

3. In support of this Application, Mr.Dube strenuously contended that obstructionist is in possession of room No. 7-A/B at Kalyani Nivas 1st floor, Vakola Masjid, Valoka Village Road, Santacruz (E), Mumbai 400 055. The obstructionist is paying maintenance charges to the Association. On 21/03/2014, the Secretary had issued receipt in favour of Latha A. Subramaniam, the applicant No.2 herein for the month of February 2014 by cheque dated 20/03/2014. He submitted that applicant wants to examine the Secretary of the Association to prove the contents of the said receipt. The said receipt is a private document. In order to establish the case of the obstructionist that she has independent right, title and interest in the suit property, it is absolutely necessary to examine the Secretary of the Association. The learned trial Judge, however, rejected the Motion on the grounds set out in paragraph 5 of the impugned order. He submitted that no prejudice will be caused to the first respondent-Decree Holder if the Motion is allowed.

4. On the other hand Mr. Shinde supported the impugned order. He has taken me through the certificate dated 09/05/2012 issued by the Association as also leave and licence agreement dated 27/01/1997 and the cross examination of the obstructionist. He submitted that the learned trial Judge gave opportunity to the applicant to lead her evidence. She, however, did not avail the opportunity and therefore, she is precluded from making grievance

about the impugned order.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the impugned order shows that obstructionist was allowed to adduce evidence by the Court. On 11/06/2014, applicant's evidence was recorded. The cross examination was completed in June 2014 itself. In September 2014, obstructionist submitted that she wants to adduce further evidence. On the same day, she was instructed that if evidence is not adduced by the next date, the matter will proceed further from that stage. The matter was adjourned on 06/11/2014. The obstructionist did not adduce evidence. She was not even present on that day. On 01/12/2014, Suit was adjourned to January 2015. On 05/01/2015, obstructionist filed application for issuing witness summons which was rejected and she was not allowed to cross examine Secretary of the Association.

6. The obstructionist thereafter took out present Notice of Motion and filed affidavit in support thereof. In paragraph 4 of the affidavit in support, it is averred as under :

“4. I say that in fact I have not filed any pursis for closing my evidence and I want to examine the Secretary of the building who is very material witness and if I am not allowed to examine him as my witness in that event I would suffer great loss and injury.”

7. Perusal of paragraph 4 shows that obstructionist wants to examine Secretary of the Association as according to her he is a very material witness. However, no particulars are given in this paragraph as to how he is a very material witness. It is to be noted here that respondent No.1 is a Decree Holder and when he was to execute the decree, the execution of the decree was obstructed. It is settled position that the obstructionist has to establish her independent right, title and interest in the subject matter of the proceedings. It is nowhere brought on record as to how by examining the Secretary of the Association, the obstructionist will establish her independent right, title and interest. As noted earlier, obstructionist has examined herself in June 2014 and her cross examination was over in June 2014. She was given opportunity to examine her witness with specific understanding if she does not adduce evidence on the next date, the Court will proceed from that stage onwards. Despite giving opportunity, obstructionist did not avail that opportunity. In view of the conduct of the obstructionist, I do not find that the learned trial Judge committed any error in passing the impugned order. Mr.Dube submitted that no prejudice will be caused to respondent No.1 if she is allowed to adduce further evidence and that serious injustice will be caused to her if she is not allowed to adduce further evidence. The learned trial Judge considered this aspect in the impugned order and did not accept the

submission.

8. In view of above discussion, no case is made out for invocation of powers under Section 115 of the C.P.C. Application fails and the same is dismissed, more so when the matter was at the stage of final arguments.

(R. G. KETKAR, J.)