IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 394 OF 2015

WITH

WRIT PETITION NO. 5401 OF 2015

WITH

CIVIL APPLICATION NO. 415 OF 2015

IN

CIVIL REVISION APPLICATION NO. 394 OF 2015

Sameer Dinkarrao Javalekar **...Petitioner/Applicant**

V/s.

1) Gulab Haribhau Ladkat) Since Deceased through their legal heir)
1(a) Deepali Gulab Ladkar (since deceased through Legal heir)
1(b) Shashank Gulab Ladkat since deceased through Legal heir)
1(b)(i) Varsha Shashank Ladkat
1c) Shailaja Gulab Ladkat (since deceased through her legal heirs)
1(c)(i) Varsha Shashank Ladkat

2) Ashok Haribhau Ladkat (since deceased through his legal heirs)
2(a) Mangal Ashok Ladkat
2(b) Amit Ashok Ladkat
2(c) Tushar Ashok Ladkat
2(d) Sameer Ashok Ladkat

3) Chandrakant Haribhau Ladkat
(Since Deceased through his legal heirs)
3(a) Kalpana Chandrakant Ladkat

3(b) Charushila Amol Ekatpure
3(c) Vrushali Rohan Borate
3(d) Mayur Chandrakant Ladkat

4) Madhukar Haribhau Ladkat (since deceased through his legal heirs)
4(a) Vatsala Madhukar Ladkat
4(b) Poonam Vijay Shirsat
4(c) Seema Prashant Sathav
4(d) Sonal Nandkumar Hole

5) Pune Fuel Merchants Association Ltd

... Respondents

Mr. Yuvraj Narvankar *with Ms. Raufa Shaikh and Mr. Kshitij Munj for Applicant/Petitioner.*

Mr. Rahul Soman *with Mr. Suyash More for Respondent Nos. 1 to 3.*

CORAM: SANDEEP V. MARNE, J.

Reserved On: 29 SEPTEMBER 2026.

Pronounced On: 16 OCTOBER 2026.

JUDGMENT:

1) The phrase "*The difficulties of a litigant in India begin when he has obtained a decree*" was first observed by the Privy Council back in the year 1872 in ***General Manager of the Raj Durbhunga Versus. Coomar Ramaput Sing***[1] and tragically, the observations made centuries ago is still a reality. The delay in Court systems and the subsequent struggle to execute decrees is a well recognised systemic issue in the legal system. In ***Periyammal (dead) Through Legal Representatives and Ors. Versus V. Rajamani and Anr.***[2], the Apex Court has highlighted the fact that

[1] 1872 SCC OnLine PC 16
[2] (2025) 9 SCC 568

winning a civil suit is only half the battle, as successful litigants are frequently deprived of the fruits of their decree due to complex procedural hurdles and intentional obstructions during execution proceedings. This is one such unfortunate case where the landowner is fighting a court battle for the last 63 long years and despite succeeding in the suit and securing an eviction decree on 14 August 1974, he/his legal heirs are still waiting for enjoying the fruits of the decree. The landowner is kept engaged in a maze of jurisdictional objections both by the original lessee and also by the obstructionist. The Revision Applicant/Petitioner, who has presented obstruction to execution of the decree, has successfully delayed the execution proceedings for the last 33 long years.

2) These proceedings arise out of obstruction presented by the Petitioner/Applicant to execution of the decree dated 14 August 1974 passed by the District Judge, Pune in Civil Suit No. 8 of 1968. When the decree was put in execution and the bailiff visited the suit property for execution of warrant of possession, the Petitioner/Applicant submitted his objections in writing through an application made to the bailiff. The Executing Court took cognizance of the objections and directed that the same be treated as an Application filed under Order XXI Rule 97 of the Code of Civil Procedure, 1908 (**Code**). In that Application, Petitioner/Applicant preferred Application at Exh-122 under Section 47 of the Code seeking dismissal of execution proceeding on the ground that decree is a nullity and is not executable on account of it being passed by a Court having no jurisdiction. The Application at Exh-122 is rejected by the Executing Court by order dated 14 July 2015, which is

subject matter of challenge in the Civil Revision Application No. 394 of 2015.

3) The Petitioner/Applicant filed Application at Exh-115 seeking a direction for not permitting the Decree Holder to lead evidence on account of failure to file a reply to the Application under Order XXI Rule 97 of the Code. The Application at Exh-115 has been rejected by the Executing Court by order dated 9 June 2015, which is the subject matter of challenge in Writ Petition No. 5401 of 2015.

4) Since both the Revision Application as well as Writ Petition arise out of common proceedings, the same are being heard and decided analogously.

5) A very brief narration of the facts would be necessary for better understanding of the issue at hand. The land and property bearing sub-plot Nos. 1, 2, 9 and 10 out of final Plot No. 25 in Somwar Peth, 421 New Mangalwar Peth, Pune-411 011 is the suit property. The property was agricultural land owned by Mr. Haribhau Savalaram Ladkat. By Lease Deed dated 1 June 1944, the suit property was let out to Poona Fuel Merchants Association Ltd. (**Poona Fuel**) at a monthly rent of Rs. 112.50/-. Under the Lease Deed, the lessee was permitted to erect sheds over the suit property for the purpose of storing of coal. Liquidation proceedings were initiated against Poona Fuel and the same were pending in District Court, Pune in the form of I.C. Misc Application No. 7 of 1953. Since there were arrears of rent, the landlord-Haribhau Savalaram Ladkat filed Suit No. 3137 of 1954 in the Small Causes Court,

Pune seeking possession of the suit property on the ground of arrears of rent and subletting. The suit was transferred to Civil Court and was renumbered as Suit No. 810 of 1955. On 23 January 1956, the Plaintiff and the liquidator of Poona Fuel settled Suit No. 810 of 1955 and Poona Fuel continued as tenant after clearing arrears of rent.

6) On 1 May 1956, Poona Fuel once again fell in arrears of rent. The landlord terminated the tenancy by notice dated 26 November 1956 with effect from 31 December 1956. On 27 July 1962, the District Court granted leave to the landlord to file suit against the liquidator of Poona Fuel. Accordingly, the landlord filed Suit No. 1827 of 1963 in the Court of Small Causes, Pune seeking eviction of Poona Fuel and recovery of arrears of rent under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (**Bombay Rent Act**). The suit was renumbered as Suit No. 725 of 1964. However, Poona Fuel raised an objection to the jurisdiction contending that the property let out was agricultural land and therefore, Small Causes Court did not have jurisdiction. By order dated 16 August 1967, the Court held that the property was agricultural land on the date of lease and that therefore, the same was not "premises" under the Bombay Rent Act and that therefore the Court had no jurisdiction. The plaint was accordingly ordered to be returned by order dated 16 August 1967. Upon return of plaint, the same was presented in the District Court, Pune under Section 446 of the Indian Companies Act, 1956 on 7 October 1968 and the same was registered as Civil Suit No. 8 of 1968. The liquidator of Poona Fuel filed a written statement in which an objection of jurisdiction was raised contending that District Court had no jurisdiction because the property

let out was agricultural land. Though, preliminary issue of jurisdiction was framed, the liquidator of Poona Fuel did not press the objection by filing a pursis. The learned District Judge decreed Civil Suit No. 8 of 1968 on 14 August 1974. The objection of jurisdiction was decided against the Defendant holding that provisions of Bombay Rent Act did not apply to the suit property. The Defendant was directed to deliver vacant possession after removing the structures alongwith an inquiry in the mesne profits. Poona Fuels filed First Appeal No. 726 of 1974 in this Court and by judgment and order dated 2/3 August 1982, this Court dismissed First Appeal No. 726 of 1974 and confirmed the eviction decree. Shortly thereafter original Plaintiff-Haribhau passed away in 1984. Similarly, liquidator of Poona Fuel Mr. N. B. Sathe also passed away on 16 May 1986 and Nazir of the Court was appointed in place of liquidator on 25 October 1994. It appears that Darkhast No. 1 of 1988 was earlier filed for execution of the decree.

7) In the year 1993, Darkhast No. 10 of 1993 was filed by legal heirs of Haribhau *viz*. Chandrakant, Ashok, Gulab, Vijaykant and Chandrabhagabai. One son of Haribhau *viz*. Madhukar did not sign the Darkhast and was thereafter joined as formal Respondent in Darkhast proceedings. By order dated 5 February 2001, warrant of possession was issued. Bailiff's report dated 12 February 2001 reported obstruction by the occupants in the suit property. It appears that objections by14 obstructions were filed with the bailiffs and by order dated 3 September 2007, the District Court registered the said applications as the one filed under Order XXI Rule 97 of the Code with further direction to decide the

same by treating them as one suit. Applicant/Petitioner was one of the obstructionist, who was found occupying part of the suit property.

8) This is how obstruction presented by the Petitioner/Applicant came to be treated as Application under Order XXI Rule 97 of the Code. He filed affidavit of evidence claiming that he was inducted as a tenant by Madhukar Ladkat (*who had not signed the Darkhast and who was impleaded as Judgment Debtor No. 2*). It was claimed by Petitioner/Applicant that he was in possession of premises admeasuring 700 Sq. Ft. in sub plot No. 10. He relied on various rent receipts including the one issued on 4 January 1999 by Madhukar. On 20 January 2015 Applicant filed affidavit of evidence. On 24 April 2015, Application at Exh-115 was filed by the Petitioner/Applicant for not permitting Decree Holders to lead evidence for want of pleadings. By order dated 9 June 2015, the Executing Court has rejected Applicant's Application at Exh-115. Order dated 9 June 2015 passed by the Executing Court on application at Exhibit 115 is subject matter of challenge in Writ Petition No. 5401 of 2015.

9) The Petitioner/Applicant also filed Application at Exh-122 under Section 47 of the Code seeking dismissal of execution proceedings on the ground that decree is nullity as the same was passed by the District Court, which did not have jurisdiction over the suit property let out for purposes other than agriculture. The Application was opposed by Respondent's Decree Holders. By order dated 14 July 2015, the Executing Court has rejected the Application at Exh-122 with costs of Rs. 5000/-. Order dated 14 July 2015 passed by the Executing Court on Application

At Exhibit-122 is the subject matter of challenge in Civil Revision Application No. 394 of 2015. By order dated 31 July 2015, this Court directed production of various documents by the Petitioner/Applicant and stayed the execution proceedings.

10) Both Revision Application as well as Writ Petition are called out for final hearing and disposal.

11) Mr. Narvankar, the learned counsel appearing for the Petitioner/ Applicant submits that the Executing Court has grossly erred in rejecting the Application at Exh-122 filed under Section 47 of the Code. He submits that the plea of decree being nullity can be raised even in executing proceedings. That the decree passed in the present case by the District Court is clearly without jurisdiction. That the suit property is 'premises' within the meaning of the Bombay Rent Act. That though the suit property may be agricultural land at the time of creation of the lease, the same was let out for storage of coal. He relies on judgment of the Apex Court in ***Tavangowda Tamangowda Patil and ors. V/s Yellappa Krishna Muchandi and Ors.***[3] in support of his contention that when land was leased out for the purpose of storing timber, the same was held to be 'premises' within the meaning of Section 5 (8) of the Bombay Rent Act.

12) Mr. Narvankar further submits that the objection of absence of jurisdiction was given up by the Defendant in the suit by filing a pursis. That the concession made by the Defendant in respect of

[3] (1980) 3 SCC OnLine SC 10

objection of jurisdiction cannot have the effect of conferring jurisdiction on the Court which it inherently lacks. That since the decree passed by the Court without jurisdiction goes to the root of the matter and is a nullity, its invalidity can be set up in execution proceedings or even in collateral proceedings. In support, he relies on judgments of Apex Court in ***Sushil Kumar Mehta V/s Gobind Ram Bohra (Dead) through his Lrs.***[4] and ***Kiran Singh and Ors. V/s Chaman Paswan and Ors***.[5] He submits that the rule of *res-judicata* or estoppel does not apply to a decision on a pure question of law such as the one relating to the jurisdiction of the Court. In support, he relies on judgment of Apex Court in ***Isabella Johnson V./s M. A. Susai (Dead) by Lrs.***[6]

13) Mr. Narvankar further submits that the Executing Court has grossly erred in holding that the issue of jurisdiction is already decided by the Trial Court. That an erroneous decision on jurisdiction does not operate as *res-judicata.* That in any case, Issue No. 4 was never adjudicated. That jurisdiction cannot be conferred by consent, waiver, acquiescence or estoppel.

14) Mr. Narvankar further submits that the Applicant is entitled to invoke the provisions of Section 47 of the Code. He submits that Section 47 applies when a question arises between the 'parties' to the suit or their 'representatives' relating to the execution of the decree and that a 'representative' includes one who derives title or interest from a party and that the Applicant/Petitioner has derived his tenancy right

[4] (1990) 1 SCC 193
[5] (1954) 1 SCC 710
[6] (1991) 1 SCC 494

from Judgment Debtor No. 2, a son and heir of the original Plaintiff. He submits that therefore, the Petitioner/Applicant is a legal representative of the party and can invoke the provisions of Section 47 of the Code. Mr. Narvankar accordingly prays for setting aside the order dated 14 July 2015 passed on the Application at Exh-122.

15) So far as Writ Petition No. 5401 of 2015 is concerned, Mr. Narvankar submits that the Executing Court has grossly erred in permitting the Decree Holders to lead evidence in the absence of pleadings, that an Application under Order XXI Rule 97 is required to be tried as a suit and that therefore, all the incidents of a suit apply to the trial of an obstruction Application. He submits that in the absence of a pleading opposing the obstruction Application, it is impermissible for the Decree Holder to lead evidence. He submits that evidence in the absence of underlying pleading is of no avail and that therefore, the impugned order dated 9 June 2015 passed on the Application at Exh-115 deserves to be set aside.

16) Mr. Soman, the learned counsel appears on behalf of Respondent Nos. 1 to 3, who are the Decree Holders, opposing the Revision Application as well as the Writ Petition. He submits that the Executing Court has rightly rejected Application at Exh-122 as the same was not maintainable under Section 47 of the Code. That Petitioner/Applicant is a stranger to the Suit and therefore, cannot maintain Application under Section 47 of the Code. That Section 47 (1) of the Code is confined to questions arising between the 'parties' to the

suit, in which the decree was passed or their representatives. That a dispute between party to the suit or a representative of a party on one hand and the stranger on other is outside the scope of Section 47. In support he relies on commentary of Mulla on Civil Procedure.

17) He also relies on judgment of the Apex Court in ***Periyammal*** (supra) in support of his contention that questions arising between the parties to the suit fall under Section 47 and the questions raised by the third parties fall under the Order XXI Rule 97 of the Code. That therefore Application at Exh-122 could only be treated as the one filed under Order XXI Rule 97 which was already pending as order dated 3 September 2007 has already treated Applicant/Petitioner's objection as Application under Order XXI Rule 97 of the Code. That therefore second Application under same provision was clearly not maintainable. In support he relies on judgment of the Apex Court in ***Rahul S. Shah Vs. Jinendra Kumar Gandhi and Ors***.[7]

18) Mr. Soman further submits that the inquiry under Order XXI Rule 101 of the Code can only be into right of the obstructionist to occupy the suit property and not into the issue of validity of decree. That the issue of validity of decree passed between landlord and tenant is not a question relating to adjudication of claim of the Petitioner/Applicant to be a tenant of Judgment Debtor No. 2. That therefore plea of nullity was clearly outside the scope of inquiry of the Executing Court. That only matters arising after the decree can be gone into in execution and the issues which ought to have been raised in the suit cannot be re-

[7] (2021) 6 SCC 418

adjudicate. That Executing Court cannot go behind the decree and question its correctness in support he relies on judgment in ***Vasudev Dhanjibhai Modi V/s Rajabhai Abdul Rehman and Ors***.[8]. That until Applicant establishes the status claimed, the question of decree being a nullity does not arise at all.

19) Mr. Soman further submits that documents relied upon by the Petitioner/Applicant were created after the decree and by a person on the side of the owners. That therefore right allegedly created during execution by one co-owner cannot defeat the decree. He submits that decree passed by the District Court has merged in the decree passed by this Court in the first Appeal and that therefore, the subordinate Court cannot hold that decree passed by the High Court is a nullity. That order of superior Court must always be obeyed, whatever flaws it may contain. In support he relies on judgment in ***Rafique Bibi (Dead) by Lrs. V/s Sayed Waliuddin (Dead) by Lrs. and Ors***.[9]. That original Defendant company pleaded in the suit that the land was agricultural land and not 'premises' under the Bombay Rent Act and obtain return of the plaint. Accordingly, that even in Civil Suit No. 8 to 1968, the company admitted in the written statement that suit property was agricultural land and did not press preliminary issue on jurisdiction. Despite this, Issue No. 4 regarding jurisdiction was answered by the District Court in the negative and that ground No. 7 and 8 raised in first appeal relating to the issue of jurisdiction were rejected by this Court in judgment dated 2/3 August 1982. He submits that even a wrong decision on the question of

[8] 1970 (1) SCC 670
[9] (2004) 1 SCC 287

jurisdiction would not make a decree nullity. That all irregular or wrong decrees are not null and void and an erroneous or illegal decision, which is not void, cannot be objected in execution or colateral proceedings. In support, he relies on judgment in ***Balvant N. Viswamitra and Ors. V/s Yadav Sadashiv Mule and Ors.***[10]

20) Mr. Soman further submits that even otherwise, the decree was not passed without jurisdiction. That the material date for ascertaining whether the land is 'premises' is the date of letting and that mere liberty to Poona Fuel to erect shares for storing coal does not make the land "premises" as on 1 June 1944. That in any case Applicant has come into the property long after the decree. That Application under Order XXI Rule 97 is still pending and cannot seek piecemeal determination of his obstruction. He prays for dismissal of Civil Revision Application No. 394 of 2015.

21) Mr. Soman also opposes Writ Petition No 5401 of 2015. He submits that there is no requirement to file written statement or reply by the Decree Holder to the obstruction obligation. That procedure prescribed in Rules 98 to 106 of Order XXI is a complete code in itself. That adjudication under Order XXI Rule 97 does not necessarily involve a detailed inquiry or collection of evidence. In support he relies on judgment of the Apex Court in ***Silverline Forum Pvt. Ltd vs Rajiv Trust And Another***[11]. That the burden in obstruction proceedings is on the Applicant, who has to prove better title to possess the properties than Decree Holders. That evidence of Decree Holders is in the rebuttal of the

[10] (2004) 8 SCC 706
[11] 1998 3 SCC 723

case set up by the Applicant. That the Executing Court has rightly rejected Application at Exh-115 preferred by the Petitioner/ Applicant. He prays for dismissal of Writ Petition No. 5401 of 2015.

22) Rival contentions urged on behalf of the parties, now fall for my consideration.

23) Petitioner/Applicant has presented obstruction to execution of the decree dated 14 August 1974 passed in Civil Suit No. 8 of 1968. Petitioner/Applicant is aggrieved by rejection of his Application at Exh-122 filed in Darkhast No. 10 of 1993 seeking dismissal of execution proceedings under Section 47 of the Code on the ground that the decree is a nullity as the same is passed by the Court not having jurisdiction. Petitioner/Applicant is also aggrieved by the Executing Court permitting the Decree Holders to lead evidence in absence of filing of affidavit-in-reply to the Obstruction Application. I first proceed to consider correctness of order dated 14 July 2015 passed by the Executing Court on Application at Exh-122 filed under Section 47 of the Code seeking dismissal of the executing proceedings.

24) Petitioner/Applicant's Application at Exh-122, filed under Section 47 of the Code, was premised on the plea that the suit property are 'premises' within the meaning of Section 5(8) of the Bombay Rent Act and that provisions of Bombay Rent Act were applicable to the suit property as well as to the parties to the lease. It was further contended that only Small Causes Court had jurisdiction to try and entertain the eviction suit. It was therefore contended that the decree passed by the

District Court was without jurisdiction and therefore a nullity and hence the same cannot be executed. Paragraph Nos. 6, 7 and 8 of the Application at Exh-122 filed by Petitioner/Applicant read thus:

> 6) It is submitted that it is settled law that the purpose for which agricultural land is leased is material to determine whether the same is covered under the definition of premises' and it has been held that when in property is an agricultural land at time of use but subsequently used for Non agricultural purpose at the date of the suit, the same is the premises within the meaning of Rent Act. In the present case purpose of letting was running a coal depot which certainly was non agricultural propose and therefore on the date of the suit, the suit land was premises within the meaning of Section 5(8) of the Bombay Rent Act and Bombay Rent was applicable to the suit property as well as parties to the lease. Therefore submitted that the suit ought to have been filed in the court having jurisdiction to try the suit under Section 28 of the Bombay Rent Act and it was only the court of small causes which has jurisdiction to try and entertain the suit.
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> 7) It is submitted that in the factual matrix as narrated above the decree and judgement passed by the District Judge is in the above suit had been passed by the Court having no inherent jurisdiction to try and entertain the suit, the same therefore is nullity and non executable.
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> 8) It is further submitted that it is again a settled law that a decree passed by the court having no inherent jurisdiction is nullity and same can be challenged even at the stage of execution. It is further submitted it is that again a settled law that principle of estoppels, waiver and acquiescence or even res-judicata are procedural in nature and would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in this behalf. Any order passed by the court without jurisdiction would be Coram non judis and nullity the same should not be given effect to. It is submitted that the present case is a decree having been passed by the District Judge on the footing that the Rent Act is not applicable on the basis of estoppels as the lawyer of the defendant contended that Rent Act is not applicable to the said property. This having being the fact it is humbly submitted that the principles of estoppels shall not apply here to hold that the decree is valid and executable.

25) In the present case, the suit property was originally an agricultural land and the same was let out by its owner Haribhau Ladkat

to Poona Fuel on lease vide deed dated 1 June 1944. Plaintiff Haribhau initially believed that provisions of Bombay Rent Act applied to the suit property and accordingly filed first suit bearing Suit No. 3137 of 1954 in the Court of Small Causes at Pune for recovery of possession and for arrears of rent. The said Suit was settled between the parties on 23 January 1956.

26) The lessee (Poona Fuel) however once again fell in arrears of rent. Plaintiff therefore terminated the tenancy by notice dated 26 November 1956. Poona Fuel was under liquidation and the proceedings for liquidation were apparently pending before the District Court. Therefore, leave of the District Court was secured by the Plaintiff for filing suit for eviction against the Liquidator of Poona Fuels. This time again, Plaintiff Haribhau believed that suit property was governed by provisions of Bombay Rent Act and accordingly filed Suit No. 1827 of 1963 in the Court of Small Causes at Pune seeking eviction of the company. The suit was transferred to the Civil Court (*execrcising jurisdiction of Small Causes Court*) and was renumbered as Suit No. 725 of 1964. The Defendant- Poona Fuel raised objection about jurisdiction of Small Causes Court to decide the suit on the ground that the same was not governed by the provisions of the Bombay Rent Act since what was let out was mere agricultural land on the date of the lease. Objection filed by Defendant- Poona Fuel was upheld and the plaint was returned by order dated 16 August 1967 for being presented to the Court having jurisdiction. This is how period of about five long years got wasted and Plaintiff-Haribhau was required to file a Suit before normal Civil Court, which in the present case was District Court on account of pendency of

liquidation proceedings against the company Poona Fuel. Accordingly, Civil Suit No. 8 of 1968 was filed by the Plaintiff-Haribhau under provisions of Section 446 of the Companies Act, 1956 against Poona Fuel through its liquidator Shri. N.B. Sathe. The liquidator appeared in the Suit and filed written statement admitting that the suit property was an agricultural land. However, the liquidator still raised an objection as to jurisdiction of the District Court and accordingly preliminary issue of jurisdiction was framed below Exh-20. However, the company filed pursis at Exh-23 not pressing the issue of jurisdiction. The District Court however framed specific Issue No. 4 as to whether provisions of Bombay Rent Act are applicable to the suit property. The said Issue No. 4 was answered by the District Court by holding in paragraph No. 8 of the judgment as under:

> 8. Issue No. 4 does not survive, inasmuch as Shri. Pashankar for the Plaintiff as well as Shri Inamdar for the Defendant have frankly stated that the provisions of the Bombay Rent Act are not applicable. It may be noted that such a decision has been given by the Second Joint Civil Judge, S.D. when he returned the plaint to the Plaintiff for presentation to the proper Court. Thus, the Defendant has secured an order on the basis of a contention that the suit property is not governed by the Rent Act and obviously the Defendant cannot now urge that the Rent Act is applicable. Issue No. 4 is thus answered in the negative.

27) The District Court proceeded to decree the suit by judgment and order dated 14 August 1974 directing the Defendant to handover vacant possession of suit property after removal of structures standing thereon and also ordered an inquiry into mesne profits.

28) The Defendant-company filed First Appeal No. 726 of 1974 in this Court. In its Appeal, the Defendant-company specifically raised following grounds:

> **7.** It was an error to hold that the provisions of the Bombay Rent Act are not applicable to the premises.
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> **8.** It was an error to hold that in view of the contention of the Defendant, and the decision given by the IInd Joint Civil Judge, Senior Division, it was not open to the Defendant to now contend that the suit property is governed by the Rent Act.

29) Thus, the issue of jurisdiction was specifically raised before this Court in the First Appeal. This Court dismissed the First Appeal No. 726 of 1974 by judgment and order dated 2/3 August 1982 holding in paragraph 11 as under:

> **11.** The last submission was that a concession on a point of law was made on behalf of the appellant-Company in the trial Court and that the Bombay Rent Act did not appeal to the suit property. The suit property falls within the definition of the word "premises" as defined under section 5(8) of the Bombay Rent Act and the relevant date for ascertaining that was the date of letting as laid down in Mst. Subhadra v/s. Narasaji Chenaji Marwadi A.I.R. 1966 Supreme Court p. 806 and relied on in Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and others A.I.R. 1970 Supreme Court p. 1475. Now, the Second Joint Civil Judge, Senior Division, Poona, recorded a finding on a preliminary issue that the property was an agricultural land and it was not "premises" as defined by the Bombay Rent Act. Thus, before the Second Joint Civil Judge, Senior Division, also, an order was secured on the basis that the suit property was not governed by the Bombay Rent Act. It was after this decision that the plaint was returned. Again in the present suit, issue No. 4 about the applicability of the Bombay Rent Act was raised. A purshis, Ex.23, was filed whereunder this issue was not pressed. In these circumstances, Shri Gokhale's suggestion that the appellant-Company should be allowed to raise the question of the applicability of the Bombay Rent Act cannot be accepted.

30) This is how the Defendant-Company invited order dated 16 August 1967 from second Joint Civil Judge Senior Division, Pune in Suit No. 725 of 1964 (*which was earlier filed in the Small Causes Court as Suit No. 1827 of 1963*) directing return of the plaint on the ground of the suit property being agricultural land not constituting 'premises' within the meaning of Section 5(8) of the Bombay Rent Act. It drove Plaintiff-Haribhau to Civil Court/ District Court by treating the suit property as not being governed by provisions of Bombay Rent Act by making it to file fresh Civil Suit No. 8 of 1968. In that suit, Defendant-company took a *volte face* and raised preliminary objection of jurisdiction. However it later withdrew its objection. However, at the instance of Defendant-company, the District Court did frame the issue of application of provisions of Bombay Rent Act and answered the same holding that the Act did not apply to the suit premises. The Defendant-company once again sought to contend in First Appeal filed before this Court that suit property is governed by provisions of Bombay Rent Act. The objection was once again repelled by this Court while dismissing the First Appeal.

31) After the original Defendant did summersaults on the issue of applicability of provisions of Bombay Rent Act, it is now the turn of Petitioner/Applicant who has presented an obstruction to execution of the decree. He now seeks to raise a contention that since suit premises were let out for storage of coal, which is not an agricultural use, the same are 'premises' within the meaning of Section 5(8) of the Bombay Rent Act. Issue for consideration is whether Petitioner/Applicant can be permitted to raise this issue. The answer, to my mind, appears to be in

the negative for variety of reasons, which are discussed in the paragraphs to follow.

32) Petitioner/Applicant does not claim through the Defendants/Judgment Debtors. He claims to have been inducted as tenant by son of Haribhau (*who did not join filing of execution application and is impleaded as formal Judgment Debtor No. 2 in the Darkhast*). Petitioner/Applicant claims tenancy rights in respect of a small portion of constructed shed admeasuring 700 sq. ft. based on rent receipt allegedly issued on 4 January 1999 i.e. long after finalization of decree by this Court on 2/3 August 1982 and long after filing of Darkhast No. 10 of 1993. Thus alleged right to occupy the premises in the suit property is claimed to have been secured by the Applicant/Petitioner after the decree was put in execution and therefore, he has no right to obstruct execution of decree.

33) Secondly, the objection of the decree being a nullity raised by Applicant/Petitioner is destructive to his own case. If the decree is indeed held to be a nullity, the original Judgment Debtor/Defendant would continue to remain in possession of the suit property. Since alleged tenancy is created in favour of Applicant/Petitioner after passing of decree and after filing of execution proceedings and that too by one of the decree holders. He is seeking to plead against the person through whom he claims rights. He would not no right to remain in possession of part of the suit property, since possession of original Defendant/Judgment Debtor would get regularized upon decree being declared as nullity. Thus in a zeal to somehow continue occupying the

portion of the suit property by somehow delaying the execution proceedings. Applicant/Plaintiff has raised a self-destructive objection of decree being a nullity. The objection is aimed at delaying the execution proceedings.

34) Petitioner/Applicant has presented obstruction to the execution of decree which has been registered as an Application under Order XXI Rule 97 of the Code by order dated 3 September 2007. As observed above, 14 persons who were found on the suit property by the bailiff at the time of execution of warrant of possession raised objections, which have been treated by the Executing Court as Applications under Order XXI Rule 97 of the Code by passing following order on 3 September 2007.

> 10. After going through this provisions one finds that if the applications filed under Order XXI Rule 97 of C.P.C. do not form part of the proceedings in a suit or Darkhast or appeal, pending before the court, then alone such applications are to be separately numbered. In my opinion, if the main execution proceeding is pending, out of which these applications have arisen, then such applications will have to be decided in the same main Darkhast without numbering them separately. The only precaution that will have to be taken is that, the application should be disposed of by treating them at the par with suit.
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> 11. Here in this case obstructionists have taken the similar stand of sub-tenancy and long possession. Hence I feel that these fourteen applications can be disposed of in common very conveniently without causing prejudice to the parties. Therefore, the following order.
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> ORDER
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> The written applications of the obstructionists except the obstructions taken by Swaransingh Jaswantsingh Hora, are treated as the applications filed under Order XXI Rule 97 of Civil Procedure Code.
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> They are taken for decision in common by threating them as one suit.
>
> D. H. is allowed to file the reply thereto if the D. H. so decides.

35) This is how Petitioner/Applicant's obstruction to execution of decree is treated as an Application under Order XXI Rule 97 of the Code. In that Application, the Petitioner/Applicant will have to prove his independent right to occupy portion of the suit property in his possession. Provisions of Order XXI Rule 97 reads thus:

> **97. Resistance or obstruction to possession of immovable property.—**
>
> (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.
>
> (2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

36) While deciding Application under Order XXI Rule 97 inquiry is required to be conducted in accordance with provisions of Rule 101, which provides thus:-

> **101. Question to be determined.—**
> All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.
>
> **HIGH COURT AMENDMENT**

> Bombay- In Order XXI, in rule 101, insert the following proviso, namely:-"Provided that when the Court is not competent to decide such question due to want of pecuniary jurisdiction the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge, shall deal with it in the same manner as if the case had been originally instituted in that Court."

37) Thus, while deciding Petitioner's Application under Order XXI Rule 97 and 101 of the Code, the Executing Court would decide "*all questions arising between the parties to a proceeding on an Application under Order XXI Rule 97*". Thus, limited inquiry to be conducted by the Executing Court while deciding Petitioner's Application under Order XXI Rule 97 is his right to occupy the property *dehors* the decree. In that Application, the Executing Court is not supposed to decide whether the decree has been passed in accordance with law or whether the Court passing the decree had jurisdiction to try or entertain the suit. The Executing Court cannot go behind the decree and decide the issue of jurisdiction while deciding objection raised by an obstructionist who claims independent right to occupy the suit property. This is particularly because the issue of jurisdiction has already been decided by the Trial Court and also by this Court.

38) In that sense, Petitioner's Application under Section 47 of the Code was clearly not maintainable. The proceedings under Section 47 of the Code and the one filed under Order XXI Rule 97 operate in different spheres and compartments. Under Section 47, only the questions arising between parties to the suit or their representatives and

relating to execution, discharged or satisfaction of the decree can be determined by the Executing Court. Section 47 of the Code provides thus:

> **47. Questions to be determined by the Court executing decree.—**
>
> (1) All questions **arising between the parties to the suit** in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.
> ***
> (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.
>
> Explanation I.—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.
>
> Explanation II.—(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and
>
> (b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.
>
> *(emphasis and underlining added)*

39) Thus, the inquiry under Section 47 of the Code is restricted to questions arising between the parties/their representatives. Therefore, no question, which concerns a person who is not a party/representative, can be decided in an application under Section 47 of the Code. The question/issue/objection relating to a person who is not a party/representative has to be decided under Order XXI Rule 97 of the Code. Law in this regard is well settled by recent judgment of the Apex

Court in ***Pariyammal*** (supra) in which the Apex Court has held in paragraphs 52, 63, 64, 65 of the judgment as under:

> 52. **Under Section 47 of the CPC, questions arising between the parties to the suit relating to the execution, discharge or satisfaction of the decree are covered whereas under Order XXI, Rule 97 read with rule 101 of the CPC, questions including those relating to right, title or interest in the property arising between the parties to the proceeding on an application under Rule 97 or Rule 99 of Order XXI are to be determined by the executing court.** The language of Rule 97 provides that where the holder of a decree for possession of immovable property is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction. The language used is "obstructed by any person". It may be by the judgment-debtor or by a third person. Sub-rule (2) of the said Rule 97 further provides that where an application is made under sub-rule (1), the court shall proceed to adjudicate upon the application in accordance with the provisions thereunder contained. Sub-rule (2) of Rule 98 of Order XXI, further provides that where upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, he shall direct that the applicant be put into, possession of the property.
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> 63. It further appears that the respondent Nos. 1 and 2 respectively, claiming to be cultivating tenants, had contended before the courts below that the civil court lacked jurisdiction to adjudicate on matters pertaining to possession of the suit property and eviction therefrom. The respondents submitted that the decree passed in the original suit was a nullity and therefore, the validity of the decree could be challenged even during the execution proceedings.
>
> 64. **A harmonious reading of Section 47 with Order XXI Rule 101 implies that questions relating to right, title or interest in a decretal property must be related to the execution, discharge or satisfaction of the decree. <u>The import of such a reading of the provisions is that only matters arising *subsequent* to the passing of the decree can be determined by an executing court under Section 47 and Order XXI Rule 101.</u>** Such reasoning is reinforced by the decisions of this Court in C.F. Angadi v. Y.S. Hirannayya reported in (1972) 1 SCC 191 and Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman reported in (1970) 1 SCC 670, wherein **it has been held that**

> **while determining a question under Section 47, an executing court cannot go behind the decree and question the correctness of the same.**
>
> **65. What flows from the position of law, as afore stated, is that the issues that ought to have been raised by the parties during the adjudication of the original suit cannot be determined by the executing court as such adjudication may undermine the decree itself. This Court in Rahul S. Shah v. Jinendra Kumar Gandhi reported in (2021) 6 SCC 418 has held that the benefit of Section 47 cannot be availed to conduct a retrial causing failure of realisation of fruits of the decree.**
>
> *(emphasis and underlining added)*

40) In ***Rahul S. Shah*** (supra) which is followed by the Apex Court in ***Pariyammal***, the Apex Court has held that Section 47 of the Code contemplates adjudication of a limited nature of issues relating to execution. It is held that the question must be the one arising between the "parties" and that the dispute must relate to execution, discharge or satisfaction of the decree. It is held in paragraphs 24 to 27 and 42.8 of the judgment as under:

> 24. In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution. i. e. discharge or satisfaction of the decree and is aligned with the consequential provisions of 4 Order 21 CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. **For the applicability of the section, two essential requisites have to be kept in mind. <u>Firstly, the question must be the one arising between the parties</u> and secondly, the dispute relates to the execution, discharge or satisfaction of the decree.** Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.
>
> 25. **These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which**

> **the party seeks from the courts despite there being a decree in their favour.** Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.
>
> 26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment-debtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.
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> 27. This is antithesis to the scheme of the Civil Procedure Code, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial. Order 1 and Order 2 which relate to parties to suits and frame of suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common questions of law and facts could be decided at one go.
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> **42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner.** Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

41) Thus, the proceedings under Section 47 and Order XXI Rule 97 of the Code operate in different spheres, which can be filed by different persons and for distinct purposes. Therefore, an obstructionist at whose instance proceedings under Order XXI Rule 97 of the Code are initiated cannot file an application under Section 47 of the Code in those

proceedings. The obstructionist cannot seek to prove his independent right to occupy the decretal property under Order XXI Rule 97 (thereby suggesting that the decree does not bind him) and at the same time question validity of the decree by raising objection under Section 47 of the Code. He cannot interchange is avatars from a third-party objector (*under Order XXI Rule 97*) to a party to the suit *(required for Section 47*). Therefore the application filed under Section 47 of the Code in proceedings initiated under Order XXI Rule 97 of the Code is wholly non-maintainable.

42) Since Petitioner/Applicant was not a party to the Suit, he cannot seek adjudication of any question relating to execution of the decree under Section 47 of the Code. This is sought to be countered by Mr. Narvankar contending that Petitioner/Applicant would be covered by the expression 'representatives' appearing in Section 47 of the Code. He contends that Petitioner/Applicant has secured tenancy rights from the son of the original Plaintiff and that therefore he is a representative of legal heir of the original Plaintiff. The argument may appear to be attractive in the first blush, but is baseless to the core. As observed above a shift in roles by the obstructor is impermissible. If the person objecting to execution of the decree wants to take a position that he is a representative of the party to the suit, he needs to file application under Section 47 of the Code. This is not done by the Applicant/Petitioner. He never treated himself as a representative of a party to the suit. On the other hand he allowed his objection to be treated as the one under Order XXI Rule 97 of the Code. He allowed himself to be treated as a third-party obstructionist claiming independent right to occupy the property

dehorse the decree. Now he cannot turn around and contend that he is a representative of party to the suit and is hence entitled to maintain application under Section 47 of the Code.

43) Also, Applicant/Petitioner's contention that he is a representative of party to the suit is again self-destructive. If indeed Petitioner/Applicant is a representative of legal heir of the Plaintiff, what it is doing effectively is blocking execution of the decree passed in his own favour. The expression 'representatives' used in Section 47 of the Code would mean all representatives standing on one side alongwith either the decree holder or the judgment debtor. A representative of the judgment debtor can file an application under Section 47 of the Code questioning the executability of the decree.

44) Section 47 of the Code does not contemplate an inquiry into two decree holders in relation to validity of the decree. It is unfathomable that one decree holder can complain to the Executing Court that the decree must be declared a nullity and non-executable with a view to destroy right of another decree holder by filing application under Section 47 of the Code. Therefore, submission raised by Mr. Narvankar that Petitioner/Applicant is a representative of decree holder is baseless and deserves outright rejection. Petitioner/Applicant is acting against the interest of the heirs of the decree holder and is obstructing execution of the decree and cannot be treated as representatives of a party to the suit. He is stranger to the decree and the only remedy available for him is to justify his occupation/ possession by succeeding in Application filed under Order XXI Rule 97 of the Code.

45) Reliance by Mr. Soman on a passage from Mulla on Code of Civil Procedure is apposite in which the author states that 'parties' ordinarily means parties who are opposed to each other suit though not necessarily as plaintiff and defendant. The author opines in paragraph 18 and 18F as under:

> 18. Parties to the suit. If the question is one relating to the execution, discharge, or satisfaction of the decree, but does not arise between the parties to the suit, the section does not apply, and a suit is not barred. 'Parties' ordinarily means parties who are opposed to each other in the suit, though not necessarily as plaintiff and defendant; "for, in a partition suit co-defendants may be opposed to each other. Thus, where a decree was passed against J and R on a joint debt and it was scaled as against J, a subsequent application by J to adjust towards the decree as scaled, payments made by R is not within this section, as it is not one between the parties to the order scaling the debt nor could they be adjusted as they were prior to the scaling. Where a party not taking part in the execution proceedings to be intimated about the date fixed for hearing questions arising between parties who are not opposed to each other, or between a party and a stranger, do not fall under s 47. The following are illustrations:
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> **xxx**
>
> (f) Questions Between a Party and a Stranger. -A dispute between a party to the suit or his representatives on the one hand and a stranger (not a purchaser at the execution sale) on the other, is outside the scope of this section. Under the new Explanation II, a purchaser or property at a sale in execution of a decree, though a stranger to the suit, is deemed to be a party to the suit in which the decree has been passed. Before the recent amendment, the view taken was that a suit by the purchaser in court auction of the interest of a co-sharer against the other co-sharers for partition and separate possession of that interest does not fall under this section. But, after the amendment, such a purchaser is a deemed party to the suit wherein the decree was passed and the question of delivery of possession of the co-sharer's share in the property would be deemed to be a question relating to execution. Hence the view held in those cases may not henceforth be held to be correct. Where, pending a second appeal, the decree-holder died and his widows were brought on record as his legal representatives, an application by a third person claiming to be the representative of the deceased decree-holder to

> enforce the decree is not within this section. Proceedings against the garnishee in execution are outside s 47, and so is an order directing execution on the application of a commissioner for recovery of costs directed to be paid by a party. The members of joint Hindu family do not become entitled to file objections under s 47, Code of Civil Procedure. Section 47, is a special provision regarding objections in the execution by the parties to the suit. It cannot be extended to the persons, who are not parties to the suit on the basis that they are also members of joint Hindu family. This provision cannot be availed by them and the only option for them is to file a separate suit.

46) In my view therefore, the Application filed by the Petitioner/Applicant at Exh-122 under Section 47 of the Code was clearly not maintainable and deserved rejection. Filing of application by the Applicant under Section 47 in proceedings filed under Order XXI Rule 97 was far from bonafide and apart from the same being wholly baseless, the application was aimed at somehow delaying the execution proceedings. The observations made by the Apex Court in ***Rahul S. Shah*** about indefinite delay in execution proceedings and preventing the decree holder from enjoying the fruits of the decree squarely apply in the facts of the present case.

47) It is otherwise well settled position that Executing Court cannot go behind the decree. In ***Vasudev Dhanjibhai Modi*** (supra) the Apex Court has considered almost a similar situation where the Appellant therein had applied for execution of decree for ejectment, which he has obtain against the Respondent, who raised the objection that decree was a nullity as Court of Small Causes had no jurisdiction to entertain the suit. The Apex Court held that the question whether the Court of Small Causes had jurisdiction to entertain the suit against

Munshi depended upon the interpretation of the terms of the agreement of lease, and the user to which the land was put at the date of the grant of the lease. It is held that the said questions could not be permitted to be raised in an execution proceeding so as to displace the jurisdiction of the Court which passed the decree. The Apex Court held in paragraphs 6, 8 and 9 of the judgment as under:

> **6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts.** Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.
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> **8. In the present case the question whether the Court of Small Causes had jurisdiction to entertain the suit against Munshi depended upon the interpretation of the terms of the agreement of lease, and the user to which the land was put at the date of the grant of the lease. These questions cannot be permitted to be raised in an execution proceeding so as to displace the jurisdiction of the Court which passed the decree.** If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under Section 11 of the Suits Valuation Act, objection to the jurisdiction of the Court to make the decree may be raised; where it is necessary to investigate facts in order to determine whether the Court which had passed the decree had no jurisdiction to entertain and try the suit, the objection cannot be raised in the execution proceeding.
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> 9. The High Court was of the view that where there is lack of inherent jurisdiction in the Court which passed the decree, the executing Court must refuse to execute it on the ground that the decree is a nullity. **But, in our judgment, for the purpose of determining whether the Court which passed the decree had jurisdiction to try the suit, it is necessary to determine facts on the decision of which the question depends, and the objection does not appear on the face of the record, the executing Court cannot enter upon an enquiry into those facts. In the view of the High Court since the land leased was at the date of the lease used for agricultural purposes and that it so appeared on investigation of the terms of the lease and other relevant evidence, it was open to the Court to hold that the decree was without jurisdiction and on that account a nullity.** The view taken by the High Court, in our judgment, cannot be sustained.
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> *(emphasis added)*

48) Thus, in ***Vasudev Dhanjibhai Modi***, the Apex Court held that even at the instance of a party to the suit, the Executing Court cannot go into the issue of jurisdiction of a Small Causes Court to pass the decree. More importantly, the Apex Court held that for the purpose of determining the question as to whether Court had jurisdiction in execution proceedings, when it becomes necessary to determine facts on which decision of issue depends, and if the objection does not appear on the face of record, the Executing Court cannot enter upon inquiry into those facts. The Apex Court held that the issue of nature of lease cannot be gone into by the Executing Court. The judgment squarely applies in the facts of the present case where Petitioner wanted the Executing Court to decide whether the lease was granted for agricultural proposes or for the purpose of storage of coal. In the present case, for deciding the issue of jurisdiction or applicability of provisions of Bombay Rent Act a factual inquiry is necessary as to the purpose for which the premises were let out. This factual inquiry cannot be conducted by the Executing Court for holding that the decree was nullity.

49) In the present case, the issue of applicability of provisions of Bombay Rent Act has been repeatedly considered and decided on multiple occasion by Small Causes Court, by District Court and by this Court. If any doubt remains, the same gets resolved by judgment of the Apex Court in ***Subhadra V/s Narsaji Chenaji Marwadi***[12] which judgment has been considered by this Court while dismissing the First Appeal. The judgment is an authority on the proposition that the material date for

[12] AIR 1966 SC 806

ascertaining whether the land is 'premises' within the meaning of Section 5(8) of the Bombay Rent Act is the date of letting and not the later date.

50) Mr. Narvankar has relied on judgment of the Apex Court in ***Tavangowda Tamangowda Patil*** (supra) in which the judgment of the Apex Court in ***Subhadra*** is considered and it is held in paragraph 4 as under:

> **4.** The submission of Shri Ganpule was that the material date for ascertaining whether the plot of land was "premises" within the meaning of Section 5(8) of the Bombay Rent Act was the date of letting and as it was not shown that the user of the land was converted from agricultural to non-agricultural purposes after obtaining the permission of the Collector in accordance with the provisions of the Bombay Land Revenue Code, it must be held that the land was not 'premises' within the meaning of Section 5(8) on the material date. He relied on the decision of this Court in ***Smt. Subhadra v. Narsaji Chenaji Marwad*** MANU/SC/0287/1961 : [1962]3SCR98. The fundamental flaw in the submission of Shri Ganpule is the underlying assumption that the land was agricultural land at the inception or at any rate at the time when it was let out to the respondents for the first time. We find no basis in the record for these assumptions. In fact, before the High Court when it was argued that the land was used for non-agricultural purposes and therefore, the provisions of the Bombay Rent Act were applicable, the answer of the present appellants was not that it was agricultural land on the material date but that it was except from the provisions of the Act as it belonged to the Government. As we observed, there is no basis in the record for the assumption that the land was ever used for agricultural purposes. When the land was leased to the respondents it was admittedly leased for the purpose of storing timber etc. We are, therefore, unable to see any force in the first submission of Shri Ganpule.

51) In ***Tavangowda Tamangowda Patil*** it was found that the leased land was never put for agricultural use even at the time of letting, which is not the case here. In the present case, there were no constructed shades in the suit property at the time of creation of lease as on 1 June

1944. A mere permission was granted to the lessee to erect shades for the purpose of storage of coal on the agricultural land. On 1 June 1944 lease was created in respect of agricultural land. Merely because the lessee subsequently put the land for use for storage of coal made no difference to the fact that the property leased originally happened to be agricultural land. Therefore, even otherwise the provisions of Bombay Rent Act did not apply to the suit property or to the parties to the lease when the same was created on 1 June 1944. Therefore, objection of jurisdiction of District Court to pass the decree is otherwise totally baseless and could have been set at naught if raised in a proceeding where the issue could have been adjudicated. Here neither Petitioner/Applicant was competent to raise the objection nor Executing Court is competent to decide the same. In the present case however, the issue cannot be gone into by the Executing Court for the reasons discussed above.

52) Mr. Soman is justified in relying on judgment of the Apex Court in ***Rafique Bibi*** (supra) in which the Apex Court has held that mere wrong exercise of jurisdiction does not render the decree a nullity and that order a superior Court such as High Court must always be obeyed, no matter what flaws it may have. The Apex Court has held in paragraphs 6, 7 and 8 as under:

> 6. What is "void" has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.

> 7 Two things must be clearly borne in mind. Firstly, "the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be 'a nullity and 'void' but these terms have no absolute sense: their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results." (Administrative Law, Wade and Forsyth, 8th Edn., 2000, p. 308.) Secondly, there is a distinction between mere administrative orders and the decrees of courts, especially a superior court. "The order of a superior court such as the High 9 Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time-limit." (ibid., p. 312)
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> 8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.

53) In ***Balvant N. Viswamitra*** (supra) the Apex Court has reiterated that there is a distinction between the decree which is void and the decree which is wrong, incorrect, irregular or not in accordance with law. It is held in paragraphs 9, 15, 20 and 23 of the judgment as under:

> **9.** The main question which arises for our consideration is whether the decree passed by the trial court can be said to be 'null' and 'void'. In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order,

> a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such detect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.
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> **15**. From the above decisions, it is amply clear that all irregular or wrong decrees or orders are not necessarily null and void. An erroneous or illegal decision, which is not void, cannot be objected in execution or collateral proceedings.
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> **20.** In our considered opinion, such a decree, by no stretch of imagination, can be described nullity. If the decree is not null and void, as per settled law, appropriate proceedings will have to be taken by the persons aggrieved by such decree.
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> **23.** Negativing the contention, the court held that the persons who could make grievance were the heirs and legal representatives of deceased Narayan and the petitioner had no right to make such grievance. The court further observed that since the petitioner was claiming through the tenant, he was bound by the decree passed in the suit. The petition was, therefore, dismissed.

54) In the present case, decree of the District has merged into the decree passed by this Court in First Appeal. This Court has also dealt with the issue of applicability of provisions of Bombay Rent Act as well as jurisdiction of the District Court to pass the decree. Therefore, the Executing Court, which is a District Court, cannot otherwise rule that High Court has erred in passing the decree or that decree passed by the High Court is a nullity. Reliance by Mr. Soman on judgment of the Apex

Court in ***Chandi Prasad and others V/s Jagdish Prasad and others***[13] is also apposite in which it is held that when a higher appellate forum entertains an appeal and passes an order on merits (whether by confirmation, modification, or reversal), the lower Court's decree merges with the appellate decree and consequently, there can only be one operative decree governing the subject matter at any given point in time i.e. the final decree of the appellate Court.

55) What remains now is to deal with some of the judgments relied upon by Mr. Narvankar. The judgment of the Apex Court in ***Kiran Singh*** is relied upon in support of the contention that the defects of pecuniary, territorial, or subject-matter jurisdiction strike at the root of a Court's authority and that such defects cannot be cured by consent or waiver, rendering the resulting decree a nullity and that can be challenged at any stage, including in execution proceedings. However, in view of the discussions above, the issue of jurisdiction of the District Court (Civil Court) to try and entertain the Suit has been decided upto this Court and has been answered in favour of the Plaintiff/decree holders. Therefore, it cannot be contended that there is waiver of jurisdiction objection by the Defendant in the suit. Though a *purshis* was filed dropping the preliminary objection, the jurisdiction issue was pressed by the Defendant right upto this Court, as held above. Also since the issue of jurisdiction required inquiry into nature of lease, the same cannot be conducted by the Executing Court.

[13] (2004) 8 SCC 724

56) Mr. Narvankar has relied on the judgment of the Apex Court in ***Sushil Kumar Mehta*** (supra) in support of the contention that *res judicata* does not bar the judgment-debtor from challenging the decree, that waiver or estoppel cannot validate a void decree and that the plea of nullity can be raised directly in execution proceedings. However, in the present case, there is no waiver as to objection of jurisdiction by the Defendant as observed above. Secondly the case does not involve the facet of absence of jurisdiction on the face of the decree. The issue of jurisdiction needs factual inquiry into nature and purpose of lease, which inquiry is already conducted by the District Court and by this Court in First Appeal.

57) In view of the above discussion, I am unable to trace any error in the order dated 14 July 2015 passed by the Executing Court rejecting Petitioner's Application at Exh-122. In fact, filing of Application at Exh-122 under Section 47 of the Code is found to be gross abuse of process of law by the Applicant/ Petitioner. Filing of the said Application has resulted in delaying the decision of the Application under Order XXI Rule 97 of the Code. The eviction decree in the present case is passed on 14 August 1974 and the said decree is confirmed by this Court on 2/3 August 1982. The Decree Holders are unable to enjoy the fruits of the decree for the last 52 long years. On the other hand, Petitioner/Applicant is enjoying possession of portion of the suit property by deliberately creating hurdles in decision of his application under Order XXI Rule 97 of the Code. Instead of proving his alleged independent right to occupy the suit property *dehors* the decree, Petitioner/Applicant unnecessarily sought to go behind the decree and

sought a declaration that the same is a nullity. It made the Executing Court undertake a piecemeal inquiry into validity of the decree by passing order dated 14 July 2015, even though his Application under Order XXI Rule 97 of the Code still remains pending. In my view therefore, while dismissing Civil Revision Application Petitioner/ Applicant is required to be mulct with costs.

58) So far as Writ Petition No. 5401 of 2015 is concerned the same challenges order dated 9 June 2015 passed by the Executing Court rejecting the Petitioner/Applicant's Application at Exh-115 by which he had sought to prevent Decree Holders from leading evidence on the ground that they did not file reply to his Application under Order XXI Rule 97 of the Code.

59) In the present case, Petitioner/Applicant did not file any specific Application under Order XXI Rule 97 of the Code. As observed above, the objections presented to the bailiffs by 14 persons have been treated as Applications under Order XXI Rule 97 of the Code by the Executing Court vide order dated 3 September 2007. Thus, there is no formal Application filed by the Petitioner/Applicant under Order XXI Rule 97 of the Code. Furthermore, the scheme under Order XXI Rule 97 to Rule 101 of the Code does not require filing of the formal written statement/reply by the Decree Holder for deciding the obstruction Application. Though Application under Order XXI Rule 97 may have to be decided as if it is the suit by conduct of inquiry under Order XXI Rule 101, of the Code the same does not mean that it is mandatory to file the written statement/reply opposing an obstructionist proceeding. The

burden is on the obstructionist to prove his independent right to occupy the suit property and it is not necessary to conduct a detailed evidentiary inquiry for deciding the objection presented by the obstructionist. Reference, in this regard can be made to the judgment of the Apex Court in ***Silverline Forum (P) Ltd. V/s Rajiv Trust***, (supra) in which it is held in paragraphs 9, 10 and 14 of the judgment as under:

> 9. At the outset, we may observe that it is difficult to agree with the High Court 17 that resistance or obstructions made by a third party to the decree of execution cannot be gone into under Order XXI Rule 97 of the Code. Rules 97 to 106 in Order XXI of the Code are subsumed under the caption "Resistance to delivery of possession to decree-holder or purchaser". Those rules are intended to deal with every sort of resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by "any person" in obtaining possession of the property such decree-holder has to make an application complaining of the resistance f or obstruction. Sub-rule (2) makes it incumbent on the court to proceed to adjudicate upon such complaint in accordance with the procedure laid down.
>
> 10. It is true that Rule 99 of Order XXI is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding 9 on an application under Rule 97 or Rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the executing court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of property Act.
>
> **Xxx**

> 14. It is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and he refused to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order XXI Rule 97(2) of the Code. **The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resister**. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary."
>
> *(emphasis supplied)*

60) In ***Usha Sinha V/s Dina Ram and Ors.***[14] the Apex Court has held that in execution proceedings, the Court's inquiry is strictly limited to whether the objector/transferee is claiming a right through the judgment-debtor.

61) Leading of evidence by the decree holders is mandatory as the Applicant/Petitioner would demand a full-fledged inquiry. Therefore, it cannot be that only the Applicant is allowed to lead evidence and not the decree holder. In ***Periyammal*** (supra) the Apex Court has highlighted the need for taking evidence in obstruction proceedings. It is held in paragraph 43 of the judgment as under:

> 43. It is a settled position of law that an application under Order 21 Rule 97 may be made in respect of obstruction raised by any person in obtaining possession of the decretal property. The courts adjudicating such application have to do so in accordance with Rule 101 and hold a full-fledged inquiry to determine all questions including questions relating to right, title or interest in the property arising between the parties.

[14] (2008) 7 SCC 144

62) In ***Udyavara R. Acharya and another V/s. Jugal Kishor Jagannath Sharda*** [15], a coordinate bench of this Court has held that it is necessary to take evidence by framing issues in obstruction Application. This Court held in paragraphs 46 to 49 as under:

> **46**. In Silverline Forum, the owner let out the property. With the owner's leave, the tenant subleased the property. Again, that sublessee further sublet the property. Here, in the ejectment suit, the subtenants were not made parties. So, the second subtenant obstructed the execution. True, West Bengal Premises Tenancy Act permitted sub-tenancy but subject to certain procedural safeguards, but the tenant has not adhered to them. Even with the owner's consent, there can be only one sub-tenancy-not a succession of them. In this context, the Supreme Court has held that when a decree-holder complains of resistance to the execution of a decree, it is incumbent on the execution Court to adjudicate upon it. But while adjudicating, the Court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must relate to the adjudication.
>
> **47**. Silverline Forum has stressed that the words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the Court does not have to determine a question merely because the resistor raised it. Succinctly stated, it is necessary that the questions raised by the resistor or the Obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in order 21 Rule 97(2) of the Code, the execution Court can decide whether the question raised by a resistor or Obstructor legally arises between the parties. That is, the executing Court can decide whether the resistor or Obstructor is a person bound by the decree, and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. In this context, it has held that :
>
> **The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resistor. Of course the Court can direct the parties to adduce evidence for such determination if the Court deems it necessary.**

[15] 2020 (5) Mh.L.J. 227

> **48**. In this context, we may refer to Para 435 of Bombay High Court Civil Manual. Under Chapter XXI, appropriately, dealing with Execution of Decrees, Para 435 requires the Executing Court to frame issues, to take evidence, and to deliver judgment in any dispute arising during the execution proceedings. The Paragraph reads:
>
> > 345. When the dispute arise in the course of execution proceedings, the provisions as to suits, unless inapplicable, should be followed. In such cases, issues must be framed, evidence taken and judgment written according to the law applicable to the suits.
>
> **49**. Before we answer the question about the need to record evidence, we must accept that the Executing Court, too, has felt that it was necessary. But it dissuaded itself from letting the parties lead evidence. On that count, it has suffered from certain legal fallacies. Let us examine them.
>
> ***(f) The Fallacies the Executing Court's Order Suffered From:***
> (a) The trial Court and the Appellate Court in the eviction suit between the landlord and the tenant have concurrently found against the Obstructor:

63) In my view therefore, the Executing Court is justified in rejecting baseless application filed by the Applicant/Petitioner to prevent leading of evidence by the Decree Holders in obstruction application under Order XXI Rule 97 of the Code. Writ Petition No. 5401 of 2015 accordingly deserves to be rejected.

64) In view of the above discussion, Civil Revision Application No. 394 of 2015 and Writ Petition No. 5401 of 2015 fail and I proceed to pass the following Order:

(i) Civil Revision Application No. 394 of 2015 and Writ Petition No. 5401 of 2015 are **dismissed**. Pending Civil Application also disposed of.

(ii) Applicant/Petitioner shall pay costs of Rs. 1,00,000/- to the Applicants in the execution application. The amount of cost shall be deposited by the Petitioner in the Executing Court within a period of four weeks with liberty to the Decree Holders to withdraw the same. Payment of costs within the stipulated time shall be condition a precedent for the Applicant/Petitioner to prosecute the application for obstruction.

(iii) As the execution proceedings are pending since the year 1993, the Executing Court shall give due priority for its expeditious decision and the same shall be decided as expeditiously as possible, preferably within a period of four months, without making any request for extension of time.

[SANDEEP V. MARNE, J.]

NEETA SHAILESH SAWANT
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