

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.110 OF 2014**

Shri Kedar Sanjeev Khadke]
Age 29, Occu : Business,]
Residing at Sonhari, Nirmal Baug,]... Applicant
Survey No.46, Parvati,] (Original
Pune 411 009] Deft. No.1)

versus

- | | | |
|----|--|-------------------|
| 1] | Shri Anant Krishnan Narayanan |] |
| | Age 52 years, occu : Business |] |
| | Residing at Unit No.20, Phase II |] |
| | Vascon Paradise Baner Road Pune 411 045 |] |
| | |] |
| 2] | M/s. Mullineri Gapchup |] |
| | Constructions Pvt. Ltd. |] |
| | A Private Limited Company |] |
| | Registered under the provisions of |] |
| | Companies Act, 1956, having its |] |
| | Address at Flat No.5, Laukik Apartment |] |
| | 970/3, Bhandarkar Road, Pune, 411 004 |] |
| | Through its Director |] |
| | Shri Sridhar Govind Watve |] |
| | Age adult, occu, business, |] |
| | Residing at Flat No.5, Laukik |] |
| | Apartment, 970/3, Bhandarkar |] |
| | Road, Pune 411 004 |] |
| | |] |
| 3] | Shri Ashok Gapchup |] |
| | Age adult, occu, business |] |
| | Residing at Flat No.5, Laukik |] |
| | Apartment, 970/3, Bhandarkar |] |
| | Road, Pune 411 004 |] |
| | |] |
| 4] | Shri Prashant B. Mellinkeri |] |
| | Age adult, Occu, business |]... Respondents/ |
| | Residing ag Flat No.5, Laukik |](No.1 Ori. Plff. |
| | Apartment, 870/3, Bhandarkar |] 2-4 Ori. Deft. |
| | Road, Pune 411 004 |] Deft. 2-4) |

Mr. G S. Godbole, i/by Mr. Drupad S Patil for the Petitioner.
Mr. Subodh S Shah for the Respondent No.1.
Mr. Jaydeep Deo for the Respondent Nos.2 to 4.

CORAM : R. M. SAVANT, J.
DATE : 15th January 2015

P.C.

1 Admit, with the consent of the learned counsel for the parties taken up for final hearing forthwith.

2 The revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure is invoked against the judgment and order dated 3/12/2013 passed by the learned 2nd Joint Civil Judge, Senior Division, Pune thereby decreeing the suit filed by the Respondent No.1 herein under Section 6 of the Specific Relief Act 1971. Consequential to the decree passed, the Defendant No.1 i.e. the Petitioner herein is directed to hand over the possession of the premises in question being Show Room No.3 in Akshay Complex Aundh, Pune to the Plaintiff.

3 The facts giving rise to the filing of the above Civil Revision Application in brief can be stated thus :-

The Respondent No.1 is the original Plaintiff and the Defendant Nos.2 to 4 are the Developers of the plot of land in question being Plot No.3 admeasuring 513.75 sq.mtrs, out of the sanctioned lay out of the land bearing

survey No.133, Hissa No.1+2 and Survey No.134, Hissa No.2 equivalent to City Survey No.1337/4 situated at village Aundh, Tal. Haveli, Dist. Pune. The Plaintiff had 25% undivided share in the aforesaid plot whereas the Defendant Nos. 2 to 4 had the remaining 75% undivided share. It is the case of the Plaintiff that negotiation took place between the parties i.e. the Plaintiff and the Defendant Nos.2 to 4 pursuant to which the Plaintiff permitted the Defendant Nos.2 to 4 to amalgamate his 25% share with rest of the property. A Development Agreement dated 31/12/2005 was entered into between the parties. In terms of the said Development Agreement, the Defendant Nos.2 to 4 agreed to hand over two show rooms being Show Room No.3 and Show Room No.4 totally admeasuring about 6000 sq.ft. on the ground floor of the complex that was constructed. Accordingly the Defendant Nos.2 to 4 after completion of the construction handed over the show rooms in the complex which was constructed on the said plot of land being Akshay Complex, and put the Plaintiff in possession on 20/03/2006. The possession receipt was accordingly executed and it is the case of the Plaintiff that he is in possession ever since then. It is the case of the Plaintiff that he had kept the premises in question i.e. the Show Room No.3 under lock and key, but on 16/10/2008 at about 1.30 pm when the Plaintiff visited the suit premises, to his surprise he found that the Defendant No.1 had broken open the lock and taken forcible possession of the said Show Room No.3. It is the case of the Plaintiff that he requested the Defendant No.1 to hand over the possession but on his refusal to

do so, he was left with no alternative but to lodge a complaint with the police of his forcible dispossession and thereafter to file the instant suit.

4 In so far as the Defendant No.1 is concerned, he filed his written statement and denied the case of the Plaintiff in so far as the Development Agreement and be being put in possession is concerned. It is the case of the Defendant No.,1 that he was having cordial relations with the Defendant Nos.2 to 4 and he showed his interest in acquiring the commercial premises in Aundh to the said Defendants. The Defendant Nos.2 to 4 agreed to sell the said Show Room No.3 for a consideration of Rs.78 lakhs. It is the case of the Defendant No.1 that he paid the said amount from time to time from 2/11/2005 to 25/3/2006. It is the case of the Defendant No.1 that the Defendant Nos.2 to 4 executed an Agreement dated 24/03/2006 as also executed Power of Attorney on 27/03/2006 and handed over the possession of the said Show Room No.3 by executing possession receipt dated 30/03/2006. It is the case of the Defendant No.1 that on 28/11/2008 he has given the said Show Room on leave and license basis to one Shri Pawan Bhokare. It is the case of the Defendant No.1 that he has lodged criminal complaint against the Defendant Nos. 2 to 4 for deceiving him.

5 The Defendant Nos.2 to 4 also filed their written statement through the Director of the Defendant No.2. The Defendant No.2 admitted the

claim of the Plaintiff as also admitted execution of the Development Agreement dated 31/12/2005 and that the suit premises were handed over to the Plaintiff on 20/3/2006. It is the case of the Defendant No.2 that the Defendant No.1 is in the business of private money lending and that he had provided finance to the Defendant No.2 entirely in cash for acquisition of development rights in respect of some property at Kothrud. To secure repayment of the said loan, the Defendant No.1 got executed from the Defendant No.2, the agreement in respect of the Kothrud property in the name of M/s. Matrumira Constructions. It is the case of the Defendant No.2, as set out in their written statement, that the Defendant No.1 also insisted for additional security and insisted execution of the document in respect of some constructed premises. It is the case of the Defendant No.2 that it had disclosed to the Defendant No.1 that it had sold all the Units of the scheme at Aundh and Show Room Nos.3 and 4 have been sold to the Plaintiff. However, on account of the threats of the Defendant No.1 that the Defendant Nos.2 to 4 executed an Agreement in respect of Show Room No.3 on 24/03/2006. The Defendant No.2 stated that the said transaction was a loan transaction. It is further pointed out that the possession letter dated 30/03/2006 was back dated as the Defendant No.1 threatened to file complaint under Section 420 of the Indian Penal Code. It is also the case of the Defendant No.2 that on account of the threats of the Defendant No.1 that the back dated receipts in respect of the amounts paid by the Defendant No.1 were executed by the Defendant Nos.2 to 4.

6 On the basis of the pleadings, the Trial Court framed the following issues :-

- 1] Does the Plaintiff prove to have been in actual and physical possession of suit property within a period of six months next before the date of institution of suit?
- 2] Does plaintiff prove that defendant no.1 has forcibly dispossessed him from the suit property on 16/10/2008, i.e. within six months proceedings to the prosecution of the suit ?
- 3] To what relief if any are entitled ?

Suffice it to say at this stage that the said Issues were answered by the Trial Court in favour of the Plaintiff.

7 The parties led evidence in respect of their respective assertions. The Plaintiff has examined three witnesses i.e. himself, a witness from Fab India Overseas Pvt. Ltd and the Chairman of the Akshay Complex Owners Association. The Defendant No.1 in turn examined two witnesses i.e. he himself and the official of the Electricity Board. The Defendant No.2 examined one witness.

8 The Trial Court considered the oral as well as documentary evidence on record, and since in a suit under Section 6 of the Specific Relief Act, prior possession is one of the defining aspects, and in fact the most important aspect, the Trial Court ventured to determine the said aspect on the basis of the material which had come on record. The Trial Court held that the fact that the Plaintiff was in possession is supported by the oral evidence as well as the documentary evidence. The Trial Court referred to the evidence of the Plaintiff i.e. the witness from the Fab India Overseas Pvt. Ltd. Shri Sudhir Satish Gaikwad, who the Trial Court has described as an independent witness, the witness being the Chairman of the Akshay Complex Owners Association one Shalini Pravin Bora whose evidence discloses that the Plaintiff has paid the maintenance charges to the Society, the possession receipt dated 20/03/2006 which according to the Trial Court supports the case of the Plaintiff, the tax receipt issued by the Pune Municipal Corporation, the electricity bills issued in the name of the Plaintiff paid by the Plaintiff. The Trial Court also adverted to the fact the Plaintiff had 25% share in the plot of land as a result of which the Defendant Nos.2 to 4 had entered into the Development Agreement with the Plaintiff which Development Agreement was registered and prior in point of time than the alleged Agreement executed by the Defendant No.2 in favour of the Defendant No.1. The Trial Court also observed that the Defendant No.1 had not proved his own Agreement purportedly executed on 24/03/2006. The

Trial Court also adverted to the fact that the possession was not handed over at the time of execution of the said Agreement dated 24/03/2006 but later on 30/03/2006. The Trial Court also observed that the Agreement dated 24/03/2006 was not registered. The Trial Court observed that the Defendant No.1 except the Agreement and the Power of Attorney dated 27/3/2006 has produced no other document though the Defendant No.1 propounded the theory of leave and licence agreement being executed in favour of one Shri Pawan Arun Bhokare, no witness was examined to prove the same. The Defendant No.1 has not produced any material in the form of electricity bill or society charges and in fact stated that the said documents are not with him. The Trial Court therefore held that the evidence of the Plaintiff is more satisfactory than the evidence of the Defendant No.1. The Trial Court accordingly deemed it appropriate to accept the case of the Plaintiff that he was forcibly dispossessed on 16/10/2008 and that he was in prior possession thereto. As indicated above, it is the said judgment and order dated 03/12/2013 which is taken exception to by way of the above Civil Revision Application.

9 **SUBMISSIONS ON BEHALF OF THE PETITIONER/DEFENDANT NO.1 BY THE LEARNED COUNSEL SHRI G S GODBOLE.**

A] That in a suit under Section 6 of the Specific Reliefs Act, the burden is solely on the Plaintiff to prove his prior possession. In

support of the said contention the learned counsel sought to place reliance on the judgments of the Apex Court reported in the matter of Mohd. Mehtab Khan and others v/s. Khushnuma Ibrahim Khan and others¹, and in the matter of Ramchandra Sakharam Mahajan v/s Damodar Trimbak Tanksale (Dead) and others². The learned counsel would contend that the Plaintiff cannot rely upon the defects in the Defendant No.1's case but has to stand on his own feet in so far as the case of forcible dispossession is concerned.

- B] That having regard to the evidence on record it could not be said that the Plaintiff has discharged the said burden.

- C] The learned counsel questioned the document i.e. the possession receipt on the ground that to the lease deed executed with Kotak Mahindra, the possession receipt bears different dates. The learned counsel would also draw the Court's attention to the fact that the said pages were purposely not annexed to the said lease deed which was filed in the Trial Court.

- D] The learned counsel questioned the evidence of Shri Sudhir

1(2013) 9 SCC 221

2(2007) 6 SCC 737

Gaikwad of Fab India Overseas Pvt. Ltd. on the ground that the witness summons was refused to be accepted the boss of Shri Sudhir Gaikwad and it is thereafter the said witness had appeared in Court, and the evidence of such a witness cannot be given any credibility.

E] The learned counsel sought to pick holes in the evidence of the Plaintiff in so far as the aspect of possession is concerned, by relying upon the document of firm quotation produced by the officer of the Electricity Board at the instance of the D.W.No.1, as also questioning the receipt in respect of the property that the Plaintiff is also owing another property in the complex and therefore the tax receipt can be referable to the other units owned by the Plaintiff in the said complex.

F] That having regard to the totality of the evidence on record, the Plaintiff cannot be said to have proved his alleged dis-possession on 16/10/2008 and therefore the Trial Court had erred in decreeing the suit.

10 **SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.1/ORIGINAL PLAINTIFF BY THE LEARNED COUNSEL SHRI SUBODH SHAH.**

i] That the evidence led by the Plaintiff on record shows that it is the

Plaintiff who was in possession prior to his forcible dis-possession on 16/10/2008.

- ii] That having regard to the judgment of the Apex Court in Maria Margarida Sequeria Fernandes and others v/s. Erasmo Jack De Sequeria (Dead) through L.Rs.³, the Trial Court had proceeded on the correct basis by considering as to how the Plaintiff and Defendant No.1 claim to have come into possession and on such consideration has come to a conclusion that it is the Plaintiff's case which deserves to be accepted.
- iii] That having regard to the oral evidence of the Defendant No.1, the case of the Defendant No.2 that the said Agreement executed in favour of the Defendant No.1 is a security document is virtually proved.
- iv] The learned counsel by placing reliance on the evidence of the officer of the Electricity Board would contend that the objection of the Defendant No.1 in respect of the document of firm quotation has no merit.
- v] That the evidence of Shri Sudhir Gaikwad from Fab India Overseas

³ AIR 2012 SC 1727

Pvt. Ltd cannot be questioned as he is an independent witness and has volunteered to give evidence on his own pursuant to the request which was made by the Plaintiff after the witness summons were returned.

- vi] That the Power of Attorney dated 27/03/2006 on which much emphasis was laid on behalf of the Plaintiff cannot further the case of the Plaintiff in view of the glaring contradictions and admissions in the evidence of the Defendant No.1.

CONSIDERATION :

11 Having heard the learned counsel for the parties, I have considered the rival contentions. Since the gravamen of the allegations in the plaint is of the forcible dis-possession of the Plaintiff, the factum of how the party claims to have come into possession assumes significance. In the said context it would be relevant to refer to the Judgment of the Apex Court in *Mariag Margarida Sequeria Fernandes's* case (supra). The relevant paragraphs of the said judgment are Paragraph Nos.69 to 75 which have been referred to by the Trial Court, though not re-produced. The Apex Court has laid down parameters of the inquiry which is entailed in a suit filed under Section 6 of the Specific Reliefs Act. The relevant paragraphs which are

Paragraph Nos. 69 to 75 are reproduced herein under for the sake of ready reference :-

69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.

- (a) who is or are the owner or owners of the property;
- (b) title of the property;
- (c) who is in possession of the title documents
- (d) identity of the claimant or claimants to possession;
- (e) the date of entry into possession;
- (f) how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method;
- (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;
- (h) If taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed;
- (i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;

- (j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and
- (k) basis of his claim that not to deliver possession but continue in possession.

71. Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.

72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

73. Discovery and production of documents and answers to interrogatories, together with an approach of considering what in ordinary course of human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage for issues.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission.

75. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.”

No doubt in a suit filed under Section 6 of the Specific Reliefs Act, the burden is that of the Plaintiff to prove that he was in prior possession of the suit premises and that the said prior possession must date back to six months prior

to the date of forcible dis-possession. However, incidental to the said case of the Plaintiff, it would also be necessary to consider the case of the Defendant No.1 as to how he has come in possession. In so far as the Plaintiff is concerned, the Plaintiff has inter-alia referred to the following documents in support of his case :-

- [i] Development Agreement dated 31/12/2005
- [ii] Possession Receipt dated 20/03/2006
- [iii] Firm Quotation of Installation of Electric Meter
- [iv] Lease Agreement with Kotak Mahindra in respect of Show Room No.4 dated 15/12/2007
- [v] The letter of Fab India Overseas Pvt. Ltd. stating that they had taken the said Show room No.3 for a period of 3 days between 3/10/2008 to 5/10/2008
- [vi] The electric bills dating back to the year 2007
- [vii] Tax receipts issued by the Pune Municipal Council
- [viii] Receipts of payments of maintenance charges to the society
- [ix] Advertisement issued in the Times of India for letting out the said two Show Rooms dated 9/7/2007 and 21/7/2007
- [x] Pass Book of the Society of Union Bank of India showing the amount credited to the account of the Society paid by the Plaintiff.

On the other hand the Defendant No.1 has relied upon only two documents i.e. the Agreement dated 24/03/2006 and the Power of Attorney dated 27/03/2006.

12 In so far as the Plaintiff is concerned, he has stepped into the witness box and has adduced the evidence on the lines of his pleadings in the plaint. The Plaintiff has also examined the witness from Fab India Overseas Pvt. Ltd on the factum of the Fab India Overseas Pvt. Ltd. taking the suit premises i.e. the Show Room No.3 on rent from 3/10/2008 to 5/10/2008. The evidence of the said witness on the said aspect cannot be said to have been discredited in any manner. The Plaintiff has also examined the office bearer viz. the Chairman of the Akshay Complex Owners Association Shalini Pravin Bora in support of the fact that the Plaintiff has been paying the maintenance charges in respect of the suit premises. The said evidence also cannot be said to have been impinged in any manner.

13 The Defendant No.1 sought to pick holes in the said evidence of the Plaintiff by contending that in view of what has been mentioned in the address column of the document of firm quotation of the Electricity Board, the theory propounded by the Plaintiff that he is in possession could not be accepted as in the address column the address is not of Show Room No.3. However, there is no substance in the said case of the Defendant No.1 as the

witness of the Electricity Board has deposed that the documents he has produced were relating to Show Room No.3. As indicated above, the evidence of the witness of Fab India Overseas Pvt. Ltd was also sought to be impinged on the ground that though the witness summons was not honoured, the witness of Fab India Overseas Pvt. Ltd thereafter appeared and has deposed in favour of the Plaintiff which shows that the Plaintiff has some nexus with Fab India Overseas Pvt. Ltd. However, except stating so, no material in that regard either oral or documentary is placed on record. In my view, though the Defendant No.1 has tried his utmost to discredit the said evidence, the defects, if any, do not in any way further the case of the Defendant No.1 that he was in possession and the Plaintiff was not.

14 In juxtaposition there are too many loose ends in the evidence of the Defendant No.1 which are required to be considered. It is required to be noted that it is the case of the Defendant No.1 that the Agreement was executed on 24/03/2006 in his favour by the Defendant No.2. It is pertinent to note that in the receipt dated 25/03/2006 by which he has paid a further amount towards the alleged consideration it has been mentioned at the foot of the said receipt that after the receipt of the entire amount of price that the agreement would be executed. The said statement in the receipt therefore dents the case of the Defendant No.1 in so far as the Agreement being executed on 24/3/2006 is concerned. It is required to be noted that the Plaintiff had

obtained a certified copy of the Power of Attorney dated 27/03/2006 executed by the Defendant No.2 in favour of the Defendant No.1. In the said certified copy the date of the agreement in clause 4 on the second page is kept blank, and in the margin by the side initials are appearing meaning thereby that the date was to be filled in latter as per requirement. The Defendant No.1 was pointedly asked the question in his cross-examination as to whether the date of the agreement in the certified copy of the Power of Attorney was blank. He has accepted the position that the place for writing the date was blank. The said fact therefore leads to a conclusion that the date was written latter on. The said fact therefore is one more circumstance which creates a serious doubt as regards the credibility of the said two documents namely the Agreement and the Power of Attorney on the basis of which the Defendant No.1 lays a claim that he was in possession. It is also required to be noted that though the Defendant No.1 questioned the authenticity of the documents of the Plaintiff i.e. the Development Agreement and the Possession receipt on the ground that they are false and fabricated, no such averment was appearing in the written statement when filed. It is also required to be noted that the Defendant No.1 is admittedly a person involved in the construction business. He has stated in his evidence that he has checked the title documents which includes the document of the Plaintiff acquiring 25% undivided share in the plot of land which was undertaken for development by the Defendant Nos.2 to 4. In spite of the said fact being known to the Defendant No.1, the consent of the Plaintiff was not

obtained to the execution of the agreement in favour of the Defendant No.1. The most glaring aspect is that though an omnibus Power of Attorney was purportedly executed in favour of one Balasaheb Laxman Kshirsagar who is the nominee of the Defendant No.1, the said Power of Attorney was not acted upon till the year 2008 in the matter of getting the agreement registered and significantly the Agreement was submitted for adjudication to the Superintendent of Stamps immediately on the same day of the dis-possession of the Plaintiff i.e. on 16/10/2008. Another significant aspect is that the entire consideration amount of Rs.78 lakhs is purportedly paid by cash and it is the case of the Defendant No.1, as stated in the written statement, that back dated receipts were issued to the Plaintiff.

15 Apart from the aforesaid fact the oral evidence of the Defendant No.1 makes an interesting reading. He has admitted in his evidence that he is in construction business and is also aware as to which document is required to be seen before purchasing an immovable property. He has deposed that he has seen the Development Agreement entered into with the Plaintiff, the sanctioned plan etc. as also the title deed of the property at Aundh. He deposed that he also knows the procedure for obtaining the electric connection. Most significantly he has stated in his deposition that the Defendant No.2 Developer has executed a Power of Attorney dated 27/3/2006 which was handed over to him in the year 2008. At the cost of repetition, it is

required to be noted that though the Power of Attorney is dated 27/03/2006, he has also admitted that he has written the date of the Agreement i.e. 24/3/2006 by hand in clause 4 on the second page of the Power of Attorney. He has stated that till date i.e. till the date of his deposition, the Defendant No.1 had not registered the agreement. He has also admitted that the Plaintiff is not the consenting party to the agreement. He accepts that though in his affidavit of evidence he has stated that the Defendant Nos. 2 to 4 have failed and neglected to comply with the remaining terms and conditions of the Agreement, but he has not mentioned which are those specific terms and conditions. The evidence of the Defendant No.1, the gist of which has been referred to herein above, can hardly inspire confidence, in so far as his case of being put in possession is concerned.

16 In so far as the documents i.e. the Agreement dated 24/03/2006 and the Power of Attorney dated 27/03/2006 are concerned, in the context of the case of the Defendant No.2 that the said documents were executed as and by way of security and having regard to the attendant circumstances which have come on record, the said documents as already observed hereinabove are not free from doubt, and prima facie the case of the Defendant No.2 that they have been executed as and by way of security seems to be probable.

17 Now coming to the judgments of the Apex Court which have been cited by the learned counsel appearing for the Petitioner/Defendant No.1 Shri

Godbole. In so far as the judgment in *Ramchandra Sakharam Mahajan's* case is concerned, the Apex Court in the said case was concerned with a suit for recovery of possession based on title. It is in the said context the Apex Court observed that in the suit for recovery of possession on strength of title, the burden is on the Plaintiff to establish his title and the weakness of defence or failure of defendants to establish rival title set up by them would not enable the Plaintiff to a decree. Paragraph No.13 of the said report is material and is reproduced herein under for the sake of ready reference :-

“The suit is for recovery of possession on the strength of title. Obviously, the burden is on the plaintiff to establish that title. No doubt in appreciating the case of title set up by the plaintiff, the court is also entitled to consider the rival title set up by the defendants. But the weakness of the defence or the failure of the defendants to establish the title set up by them would not enable the plaintiff to a decree. There cannot be any demur to these propositions.”

18 In so far as the judgment in Mohd. Mehtab Khan's case is concerned, the Apex Court has held that a proceeding under Section 6 of the Specific Relief Act being a summary proceeding, the only issue which requires to be decided is as to whether the Plaintiff was in possession at any time six months prior to the date of filing of the suit.

19 In so far as the instant suit is concerned, in my view, the Plaintiff by leading cogent evidence and producing plethora of documents, which are referred to in Paragraph 11 hereinabove, can be said to have discharged the

burden. However, as indicated above, incidentally the case of the Defendant No.1 is also required to be tested and when so tested one can only say that the Defendant No.1 has miserably failed to prove that he was put in possession by the Defendant No.2 and that he continued to be in possession and that the theory propounded by the Plaintiff of being forcibly dis-possessed on 16/10/2008 cannot be accepted.

20 Having heard the learned counsel for the parties and having perused the impugned order passed by the Trial Court, it cannot be said that the impugned order suffers from any error of jurisdiction committed by the Trial Court or any other error for this Court to exercise its revisionary jurisdiction. The above Civil Revision Application is accordingly dismissed.

21 At this stage the learned counsel appearing for the Applicant prays for stay of the instant order so as to enable the Applicant to approach the Apex Court. The learned counsel appearing for the Respondent No.1 opposes the same. In my view, it would be appropriate to stay the instant order for a period of six weeks from date so as to enable the Applicant to approach the Apex Court. The same would be on the condition that status-quo would be maintained and the Applicant would not deal with the suit premises in any manner whatsoever.

[R.M.SAVANT, J]