in paragraphs 6 and 7 of the petition. Copies of the revenue records are relied upon to support the allegations. The allegations pertain to the objections raised by the petitioner regarding an alleged false affidavit and nomination papers filed by the applicant. A copy of the objections to the affidavit and nomination papers filed by the applicant at the time of scrutiny is produced on record. The petitioner has alleged that discrepancies exist between the applicant's affidavit and the relevant documents. Hence, the petitioner submitted the objections to the Election Commission via email. Copies of the objections and the emails are annexed to the petition. It is further pleaded that on the same day, objections were disposed of by holding that the objections cannot be considered as the same were filed after the scrutiny process was over. The petitioner has pleaded that she submitted objections on 30th October 2024 before 11:00 am, i.e., before the scrutiny process commenced. However, according to the petitioner, although the Returning Officer accepted the objection, it was rejected on erroneous grounds, as it was raised after the scrutiny was over.

[18] Secondly, the petitioner has raised objections to noncompliance with the statutory requirements. She has made allegations regarding the EVM-VVPAT machines, which are pleaded in paragraphs 28 to 34. The petitioner has stated that the mandatory provisions for ensuring compliance with Section 61-A, as prescribed for the use of voting machines, were not followed. She has pleaded that the serial numbers/unique identification marks on the machines had stickers pasted on them, when in fact it is mandatory that the EVM machines have the serial numbers engraved on the cabinet or on a metal plate riveted to the cabinet. The petitioner has further pleaded that, in the absence of permanent, irreplaceable, and unique identification marks, the EVM machines cannot be used in the conduct of elections. Hence, the election of the applicant should be declared void on account of the fact that the EVM machines, including the ballot units, control units and the VVPAT printers used in the election process, did not have any permanent serial numbers/unique identification, or marks; instead, they had detachable stickers. It is therefore the petitioner's case that, in view of the allegations made in the said paragraphs, a forensic assessment would be necessary. Hence, the petition would warrant a trial. So far as further particulars on the allegations are

concerned, the petitioner has relied upon the application filed under Rule 93 of the Conduct of the Election Rules for the supply of necessary particulars. However, her application was rejected. A rejection letter is also produced on record.

[19] The petitioner has verified the petition as contemplated under Section 83(1)(c) of the said Act of 1951, and all the annexures are independently verified as contemplated under Section 83(2) of the said Act of 1951. Form No. 25 is also duly filed as contemplated under Rule 94 of the Conduct of Election Rules 1961. Thus. The petition is filed as contemplated under Chapter II of the said Act of 1951.

[20] To examine the rival contentions on whether the petition warrants a trial or should be rejected at the threshold, it is necessary to discuss the relevant, well-settled legal principles relied upon by both parties.

LEGAL POSITION:

[21] In **Jyoti Basu**, the appellants before the Apex Court were the Chief Minister and two Ministers of the Government of West Bengal, who were impleaded as parties to an election petition challenging the election of the returned candidate on the grounds of alleged corrupt practices. They filed an application before the High Court to strike out their names. Their application was dismissed by the High Court on the ground that they were proper parties to the election petition. The Apex Court held that no one may be joined as a party to an election petition otherwise than as provided by Sections 82 and 86(4) of the Act and that a person who is not a candidate may not be joined as a respondent to the election petition. The Hon'ble Apex Court held that a challenge to an election is a statutory proceeding to which neither the common law nor the principles of equity apply, but only those rules which the statute makes apply. It is held that the special jurisdiction has always to be exercised in accordance with the statute creating it, and no election may be questioned except in the manner provided by the Representation of the People Act. Therefore, the Representation of the People Act has been held to be a complete and self-contained code within which any rights claimed in relation to an election or an election dispute must be found.

[22] In **Hari Shanker Jain**, the Hon'ble Apex Court held that "Material facts" required to be stated are those facts that can be considered as materials supporting the allegations made, that would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action.

[23] In **Karim Uddin Barbhuiya**, the Hon'ble Apex Court held that pleadings in an election petition have to be precise, specific, and unambiguous, and if the election petition does not disclose a cause of action, it is liable to be dismissed in limine. Section 83(1)(b) mandates that when the allegation of 'corrupt practice' is made, the petition shall set forth full particulars of the corrupt practice, including a statement of the names of the parties alleged to have committed such corrupt practice and the date and place of

committing such corrupt practice. If the allegations contained in the petition do not set out the grounds as contemplated by Section 100 and do not conform to the requirement under Sections 81 and 83 of the Act, the petition is liable to be rejected under Order VII Rule 11, read with Sections 83 and 87 of the RP Act.

[24] In Kanimozhi Karunanidhi, the Hon'ble Apex Court held that Section 83(1)(a) of the RP Act, 1951 mandates that an Election Petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an election petition, the same is liable to be dismissed on that ground alone, as the case would be covered under Clause (a) of Rule 11 of Order VII of CPC.

[25] In Anil Sawant, this court held that following the mandate under various judgments of the Supreme Court, and particularly in the case of Kanimozhi Karunanidhi and Karim Uddin Barbhuiya, even a singular omission of a statutory requirement must entail dismissal of the Election Petition by having recourse to provisions of OrderVII Rule 11of the CPC.

[26] In Virendra Nath Gautam, the judgment and order of the High Court of Himachal Pradesh was challenged, and the High Court upheld the preliminary objection that the election petition did not disclose material facts and was liable to be dismissed. The election petition alleged several irregularities, illegalities, and discrepancies in the voters' list and defective electronic voting machines. It is held that if all material facts in accordance with the provisions of the Act are not set out in the election petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of subsection (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code. The expression "material facts" is explained in paragraphs 31, 34 and 50 as under:

"31. The expression "material facts" has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary". [Burton's Legal Thesaurus(3rd Edn.), p. 349]. The phrase "material facts", therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."

"34. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts

by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise."

"50. There is distinction between facta probanda (the facts required to be proved i.e. material facts) and facta probantia(the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only facta probanda and not facta probantia. The material facts on which the party relies for his claim are called facta probanda and they must be stated in the pleadings. But the facts or facts by means of which facta probanda (material facts) are proved and which are in the nature of facta probantia(particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue."

emphasis applied by me

[27] In **Ashraf Kokkur**, the Apex Court held that the limited inquiry under Order 7 Rule 11(a) of the CPC is intended only to determine whether the petition should be thrown out at the threshold. In an election petition, the requirement under Section 83 of the RP Act is to provide a precise and concise statement of material facts. It is held that the expression "material facts" plainly means facts pertaining to the subject matter and which are relied on by the election petitioner, and if not proved, the election petitioner fails at the trial. The Apex Court referred to and relied upon the decision of the threeJudge Bench of the Apex Court in **Hari Shanker Jain**, where it is held that the expression "cause of action" would mean facts to be proved, and that the function of the party is to present a full picture of the cause of action with such further information to make opposite party understand the case he will have to meet. It was held that material facts would include positive statements of facts as well as positive averments of a negative fact, if necessary, and that material facts are such preliminary facts which must be proved at the trial by a party to establish the existence of a cause of action. The Apex Court discussed all the well-settled legal principles and concluded in paragraph 29 as under:

"29. Finally, as cautioned by this Court in **Raj Narain v.Indira Nehru Gandhi**, 1972 3 SCC 850, it was held that: (SCC p. 858, para 19)

"19. Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a juristic principle. It is the duty of the court to ascertain that principle and implement it."

(emphasis supplied)"

[28] The decision of the Apex Court in **Balwan Singh** is based on the Representation of the People Act, 1951, as it stood before the 1966 amendments. It was an appeal against the High Court's decision, which held that the corrupt practice had

been proved and set aside the appellant's election. The election tribunal had dismissed the election petition after a full-fledged trial, holding that the alleged corrupt practice had not been proved. The Apex Court dismissed the appeal and confirmed the order of the High Court. In considering whether a corrupt practice described in Section 123(5) is committed, it is held with reference to the allegation in the said case being the hiring or procuring of a vehicle for the conveyance of the electors, that if full particulars of conveying by a vehicle of electors to or from any polling station are given, Section 83 is duly complied with, even if the particulars of the contract of hiring, as distinguished from the fact of hiring, are not given. In the facts of that case it was held that if particulars in support of the plea of the vehicle being hired or procured by the candidate or his agent or by another person was used for conveying voters to or from the polling station are set out, failure to set out particulars of the contract of hiring or arrangement of procuring will not render the petition defective.

ANALYSIS AND CONCLUSIONS:

[29] In view of the well-settled legal principles, all "material facts" must be pleaded by the party in support of the case set up by him. The object and purpose are to enable the opposite party to know the case he has to meet with. However, "particulars" are the details of the case which is in the nature of evidence a party would be leading at the time of trial. The law requires only'full particulars' and not 'material particulars'.

[30] In the present case, the petitioner has challenged the election on the ground that it is void under Section 100(1)(b) and 100(1)(d)(i) and (iv) of the said Act. In paragraphs 4 to 7, the petitioner has pleaded the facts alleging that the applicant suppressed true and correct information regarding assets and liabilities in the affidavit, in terms of Rule 4A of the Rules of 1961, read with the prescribed Form 26. The petitioner provided full particulars of the alleged suppression, including details of the property and the liabilities suppressed by the applicant. The petitioner has annexed relevant revenue records to support the allegation of non-disclosure of the assets. Learned counsel for the applicant argued that the particulars regarding the alleged assets are not owned by the applicant, but his name is entered as the only office bearer of the society that owns the property. However, when examining whether the petition is liable to be rejected at the threshold under Order VII, Rule 11 of the CPC, the explanation or defence cannot be considered. The explanation or the defence of the applicant would be a matter of trial.

[31] The petitioner has pleaded regarding the objections she filed to the nomination of the applicant and further challenged the Returning Officer's rejection of those objections. She has pleaded that her objections were submitted much before the scrutiny process started. However, the returning officer, though he accepted her objection at that time, only to give undue benefit to the applicant, did not give an acknowledgement and later rejected her objection on the ground that it was received belatedly. The petitioner has annexed the relevant documents to support her allegations. The petitioner has thus raised an objection that the election result has been materially affected due to the improper acceptance of the applicant's nomination.

[32] To substantiate the allegations, the petitioner has pleaded in paragraphs 30 to 39 that the Rules of 1981 and the guidelines, as well as the administrative Standard Operating Procedures, were not followed for the use of the EVM-VVPAT machines. She has alleged that the EVM machines did not contain permanent, irreplaceable, or unique identification marks, and instead had detachable stickers for the identification numbers. She has also pleaded that the Electoral Registration Officer appointed under the Representation of Peoples Act 1950 did not follow the mandatory procedure to ensure full and complete enrolment of women and voters in the age group of 18 and 19 years old. The petitioner has stated that she applied for copies of Form 17C, which is crucial for verifying and tallying total votes polled. However, her application for the supply copies of the forms was rejected. Hence, it is contended that, in view of the breaches committed on the polling day, the shifting and transportation of the EVMs and their storage, as well as the names of many voters missing from the voters' list from various polling booths, have materially affected the election of the applicant. The petitioner has pleaded that the Election Commission of India did not comply with Section 61A of the said Act. Hence, the election is liable to be set aside under Section 100 (1)(d)(iv) of the said Act.

[33] The petitioner pleaded that she had applied for copies of Form 17-C pertaining to all polling booths and for complete video recordings of the election process. However, her application was rejected by the District Election Officer. The petitioner has annexed a copy of her application and the rejection letter. Hence, learned counsel for the petitioner submitted that the contents of the petition are based on her personal knowledge and observations during the election process; hence, the verification of all the paragraphs of the petition is based on her personal knowledge. In view of the nature of the allegations in the petition, the petitioner has stated that the averments are based on her personal knowledge. Hence, there would be no question of disclosing the source of personal knowledge.

[34] The petition is bereft of any pleadings to challenge the election on the ground contemplated under Section 100(1)(b) read with Section 123 of the said Act. However, the petition contains pleadings to support the allegations to challenge the election on the grounds contemplated under Section 100(1) (d)(i) and (iv) of the said Act. Whether or not the election petitioner can prove the said allegations is a matter of evidence, which can be considered only at the stage of trial. By no stretch of imagination, however, it can be said that the material fact, that is, the allegations regarding the challenge to the election on the grounds contemplated under Section 100(1)(d)(i) and (iv) of the said Act, has not been stated in the petition for rejecting the petition at the threshold. The petitioner has also pleaded that the applicant has secured 1,09,239 votes, and the petitioner has secured 72,575 votes, the second highest votes; hence, the grounds of challenge would materially affect the election result. The legal principles settled by the Hon'ble Apex Court, in the decisions of **Virendra Nath Gautam** and **Ashraf Kokkur**, squarely support the arguments made on behalf of the petitioner. The legal principles

settled in the decisions relied upon by the learned counsel for the applicant would not be of any assistance to the applicant. The material facts which are required to be pleaded in the election petition as required by Section 83(1) of the Act, read with Order 7 Rule 11(a) of the Code, have been pleaded by the petitioner, and the cause of action has been disclosed. Therefore, the petition cannot be rejected at the threshold.

[35] Hence, for the reasons recorded above, the Interim Application (L) No. 24466 of 2025 is dismissed

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2026(1)MCJ120

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Abhay Ahuja)

Interim Application; Commercial Summary Suit No 1987 of 2025, 1988 of 2025; 57 of 2021, 58 of 2021 **dated 06/11/2025**

Prime Developers and Another; In The Matter Between: Mayank Jaswantlal Shah; Minaxi P Satra

Versus

Prime Developers and Others; Minaxi P Satra

COMMERCIAL SUIT TRANSFER

Code of Civil Procedure, 1908 Or. 7R. 10 - Bombay High Court (Original Side) Rules, 1980 Rule 283 - Commercial Courts Act, 2015 Sec. 2, Sec. 7, Sec. 4 - Commercial Suit Transfer - Plaintiffs filed commercial summary suits for recovery of large amounts - Defendants sought return of plaints contending that suits were not commercial disputes under Commercial Courts Act - Plaintiffs argued suits could be renamed as ordinary civil suits instead of return - Court observed that though Rule 283 of Bombay High Court (O.S.) Rules allows return of plaint, both commercial and original side divisions are part of same High Court - Held that suits filed before competent court though under wrong nomenclature need not be refiled afresh - Directions issued to rename and renumber suits as ordinary civil suits - Applications for return of plaints rejected - Proceedings to continue from same stage before ordinary original side jurisdiction - Suits renamed and renumbered as ordinary suits

Law Point: When a plaint is filed before competent High Court under wrong jurisdictional nomenclature, it need not be returned under Rule 283 - Commercial and ordinary original sides being part of same court, suits may be renamed and renumbered to avoid unnecessary delay or multiplicity.

Acts Referred:

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

Bombay High Court (Original Side) Rules, 1980 Rule 283

Commercial Courts Act, 2015 Sec. 2, Sec. 7, Sec. 4

Counsel:

Zal Andhyarujina (Senior Advocate), Aditya Mehta, Serena Jethmalani, Krushi N Barfiwala, Shlok Bodas, Ishika Lodha, Sanjay Jain, Kunal Vaishnav, Suraj Iyer, Mani Thevar, Vijeet Trivedi, Gauri Joshi, Ganesh & Co

JUDGEMENT

Abhay Ahuja, J.- [1] The suits in respect whereof these applications have been filed have been filed as Commercial Summary Suits by the Plaintiff against the Defendants seeking recovery of Rs.17,34,26,187/- (Rupees Seventeen Crores Thirty-Four Lakhs Twenty-Six Thousand One Hundred and Thirty-Seven only) alongwith interest at the rate of 15% p.a. from the Applicants and Mr. Praful Satra (Original Defendant No.2) in one suit and recovery of Rs.15,57,32,851/- (Rupees Fifteen Crores Fifty Seven Lakhs Thirty Two Thousand Eight Hundred and Fifty One only) along with interest at the rate of 18% p.a. from the Applicant/Defendant therein in another suit.

[2] Appearance was entered into on behalf of the Defendants and thereafter, Summons for Judgment had been taken out in both the suits.

[3] After the pleadings in the Summons for Judgment were completed, on 21st February 2023, the aforementioned two Interim Applications have been taken out seeking return of the plaints under Order VII Rule 10 of the Code of Civil Procedure, 1908 (the "CPC") on the ground that the suits are not commercial suits under the Commercial Courts Act, 2015 (the "Act") and the plaints are to be returned to the Plaintiff to be presented to the appropriate court in which the suits should have been instituted.

[4] The Interim Applications had been heard on 5th May 2025 and 16th June 2025. On 23rd June 2025, the matter was adjourned to 16th July 2025 for the learned Senior Counsel for the Applicant to rejoind. On 16th July 2025, the learned Counsel for the Respondent sought to sur-rejoind, which was heard on 28th July 2025. On 11th August 2025, the arguments in the matter were concluded and the Interim Applications were reserved for orders.

[5] Mr. Andhyarujina, learned Senior Counsel, appearing for the Applicants has submitted that the two suits do not pertain to commercial disputes but are filed before the commercial division for early disposal which would just clog the system and block the path for genuine commercial disputes and hence, it is crucial for the commercial Court to exclude those cases that are not commercial in nature. In support, Mr. Andhyarujina has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP**, 2020 15 SCC 585.

[6] Mr. Andhyarujina has also drawn this Court's attention to the decision of this Court in the case of Chanda Kochhar v. ICICI Bank Ltd, Order dated 12th April 2022 passed in Interim Application (L) No.10192 of 2022 in Commercial Suit No.43 of 2022 submitting that if the Court comes to the conclusion that the dispute is not a commercial

dispute, the suit is required to be tried by the competent Court in accordance with provision contained in the CPC and only if the suit concerns a commercial dispute, a special procedure as envisaged by the CPC as amended by the Act is required to be peremptorily followed. It is submitted that the two suits do not meet the necessary conditions for the subject matter of the suits to fall under the ambit of a "commercial dispute". Mr. Andhyarujina has also relied upon the following decisions in support of the contention that the plaints in the two suits be returned under Order VII Rule 10 of the CPC:

(i) Chorus Call INC v. Gurmeetpal Singh Bindra,2023 SCCOnLineBom 2352

(ii) Bharat Hudanna Shetty v. Ahuja Properties & Developers and Ors,2021 SCCOnLineBom 13984

(iii) Varanium Cloud. Ltd, in the matter of Rolta Private Limited v. Varanium Cloud Ltd [Order dated 11th November 2024 passed in Interim Application (L) No.6341 of 2024 in Summary].

[7] Mr. Andhyarujina has further submitted that although Order XLIX of CPC excludes the application of Order VII Rule 10 of CPC to Chartered High Courts, however Rule 283 in Chapter XX of the Bombay High Court (Original Side) Rules, 1980 (the "O.S. Rules") which is akin to Order VII Rule 10 of CPC is not excluded and hence this Court being a Chartered High Court has the power to exercise its jurisdiction under Rule 283 of the O.S. Rules and pass orders for return of plaints. Mr. Andhyarujina has relied upon two decisions of this Court in the cases of Hindustan Organic Chemicals Ltd. v. ICI India Ltd.,2018 SCCOnLineBom 365 and Shree Sai Plast Pvt. Ltd. v. Prince Pipes and Fittings Ltd, Order dated 14th March 2024 passed in Interim Application (L) No.2548 of 2024 in Commercial IP Suit (L) No.27330 of 2023.

[8] Mr. Andhyarujina has submitted that once a plaint is returned under Order VII Rule 10 of CPC / Rule 283 of O.S. Rules, the same needs to be freshly presented before the Court having competent jurisdiction and trial needs to be conducted de novo. That return of plaint cannot be considered to be continuation of the suit wrongly filed in the Court not having jurisdiction. It is submitted that the Respondent/Original Plaintiff has relied upon several Judgments/Orders of this Court as well as other High Courts, regarding the contention that the present suits have to be transferred and just renumbered. Mr. Andhyarujina submitted that in none of the said Judgments/Orders has the issue of transfer of suits been contested.

[9] Mr. Andhyarujina has submitted that Hon'ble Supreme Court in the decision of **EXL Careers v. Frankfinn Aviation Services (P) Ltd.**, 2020 12 SCC 667 has categorically held that once a plaint is returned under Order VII Rule 10 of the CPC, the same has to be presented to the Court having competent jurisdiction and shall be considered to be filed afresh and the trial has to be conducted de novo, even if it stood concluded before the earlier Court. It is submitted that the Court while exercising jurisdiction under Order VII Rule 10 of CPC cannot exercise any discretion and the suit

has to commence de novo. Mr. Andhyarujina has also relied upon decision of this Court in Oriental Insurance Company v. Sunrise Biscuit Company,2024 SCCOnLineBom 1135, submitting that this Court has followed the law laid down by the Hon'ble Supreme Court in the case of EXL Careers v. Frankfinn Aviation Services (P) Ltd. (supra) and held that pursuant to an order for return of plaint being passed, the new proceedings initiated by the Plaintiff cannot be said to be proceedings in continuation of the earlier proceedings.

[10] Mr. Andhyarujina has submitted that therefore considering the relevant provisions of law and the law laid down by the Hon'ble Supreme Court as well as this Court, there is no power vested in this Court to transfer the suits, renumber it and proceed from the same stage. The procedure laid down in Order VII Rule 10 of the CPC as interpreted by the Hon'ble Supreme Court ought to be followed strictly and the plaint will have to be returned to the Plaintiff for presentation before the Court having jurisdiction for commencement of the proceedings de novo. That this would mean that the date of presentation of the plaint would be the date on which the Plaintiff files the returned plaint before the Court having competent jurisdiction.

[11] Mr. Andhyarujina has further submitted that the conversion of the present suits from commercial suits to civil suits is not just a change in nomenclature. That the constitution of the commercial division came with significant changes to the procedure under the CPC. Learned Senior Counsel submits that one of the most significant changes brought in through the Act is that the timelines for filing the pleadings under Order V and VIII have been changed. Further, the procedure under Order XIII-A for summary judgment only applies to commercial disputes as defined under Section 2(1)(c) of the Act. That therefore, these significant changes create a major difference in the procedure that needs to be followed in a commercial dispute as opposed to a noncommercial dispute.

[12] Mr. Andhyarujina has submitted that in view thereof since the Act, stipulates stricter timelines that are mandated to be followed, the present suits cannot be simply transferred to the Court having competent jurisdiction, but the same ought to be returned as per the provisions under Order VII Rule 10 of CPC/ Rule 283 of the O.S. Rules. It is submitted that if the subject matter of the dispute is not maintainable before the Commercial Division but is maintainable before the Ordinary Original Civil Jurisdiction of this Court, the present suits cannot be deemed to be a continuation of the proceedings held before the Commercial Division upon its return.

[13] Mr. Andhyarujina has submitted that the Respondent/Original Plaintiff have erroneously submitted that the Applicants/Original Defendants case is that this Court has no jurisdiction at all even considering the fact that the assignment for a commercial summary suit as well as an ordinary summary suit lies with this Court itself. It is submitted that this has never been the case of the Applicants/Original Defendants. It is submitted that there is no embargo on the fact that the assignment of a commercial summary suit as well as the ordinary summary suit is before this very Court, however

this Court while exercising jurisdiction of a commercial Court cannot pass orders in the jurisdiction of the original civil court. Learned Senior Counsel submits that in effect of which, this Court cannot pass an order for conversion/transfer of the present suits to the ordinary original jurisdiction of this Court and continuation of the proceedings from the present stage thereafter, as that would amount to passing an order dehors the jurisdiction being exercised while entertaining the present suits in the commercial jurisdiction.

[14] Without prejudice to the aforesaid Mr. Andhyarujina has submitted that, in any event the stage in the present suit is only at the hearing of summons for judgment, and that the Applicants/Original Defendants have a very good case on merits for seeking unconditional leave to defend the present suits. Hence, no prejudice will be caused to the Respondent/Original Plaintiff if the present suits are returned to be filed afresh before the Court having competent jurisdiction. However, if the present applications are not allowed, passing of any further order would be bad in law as the same would be outside the jurisdiction being exercised by this Court.

[15] Mr. Andhyarujina has submitted that since the subject matter of the present dispute does not lie with the Commercial Division of this Court, the Commercial Suits are not maintainable under the Act and considering the legislative intent of amending the CPC and introduction of the Commercial Courts Act, 2015, the plaints in the said Commercial Suits are liable to be returned to the Court having competent jurisdiction i.e. the Ordinary Original Civil Jurisdiction of this Court to be filed and commenced de novo.

[16] On the other hand, Mr. Jain Learned Counsel for the Respondent/original Plaintiffs has submitted that the sole ground for these Applications is that the dispute does not fall within meaning of 'commercial dispute' as defined under the Commercial Courts Act and the only contention of the Applicant is that the present suits ought to have been instituted on the Original Side of this Court as regular summary suits and could not have been filed with the commercial division of this Court. Mr. Jain has submitted that the Applicant does not dispute that the Bombay High Court is the civil court that would have jurisdiction in respect of the present dispute.

[17] Mr. Jain, learned Counsel, appearing for the Respondent/ original Plaintiffs has however submitted that the subject matter of the summary suits in question do not fall within the purview of the definition of "commercial dispute" under Section 2(1) (c) of the Act and are not commercial suits, however, submitting that therefore the proper course of action would be to rename the suits as ordinary/regular suits and renumber them as such and not return the plaints under Rule 283 of the O.S Rules in as much as the plaints have already been presented in this Court which has jurisdiction.

[18] Mr. Jain has taken this Court through the preamble of the Act, Section 4 of the Act under which the Commercial Division of a High Court is constituted and Section 7 of the Act which pertains to the jurisdiction of Commercial Divisions of the High Court. Mr. Jain has also referred to the Practice Note No.48 dated 04.05.2016 which specifies

that all suits, applications and matters relating to commercial disputes of a specified value shall be filed on the Ordinary Original Civil Jurisdiction and Civil Appellate Jurisdiction as the case may be of High Court on the Commercial Division.

[19] Mr. Jain has submitted that on a combined reading of the aforesaid, it can be inferred that a Judge sitting on the Original Side of the Bombay High Court in its Commercial Division is not a separate/distinct Court from a Judge sitting on the Original Side. Mr. Jain would submit that in fact the reliance of the Applicant on Rule 283 of the O.S. Rules and the decisions in Shree Sai Plast Pvt. Ltd. v. Prince Pipes and Fittings Ltd (supra) and Hindustan Organic Chemicals Ltd. v. ICI India Ltd. (supra) fortifies the submissions made on behalf of the Respondent/Plaintiff.

[20] Mr. Jain has further submitted that the Applicant has sought to artificially create two separate Courts and incorrectly treats the Commercial Division and the Original Side as two separate courts, when they are divisions of a single court.

[21] Mr. Jain has submitted that the present case is not a case of jurisdiction but merely a case of nomenclature and re-numbering and that Courts have time and again directed that suits which were incorrectly instituted as commercial suit but before the correct Court be re-numbered as an ordinary/regular suit. Mr. Jain has in support of the submission has placed reliance on the decision of the Delhi High Court in the case of P&M Movies Private Limited v. Sapna,2022 SCCOnLineDel 4480. On the aspect that when a dispute is not a commercial dispute, the courts had directed renaming and renumbering of the suits/ transfer of the Suit from its Commercial Division to the Ordinary Original Jurisdiction and not return of the plaint for filing afresh again, Ld. Counsel has also relied upon the decisions of this Court in the cases of Bharat Hudanna Shetty v. Ahuja Properties & Developers and Ors. (supra), Chanda Kochhar v. ICICI Bank Ltd. (supra) and)., Chorus Call INC v. Gurmeetpal Singh Bindra (supra).

[22] Mr. Jain has submitted that assuming the Applicant's contention that Commercial Division of this Court is a separate Court from the Original Side of this Court, is accepted, then the provision for return of plaint under Rule 283 would not apply to a Court under a Commercial Division as the commercial division of the High Court is not a separate court but the very same court.

[23] Mr. Jain has urged that the returning the plaints to the Plaintiff and then requiring him to re-present it before the very same Court would only cause delay, prejudice and irreparable harm to the Plaintiff and the entire proceedings would have to be restarted and the same would cause unnecessary hardship and multiplicity of proceedings. Mr. Jain has placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Pasupuleti Venkateswarlu v. The Motor & General Traders**, 1975 AIR(SC) 1409 and submits that equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice, subject, of course, in the absence of other disentitling factors or just circumstances.

[24] Mr. Jain has submitted that therefore this Court reject the applications filed by the Applicants and direct the Suits to be renamed and re-numbered as Ordinary Suits.

[25] I have heard the Learned Senior Counsel and the Learned Counsel at length and also considered the rival contentions.

[26] Although the Applications have been filed under Order VII Rule 10 seeking return of plaints, Order XLIX of CPC excludes the application of Order VII Rule 10 of CPC to Chartered High Courts, but this Court being a Chartered High Court has the power to exercise its jurisdiction under Rule 283 of the O.S. Rules and pass an order for return of plaint. I, therefore, agree with Mr. Andhyarujina, when he relies upon the decisions of this Court in the cases of Hindustan Organic Chemicals Ltd. v. ICI India Ltd. (supra) and Shree Sai Plast Pvt. Ltd. v. Prince Pipes and Fittings Ltd. (supra).

[27] Ergo the present applications are being considered under Rule 283 of the O.S. Rules, which reads thus:-

"283. Return of plaint

(i) The Court or the Judge in Chambers may at any stage of the suit order the plaint to be returned to the plaintiff to be presented to the Court in which the suit should have been instituted.

(ii) When an order for return of the plaint is made, the Prothonotary and Senior Master or any officer subordinate to him shall endorse on the plaint,--

(a) the date of its presentation,

(b) the date of the order for its return,

(c) the date on which the plaintiff furnishes a copy of the plaint and the date on which it is certified as a true copy by the office of the Prothonotary and Senior Master, as provided in sub-rule (iii) of this rule,

and

(d) the date of the return of the plaint.

(iii) The plaint shall be returned only after the plaintiff has furnished, for the record of the Court, a copy of the plaint and the said copy has been certified as a true copy by the office of the Prothonotary and Senior Master."

(emphasis supplied)

[28] As can be seen at any stage of a suit, the court under this rule can order the plaint to be returned to the Plaintiff to be presented to the court in which the suit should have been instituted. The rule contemplates presentation of the plaint that has been returned to the Plaintiff to the court in which the suit should have been instituted. The rule presupposes that the plaint has been filed in the wrong court and then upon return be presented in another court where it should have been instituted; it definitely does not contemplate presentation of the plaint from one bench of the same High court to another bench of the very same High court.

[29] The Respondents/Original Plaintiffs, during the course of arguments, as noted above, have conceded to the fact that the subject matter of the summary suits do not in fact fall within the purview of "commercial dispute" under Section 2(1)(c) of the Act and hence are not a commercial Suits. Therefore, although the principles discussed / laid down in the decisions in the cases of Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP (supra), Chorus Call INC vs. Gurmeetpal Singh Bindra (supra), Bharat Hudanna Shetty vz. Ahuja Properties & Developers and Ors. (supra), Varanium Cloud.Ltd, in the matter of Rolta Private Limited v. Varanium Cloud Ltd.(supra), as regards the definition and ambit of "Commercial Dispute" under the Act are settled law, but in view of the stand taken by the original Plaintiff that the two Suits under consideration are not commercial suits, no further discourse is necessary with respect to the above said decisions.

[30] The only issue left for consideration of this Court, therefore, is whether the two suits be renamed and renumbered as ordinary or regular suits or the plaints be returned under Rule 283 of the Bombay High Court (O.S) Rules to the Respondent/Original Plaintiff for fresh presentation of the same before the court in which the suits should have been instituted.

[31] To answer this, it would be first pertinent to refer to the Act, viz. the Commercial Courts Act, 2015. Section 2(1) (b) of the Act defines "Commercial Court" to mean the Commercial Court constituted under sub-section (1) of Section 3.

[32] Section 4 of the Act deals with constitution of a Commercial Division of a High Court. Section 4 of the Act reads thus:

"4. Constitution of Commercial Division of High Court -

(1) In all High Courts, having ordinary original civil jurisdiction, the Chief Justice of the High Court may by order, constitute Commercial Division having one or more benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division."

(emphasis supplied)

[33] Therefore, the constitution of a Commercial Division in a High Court under this Act depends on whether the High Court in a State has "ordinary original civil jurisdiction".

[34] The jurisdiction of the Commercial Division constituted under Section 4 of the Act is set out in Section 7 of the Act which requires that, all suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court.

[35] The specified value as per the Act is not to be below Rs.3 Lacs. However, since the pecuniary jurisdiction of the Court is above 10 crores, if a suit relates to a commercial dispute of a value of above 10 crores, then in a High Court having Ordinary Original Civil Jurisdiction, the said Suit is to be heard and disposed of only by a Commercial Division.

[36] No where it is provided that a separate Court is to be constituted by the High Court for commercial disputes. The word constitute in Section 4 means to designate and not create a separate jurisdiction. Merely designating certain benches on the Original Side of the High Court as Commercial Division does not amount to creation of a separate or distinct jurisdiction. Commercial Division is only a nomenclature.

[37] Even the Practice Note No.48 dated 04.05.2016 issued by the Prothonotary and Senior Master High Court, Original Side and Registrar (Judl - I) High Court, Appellate Side for the fresh filing of Suits, Applications, Appeal matters under Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 provides that with effect from 1st June 2016, all fresh Suits, Applications and matters relating to commercial disputes of a specified value as above within a meaning of the said Act shall be filed on the Ordinary Original Civil Jurisdiction and Civil Appellate Jurisdiction as the case may be of High Court on the "Commercial Division" of the High Court of Judicature at Bombay and they shall specifically state in the Cause Title of the such matters relating to commercial dispute that the same is filed in it's "Commercial Division" of the High Court and all categories of the matters shall be preceded by the words "Comm".

[38] The directions issued by the Learned Prothonotary and Senior Master, High Court, Original Side dated 10.05.2016, for filing of matters to be heard and decided by the Commercial Division and Commercial Appellate Division has provided the nomenclature of Commercial Dispute matters according to different types of matters.

[39] The aforesaid as can be seen only provides for a nomenclature for the suits/applications involving commercial disputes, but not creation of a jurisdiction.

[40] The High Court functions in two distinct spheres of jurisdiction: the Ordinary Original Jurisdiction and the Appellate Jurisdiction. On the Ordinary Original Jurisdiction, the Court exercises jurisdiction in the first instance, entertaining suits and causes of action that lie within its territorial and pecuniary jurisdiction. The Appellate Jurisdiction, on the other hand, is not merely an internal division but a substantive head of jurisdiction, whereby the High Court hears appeals from decrees and orders passed by district Courts and tribunals.

[41] The Commercial Division, however, stands on a different footing. It is neither a separate Court nor a distinct jurisdiction in the sense of Original and Appellate Jurisdiction. It is but a division of the Court's pre-existing original civil jurisdiction and appellate jurisdiction into a designated Division for commercial disputes. Its foundation is not the creation of a new head of jurisdiction, but only the statutory and administrative

allocation of jurisdiction already vested in the High Court. Thus, while the distinction between the Ordinary Original Civil Jurisdiction and Appellate Jurisdiction lies in the very nature of jurisdiction but the Commercial Division does not constitute a jurisdiction distinct from or external to the Ordinary Original Civil Jurisdiction of the High Court; but a part of the Original Side of the High Court itself exercising its ordinary original civil jurisdiction in a particular class of matters viz. commercial disputes. And even if under the Commercial Courts Act, there are different time lines and procedures prescribed that does not mean that commercial division is a Court with a jurisdiction other than the Ordinary Original Civil Jurisdiction.

[42] From the above elucidation it emerges that the aforesaid provisions designate benches of the High Court as commercial division but do not create of a new or a different Court. It is the Court as a body which is to have and exercise such jurisdiction; but in as much as it would neither be convenient nor practicable for the entire Court to sit for the trial and determination of every commercial dispute, provision is made for its exercise by one or more Judges specifically designated as the Commercial Division. The effect, therefore, is not to carve out a fresh or independent jurisdiction, but to regulate the manner in which the pre-existing jurisdiction of the Court is to be exercised for the more effective administration of justice in commercial disputes.

[43] I, therefore, agree with Mr. Jain that the Applicants have sought to artificially create two separate Courts and incorrectly treat the Commercial Division and the Original Side as two separate courts, when they are division of a single court.

[44] I do not think, this is a case of plaints having been instituted in a Court not having jurisdiction, but have been instituted in the High Court having Ordinary Original Civil Jurisdiction but with an incorrect nomenclature as the Commercial Division of this Court but cannot proceed as the same do not involve commercial dispute as defined under the Commercial Courts Act. This is, therefore, not a case of jurisdiction but only a case of erroneous nomenclature required to be renamed and renumbered. I am, therefore, unable to accept the argument of the Applicants that the Plaints be returned to the Respondent/Plaintiff for fresh presentation of the Plaints before the Court having competent jurisdiction.

[45] Also, since the applications are being considered under Rule 283 of the OS Rules, it is implicit that the suits have been filed in the correct jurisdiction viz. Ordinary Original Civil Jurisdiction of this Court but erroneously named as Commercial. Therefore, also the question of returning the plaints to be presented to another bench of the same Court would not arise.

[46] In the case of Bharat Hudanna Shetty vz. Ahuja Properties & Developers and Ors. (supra), this Court has in similar facts held that the suit ought to be treated as a summary suit rather than a commercial summary suit and directed that after renumbering the suit, the registry to place it before the Court in the following week.

[47] In the case of Chanda Kochhar vs. ICICI Bank Ltd (supra), this Court observing that the dispute arose out of contract of service and did not involve a commercial dispute within the meaning of Section 2(1)(c) of the Act, directed removal of the plaint from the list of suits of commercial causes of this Court to be placed before the High Court in the Ordinary Original Civil Jurisdiction also directing the Prothonotary & Senior Master to convert the suit into regular suit to be entertained and tried by the High Court in its Ordinary Original Civil Jurisdiction.

[48] In the case of Chorus Call INC vs. Gurmeetpal Singh Bindra (supra), this Court observing that the dispute was a commercial one directed removal of the suit from the list of suits to the list of commercial suits in the commercial division of this Court and to convert the suit into register of commercial suits and be placed before the appropriate bench.

[49] As can be seen, in neither of the aforesaid matters the plaints were returned under Order VII Rule 10 of CPC or under Rule 283 of the O.S. Rules.

[50] The Hon'ble Delhi High Court in the case of P&M Movies Private Limited v. Sapna (supra) in paragraphs 16-20 has observed as under:

"16. There are instances where a commercial Suit is filed before this Court and the Court comes to a conclusion that the Suit so filed is not commercial Suit or vice versa, where the Suit is filed as an ordinary Suit and the Court comes to the conclusion that the same is a commercial Suit. In such cases, the plaint is not liable to be returned under provisions of Order VII Rule 10 of the CPC. Reference in this regard may be made to Rachit Malhotra v One97 Communications Limited, 2018 SCC OnLine Del 12410

17. In Rachit Malhotra (supra), this Court held as under:

"18. The last contention of the Counsel for the applicant/defendant is, that though the present Suit qualified as a commercial Suit, but the Plaintiff has filed as an ordinary Suit and the Suit has been registered as such and is liable to be rejected. Attention, in this regard is drawn to Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Commercial Courts Act) However, on enquiry, as to which is the Commercial Division of this Court, the Counsel for the applicant/defendant admits that the Suit is pending in this Court which a Court of Ordinary Civil Jurisdiction as well as Commercial Division of the High Court.

19. I have also enquired from the Counsel for the applicant/defendant, whether not it is only a case of nomenclature and even if this Suit were to be a commercial Suit, the same can always be registered as a commercial Suit.

20. The Counsel for the applicant/defendant states that the plaint does not contain the declaration as a plaint in a commercial Suit is required to contain.

21. Even if that be so, it has been held in **Uday Shankar Triyar v. Ram Kalewar Prasad Singh**, 2006 1 SCC 75, Union of India v. Shanti Gurung,2014 SCCOnLineDel 989, **Haldiram (India) Pvt Ltd v. Haldiram Bhujiawala**, 2009 109 DRJ 647 (SLP

(Civil) No. 11587/2009 preferred whereagainst has been dismissed vide order dated 14th May , 2009) that non-compliance with procedural requirements should not entail automatic dismissal or rejection if the defect or irregularity is curable."

18. In Apnaghar Builders Pvt Ltd v Intense Fitness and SPA Pvt Ltd.,2021 SCCOnLineDel 418, this Court held as under:

"19. There is another reason why the said application is to be dismissed. As observed by this Court in Rachit Malhotra (supra), ultimately it is only a case of nomenclature and, even if, this Suit was to have been found to be a commercial Suit, it could always be registered as a commercial Suit by directions of this Court. Such a misdescription of the Suit cannot entail its rejection. When a Suit is re-numbered, as a commercial Suit, obviously, Section 12A of the Act, would not and cannot come into play. Of course, the discretion of the Court still remains under Section 89 of the CPC, to refer the parties to mediation, to work out an amicable settlement between the parties before embarking on the trial, subject of course, to the time-frame provided under the Act.

19. To similar effect are the judgments in Kailash Devi Khanna v. DD Global Capital Ltd.,2019 SCCOnLineDel 9954 and De Lage Landen Financial Services India Pvt Ltd. v. Evan Multi specialty Hospital & Research Centre Pvt Ltd.,2019 SCCOnLineDel 7762

20. The reasoning of the aforesaid orders would equally be applicable to the District Courts. If the Commercial Court comes to a conclusion that a Suit has wrongly been filed as a commercial matter and the subject matter thereof is not a commercial dispute or vice versa, that the Suit has been filed as an ordinary Suit when it is a commercial Suit, the correct course to follow would be to refer the Suit to the Principal District & Sessions Judge for allocation to a Court of competent jurisdiction, which is what was done in the present case. There is no merit in the submission of the review petitioner that the Commercial Court ought to have returned the Suit under provisions of Order VII Rule 10 of the CPC for it to have been filed again as an ordinary Suit. Axiomatically, there is no merit in the submission that the earlier orders passed by the Commercial Court before the transfer of Suit were without jurisdiction"

(emphasis supplied)

[51] I, therefore, do not agree with the Applicant's submission that the plaints if transferred from the commercial list to the list of regular suits, the orders passed by this Court prior to transfer would be without jurisdiction in view of the plaints not having been instituted in a Court not having jurisdiction.

[52] In view of the aforesaid discussion and the admitted position that the suits in respect whereof these Interim Applications have been filed are not in respect of a commercial dispute, I also propose to only rename and renumber the two Summary Suits and not return the plaints in the two suits. In my view, this exercise is neither transfer nor

conversion of the Suits but only of changed nomenclature, renaming and renumbering and nothing more.

[53] Since this Court has held that this is not a case where the plaints are to be returned to be presented to the Court in which the suits ought to have been instituted, as the suits have been correctly instituted in the Bombay High Court in its Ordinary Original Civil Jurisdiction, the decisions in the cases of EXL Careers vs. Frankfinn Aviation Services (P) Limited (supra) and Oriental Insurance Co. v. Sunrise Biscuit Company. (supra), relied upon by Mr. Andhyarujina for the Applicants, where it has been observed that after an order of return of plaint under Order VII Rule 10 of CPC, the new proceedings that would be initiated by the Plaintiff cannot be said to be proceedings in continuation of the earlier proceedings and the suit has to commence de novo would not be applicable and render no assistance to the Applicants, as the Plaints in the two Suits are not being returned under any of the provision.

[54] Ergo, there does not appear to be any merit in the submission of the Applicants that the Commercial Court ought to return the plaints for them to be filed again as an ordinary summary suit in a competent court.

[55] Consequently, the plaints and pending proceedings and the Suits are required to be renamed, renumbered as ordinary/regular summary suits without the prefix "Commercial". The other arguments on behalf of the Applicants are therefore, not necessary to be dealt with.

[56] Accordingly, the following order is passed:

ORDER

(i) The Prothonotary and Senior Master of this Court shall rename the summary suits and the connected proceedings by removing the prefix Commercial and re-number the Summary Suits as well as the connected proceedings as Ordinary/Regular Suits/proceedings to be entertained and tried by the High Court in its Ordinary Original Civil Jurisdiction as Summary Suits and not as Commercial Summary Suits.

(ii) The two Interim Applications accordingly stand disposed as above.
