



Swapnil

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 380 OF 2018**

Modi Rubber Limited.

...Applicant

Vs.

Maulik Girish Damania and Ors.

...Respondents

Mr. Harsh Moorjani a/w. Ms. Diya Chordia i/b. Mr. Sujit Lahoti
and Associates for the applicant.

Ms. Ranjana Parikh for respondent nos. 1 to 3.

CORAM : GAURI GODSE, J.

DATE : 30th SEPTEMBER 2026

ORDER :

1. This civil revision application is filed by an occupant of the suit premises, challenging the order refusing leave to file an appeal against the eviction decree passed against the lessee. Respondent nos. 1 to 3 are the original owners of the land who had executed the lease agreement in favour of the predecessor of respondent nos. 4, 5 and 6. The suit for possession filed on the ground of termination of the lease was decreed on 25th March 2013. The applicant filed an application on 5th July 2013 seeking leave to file an appeal. By the order impugned in this civil revision, the said leave

application is rejected.

2. Learned counsel for the applicant submits that the original lessee executed an agreement dated 6th May 1982 to transfer the right, title, and interest in the suit property in favour of the applicant. The applicant has filed Suit No. 2144 of 1989 seeking specific performance of the said agreement. The applicant is in possession of the land and the structure thereon, except for the third floor that is occupied by one Satishkumar Choksi. The applicant, Satishkumar Choksi, and Bhattad Commercial Corporation claimed rights in the suit property through the original lessee.

3. Learned counsel for the applicant submits that Satishkumar Choksi has filed a separate Suit No. 171 of 1982 in which the present application is arrayed as defendant no.4. By order dated 25th October 1982 passed in Choksi's suit, the Court Receiver was appointed, and the applicant was put in possession as an agent of the Court Receiver in respect of the suit property except the third floor occupied by Choksi. By an order dated 16th August 2013 in the suit filed by Choksi, the Court Receiver was directed to engage an advocate to challenge the possession decree

passed in favour of the landlord. Despite the said order, the Court Receiver failed to take any steps to defend the execution of the decree or file an appeal. By order dated 21st August 2013, the Court clarified that the directions issued to the Court Receiver to defend the execution of the decree would also apply to the present applicant, who is defendant no.4 in Choksi's suit.

4. Learned counsel for the applicant, therefore, submits that despite the directions issued to the Court Receiver, the applicant's rights were not protected by taking appropriate steps. Once the Court Receiver was appointed, the suit property became *custodia legis*; therefore, it was the Court Receiver's duty to protect the applicant's rights. He thus submits that in the absence of any appropriate steps taken by the Court Receiver, the applicant's rights have been prejudiced. Hence, the applicant is entitled to file an appeal to challenge the decree of possession passed in the suit filed by the landlord.

5. Learned counsel for the applicant refers to the reasons recorded in the impugned order and submits that the appellate court has dealt with the merits of the applicant's

rights based on the agreement in his favour and recorded findings beyond the scope of the application for leave to file an appeal. He submits that the orders passed in Choksi's suit and the directions issued to the Court Receiver are not correctly appreciated while hearing the application for leave. He therefore submits that the applicant, who is in possession of the suit premises except the third floor, which is in Choksi's possession, would be entitled to protect his rights. He, therefore, submits that the applicant, who claims through the lessee, would be entitled to challenge the possession decree against the lessee. He submits that the possession decree would directly affect the applicant, as he is occupying the premises, and thus he is entitled to file an appeal. Since the applicant is not a party to the proceedings, he would be entitled to leave to file an appeal.

6. Learned counsel for the applicant, to support his submissions, relied upon the decision of the Apex Court in *H. Anjana Appa* and this Court's decision in ***H. Anjanappa Vs A. Prabhakar***¹ and this Court's decision in ***Vinay Ambadas Kaikini Vs Court Receiver, High Court Bombay***². He relied on the legal principles summarised in the Apex Court's

¹ 2025 SCC OnLine SC 183

² 2010 SCC OnLine Bom 1340

decisions to support his submissions that if a person is prejudiced and his rights are affected by the judgment, the party would be entitled to file an appeal. He therefore submits that, since the applicant falls within the expression “person aggrieved”, it is entitled to leave to file an appeal. Learned counsel for the applicant relies on this Court's decision to support his submission that the party should not suffer because of the mistakes committed by the Court Receiver. In the present case, despite directions issued to the Court Receiver, no steps were taken to protect the applicant's interest. Learned counsel for the applicant therefore submits that the applicant is entitled to file an appeal to challenge the possession decree, as the applicant's rights are directly affected.

7. Learned counsel for respondents nos. 1 to 3 (“respondents”) submits that the applicant and the third party, i.e., Satishkumar Choksi, have made every effort to delay the execution. When this court passed an order on 16th August 2013 in Choksi's suit, the present applicant had already filed an application for leave to file an appeal. However, the applicant suppressed this fact from this Court. Based on the

submissions that no appeal had been filed against the possession decree, this court had directed the Court Receiver to take appropriate steps to defend the execution. She submits that despite filing an application for leave to file an appeal, the applicant secured an order of liberty to remain personally present or through an advocate.

8. Learned counsel for the respondents relied on the bailiff's report, which forms part of the present proceedings. She submits that the applicant had already obstructed the possession warrant on 12th August 2013. However, the present applicant suppressed all these facts in the application filed in Choksi's suit when the order dated 16th August 2013 was passed. She submits that in view of the obstruction, the respondents have applied for removal of the obstruction, and proceedings are still pending.

9. Learned counsel for the respondents submits that the present applicant is making all efforts to delay execution. Except for filing the suit, the applicant has never proceeded with the suit with due diligence and has made every effort to delay execution of the possession decree. She submits that, in view of the conduct of the other third parties claiming

through the lessee and the present applicant, this court, in its order dated 7th June 2011 in Choksi's suit, observed that the applicant and the third parties have taken out all proceedings only to delay execution.

10. Learned counsel for the respondents submits that the application to implead the present applicant as the necessary party in the suit was dismissed and the revision filed before the Division Bench of the Small Causes Court was also dismissed. The applicant took no steps to challenge the order refusing to implead it as a necessary party. Hence, at this stage on the same grounds, the applicant would be entitled to seek leave to file an appeal, which would further delay the execution of the decree in favour of the original owners. She, therefore, submits that the appeal bench of the Small Causes Court has rightly refused to grant leave to file appeal.

11. I have carefully perused the papers of the civil revision application. The application for leave to file an appeal is based on the specific pleadings that the applicant is the owner of the suit property. The applicant claims ownership based on an unregistered agreement dated 6th May 1982.

Although the suit for specific performance was filed in 1989, no interim orders protecting the applicant's rights have been passed in the said suit. So far as the orders passed in Choksi's suit are concerned, the present applicant is an added party defendant. The third party, i.e. Choksi, who has filed the suit, seeks rights in respect of the entire suit property through the lessee. Thus, the present applicant, Satishkumar Choksi and Bhattad Commercial Corporation, claimed the right, title, and interest in the entire suit property based on the alleged independent agreements executed by the lessee. By order dated 25th October 1982, the applicant was directed to be put in possession as an agent of the Court Receiver, as the applicant was occupying the ground plus mezzanine and the upper floor, except the third floor occupied by Choksi, in whose suit the Court Receiver has appointed.

12. While appointing the applicant as an agent of the Court Receiver, necessary directions are issued in paragraph 49 of the order dated 25th October 1982, which reads as under :

"49. In view of this, it would be necessary to protect the rights of the parties as far as possible until the final disposal of the suit and

this can only be done by appointing Court Receiver as receiver of the suit premises (i.e. other than the third floor). However, as stated earlier, it appears at least prima facie that defendants No.4 are in possession of the rest of the building other than third floor. Hence, the Court Receiver is appointed receiver of the suit premises other than the 3rd Floor as also the air conditioning plant. The Court Receiver is directed to hand over the said premises (i.e. other than the 3rd floor) to defendants No.4 as his agents, without security, and/or payment of any royalty, but subject to defendants No.4 giving an undertaking that they will not put up or carry out any structural alterations of a permanent character in the premises or any part thereof and subject to their paying all the rates, taxes and outgoings in respect of the suit property, and subject to their undertaking to keep and maintain the air-conditioning plant in a working order and on such other terms and conditions as the Court Receiver may think fit.”

13. A perusal of the said directions clearly shows that the applicant was appointed as an agent of the Court Receiver only on the ground that he was occupying the suit premises. Hence, the applicant was appointed as an agent subject to an undertaking. Hence, the order appointing the Court Receiver and the applicant to be put in possession as an agent of the Court Receiver was limited because the

applicant was in possession and Choksi claimed the right, title, and interest in the suit property. Thus, if Choksi succeeds or fails in his suit, the applicant, as defendant no. 4, would not benefit from any of the orders in the suit.

14. So far as the applicant's suit is concerned, no orders are passed to protect any of his rights. The second order relied upon by the learned counsel for the applicant, passed in Choksi's suit on 16th August 2013, directs the learned Court Receiver to take all possible steps to defend the execution of the decree, including filing an appeal or other proceeding by engaging an advocate. By the said order, the plaintiff, i.e. Choksi, was appointed as an agent of the Court Receiver. While issuing the operative directions this court directed that the Court Receiver shall remain present before the Small Causes Court on 20th August 2013 and convey the order to the Small Causes Court to the effect that the plaintiff in that suit, i.e. Choksi, has been appointed as an agent of the Court Receiver for the purpose of defending the suit and to take all necessary steps for filing appropriate proceedings. By the said order, the present applicant, i.e. defendant no.4 therein, was also permitted to appear in person or through

their advocate.

15. By another order dated 20th August 2013, further clarification was issued that in view of the order appointing Choksi as an agent of the Court Receiver for the purpose of defending the execution proceedings as well as for filing an appeal, the Court Receiver was further directed to make appropriate application to enable Choksi to take appropriate steps to seek stay of the decree passed by the Small Causes Court. Further clarifications were issued by order dated 21st August 2013 permitting the plaintiff, i.e. Choksi, to sign all the pleadings and Vakalatnama on behalf of the Court Receiver, with a further clarification that Choksi would furnish the copy of all such pleadings and Vakalatnama to the office of the Court Receiver. It was further clarified that the said order would also apply to defendant no.4, i.e. the present applicant. Thus, the said directions were issued on the pretext that the present applicant had not taken any independent steps to challenge the possession decree. Hence, the orders passed issuing directions to the Court Receiver in Choksi's Suit cannot be accepted as any valid grounds to consider the application for leave to file appeal.

16. The applicant seeks leave to file appeal on the ground that the applicant is the owner of the suit property. However, the applicant's suit for specific performance based on an unregistered agreement to transfer the right title interest in the suit property against the lessee is still pending. Admittedly, the original defendant, i.e., the lessee, is not the owner of the suit property. Hence, the agreement relied upon by the applicant *prima facie* does not reveal any right, title, or interest in favour of the applicant based on the said agreement. A perusal of the agreement nowhere records that the original owners are a party to it or have consented to it. The agreement is neither for transferring the lease rights nor for creating any sublease. In any event, the applicant's rights, if any, would be decided in his independent suit, which is still pending.

17. In the present suit, the applicant's application to be impleaded as a necessary party was dismissed. The impleadment was also prayed for on the same grounds, as the applicant is in possession under the agreement executed by the lessee; the suit for specific performance is still pending. However, in the absence of any *prima facie* rights in

favour of the applicant, the applicant is not entitled to leave to file an appeal as a matter of right. In any event, proceedings for removal of obstruction by the applicant are pending in the execution proceedings. In the execution proceedings, the applicant has filed his evidence, and the proceedings for removal of obstruction are still pending. Hence, the applicant's rights, if any, would be adjudicated in the obstructionist proceedings. If the applicant is able to plead and prove any right, title, or interest in the suit property, appropriate reliefs would be granted in the execution proceedings. Hence, I do not find any reason to grant leave to file an appeal to challenge the decree for possession passed against the original lessee.

18. The Apex Court, in summarising the legal principles for granting leave to file an appeal, observed that only where the judgment and decree prejudicially affect a person who is not a party can he prefer an appeal with the leave of the court. It is further clarified that an aggrieved person must be one whose rights are affected by the judgment and decree sought to be impugned. In the present case, the applicant seeks interest in the suit property based on an agreement allegedly

executed by the lessee in respect of which the suit for specific performance is still pending. The possessory rights claimed by the applicant would be adjudicated in the obstructionist proceedings. The decree for possession is on the ground of the termination of the lease of the original lessee through whom the present applicant claims right. Hence, the applicant does not claim any independent right. Hence, none of the legal principles settled by the Apex Court would assist the applicant's arguments in the present case. There is no scope for debate on the legal principles settled by this Court regarding the duty of the Court Receiver. However, this is not a ground to grant leave to file an appeal.

19. Nothing is shown on record that the applicant made any efforts through the Court Receiver's officer to protect its rights. The grounds raised by the applicant are inconsistent, as the applicant has independently taken steps in the proceedings initiated by Choksi and in the present proceedings to protect its rights. However, in the substantive suit filed by the applicant, no steps have been taken seeking any protection in respect of the applicant's alleged rights. The applicant is claiming through the lessee; hence, the applicant

would not fall within the expression “person aggrieved” for granting leave to file an appeal. As observed in the aforesaid paragraphs, the applicant’s rights, if any, would be adjudicated on their own merits in the obstructionist proceedings. Hence, the Small Causes Court's appeal bench has rightly refused to grant leave. The Appeal Court has exhaustively considered all the arguments raised by the applicant. I do not find any jurisdictional or other manifest error in the reasons recorded in the impugned order warranting any interference under Section 115 of the Civil Procedure Code, 1908.

20. The civil revision application is devoid of any merit. Hence, the civil revision application is dismissed.

21. It is clarified that since the execution proceedings have been delayed for almost 13 years, the parties shall cooperate for early disposal of the obstructionist proceedings and shall not seek necessary adjournments.

[GAURI GODSE, J.]