

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 226 OF 2016

1. Mohanrao Mallaiah Dussa and ..Applicants
Anr.

Vs

1. Sunanda wd/o Ramakant
Desai, since deceased, ... and .. Respondents
Ors.

Mr. G.S.Godbole Senior Advocate, i/b Jaydeep J.Thakkar, Advocate
for Applicants.

Mr. P.K. Dhakephalkar, Senior Advocate, i/b Mr. Ajit Kocharekar,
Advocate for Respondents No.2, 5 and 6.

CORAM : R.G.KETKAR,J.

DATE : 22/08/2016

PC:

1. Heard Mr. G.S.Godbole, learned senior counsel for the applicants and Mr. P.K.Dhakephalkar, learned senior counsel for respondents no. 2, 5 and 6 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, (for short, 'C.P.C.'), Applicants, hereinafter referred to as 'obstructionists', have challenged the following Orders:

(a) Impugned Judgment and order dated 13.1.2016 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Execution Appeal No.215 of 2008 in Obst.

Notice No.69 of 2005 in Misc.Notice No.416 of 2005 in Appeal No.211 of 2004 in R.A.E.&R. Suit No.539/1003 of 1999, thereby, dismissing the said Appeal, Exhibit-A;

(b) Impugned Judgment and order dated 14.1.2008 passed in Obst. Notice No. 69 of 2005 in Misc.Notice No.416 of 2005 in Appeal No.211 of 2004 in R.A.E.&R. Suit No.539/1003 of 1999, thereby, rejecting the obstructions raised by Shri Mohanrao Dussa, Decree passed in R.A.E.&R.Suit No.539/1003 of 1999 against the defendant Shri Ghesubhai Jain on various grounds under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act');

(c) Judgment and order dated 13.1.2016 passed in Exhibit-37 in Execution Appeal No.215 of 2008, thereby, dismissing the application for production of additional documents/evidence in Appeal;

(d) Judgment and Order dated 13.1.2016 passed in Exh.43 in Exec. Appeal No.215 of 2008, thereby, dismissing the application for production of additional documents;

(e) Judgment and order dated 13.1.2016 passed in Ex.46 in Exec. Appeal No.215 of 2008, thereby, dismissing the application for production of additional documents.

3. By order dated 14.1.2008, the learned trial Judge rejected the obstruction raised by the obstructionists and directed them to hand over possession of Flat No. F-1, Ground floor, Dulba Prasad Building, Naigaum Co-operative Housing Society, S.M.Jadhav Marg, Mumbai 400014 (for short, 'suit premises') to the plaintiffs within two months from the date of the order. They were also directed to pay Rs.5000/- per month as compensation for unlawful use of the suit premises from the date of the filing of the obstructionist notice, i.e. from 21.7.2005 till the date of handing over possession of the suit premises. Aggrieved by this decision, the obstructionists preferred Appeal before the Appellate Bench of the Small Causes Court at Mumbai.

4. During pendency of the Appeal, the obstructionists took out Applications at Exhibits 37, 43, 46 under Order 41, Rule 27 of C.P.C for production of additional documents/evidence in Appeal. By orders dated 13.1.2016 below Exhibits 37, 43, 46, the Appellate Court dismissed the Applications mainly on the ground that the documents/evidence sought to be produced are not material to decide the point in issue as to whether the obstructionists have any independent right, title and interest in the suit premises.

5. By order dated 13.1.2016, the Appellate Court dismissed the Appeal and gave 90 days time to the obstructionists to

deliver peaceful and vacant possession of the suit premises to the plaintiffs. They were also restrained from creating any third party interest or parting with possession of the suit premises in any manner. It is against these orders, the obstructionists have instituted the present Application under section 115 of C.P.C.

6. In support of this Application, Mr. Godbole has taken me through the orders dated 13.1.2016 passed by the Appellate Court below Exhibits 37,43,46. In particular, in Application Exhibit 37 the obstructionists wanted to produce:-

(i) certified copy of order dated 11.11.2010 passed by the Assistant Registrar, Co-operative Societies, F-South Ward, Mumbai;

(ii) True copy of letters dated 23.11.59, 13.6.60, 16.1.81, 3.6.61 by and between the Estate Agent and Manager of Mumbai Municipal Corporation and M/s. Karim Noorani & Co, Architects,

(iii) True copy of letters dated 2.2.54, 1.3.54, 30.7.64, 30.7.58, 1.3.54 and 14.4.51 by and between Mumbai Municipal Corporation and M/s.Patki and Dadarkar, Architects.

7. Mr. Godbole submitted that these documents would clearly indicate that the landlords were not authorised to let out the suit premises on tenancy basis. He submitted that the Appellate Court rejected the Applications by giving identical reasons in paragraph 7 in all the orders dated 13.1.2016. The applications

were rejected on the ground that these documents are not material for deciding the controversy between the parties and only question to be decided is whether the obstructionists have independent right, title and interest in the suit premises. He submitted that these documents go to the root of the matter and, therefore, the Appellate Court was not justified in rejecting the Applications. In particular, he submitted that Ramakant Desai was party to the proceedings under the Maharashtra Co-operative Societies Act, 1960. He intervened in the matter. Ramakant Desai is predecessor-in-title of the plaintiffs. Ramakant Desai was bound by the findings recorded by the authorities under the Maharashtra Cooperative Societies Act.

8. Mr. Godbole has taken me through the order dated 9.11.1987 passed by the Assistant Registrar of Co-operative Societies, F-South Ward, Bombay and, in particular, the following portion:

“The respondent society's argument that the appellants have sinister intention of grabbing the ownership of flats in their occupation has no basis. By purchasing the respondent society's shares or by contributing towards the recorded cost of construction of flats, the members do not get absolute ownership of any part of immovable property of a cooperative housing society. Even if ownership of buildings on society's plots vests in the members as claimed by them, it is impossible to get the ownership automatically transferred to the appellants after they become the members of the respondent society.”

9. Mr. Godbole submitted that that order was challenged by

way of Writ Petition in this Court. Learned Single Judge (Coram: S.P.Bharucha,J., as His Lordship then was) dismissed the petition by observing that the plots were not granted to create landlords of the promoters who would then treat with the occupants of the structures on the basis of the Rent Act. The fact that a tenant ownership society was registered does not alter this position which, as the orders say, must be rectified. The said order was confirmed by the Division Bench (Coram: Shah & Sambre, JJ.) on 7.7.1988. He submitted that, in fact ,the Division Bench of this Court had observed that the promoters filed application in form 'B" for registering the society as tenant co-ownership society and not as tenant co-ownership society for which form 'A' was required to be submitted to the authorities and on the basis of form 'B' the the society was registered as tenant ownership society. It was further observed that "it is patently clear that having obtained the plot on a very concessional or a nominal rate on a representation made by the promoters, they submitted an application on a wrong form so as to get the society registered as tenant ownership society. This cannot, but be said to be a fraud on the part of the then promoters of the society. They could never have made such an application having obtained the plots for specific purpose. Assuming that inadvertently a wrong form was used and the authority gave a wrong certificate, that cannot

alter the basic structure of the society. They society has to be treated as a tenant co-ownership society.”

10. Mr. Godbole has also taken me through the impugned orders. In nutshell, he submitted that the plaintiffs cannot claim to be owners/landlords of the building. There is no relationship of landlord and tenant between the plaintiffs and Ghesubhai Jain, the predecessor-in-title of the obstructionists. The decree passed by the Small Causes Court is a nullity . The challenge to the nullity can be raised at any stage and even in collateral proceedings. He submitted that the findings recorded by the Assistant Registrar, Co-operative Societies merged in the order passed by the learned Single Judge and the Division Bench of this Court. Those findings will operate res judicata in the subsequent proceedings instituted by the plaintiffs against the predecessor-in-title of the obstructionists. In support of this submission, he relied upon the following decisions:-

1. Lal Chand Vs. Radha Krishan, (1977)2 SCC 88, and in particular Para.19.
2. M/s Anita Enterprises Vs. Belfer coop Housing Society Ltd,(2008) 1 SCC 285 and in particular, paras 34 and 35 thereof;
3. Chandrasekhar Narayan Tambe Vs. Dhondusa Sitaram Pawar, 2003 (1) ALL MR 446.

11. Mr. Godbole also invited my attention to the order dated 2.5.2011 passed by this Court (Coram: Dr. D.Y.Chandrachud, J.) (as His Lordship then was) in Notice of Motion No. of 2011 in Suit (Lodg.) No.1106 of 2011. That order was passed in a suit filed by Naigaon CHS Ltd. For all these reasons, he submitted that the Application requires consideration and the impugned orders deserve to be set aside.

12. On the other hand, Mr. Dhakephalakar supported the impugned orders. He submitted that similarly situated eight tenants have also raised identical contentions before this Court. He relied upon the decision dated 27.8.2002 and 3rd Sept.2002 passed by this Court (Coram: D.K.Deshmukh, J.) in Writ Petition No. 3669 of 2002, S.Y.Wagle Vs. Smt Sunanda Ramakant Desai and Ors., and other companion petitions and in particular paragraphs 4 and 5 thereof. He submitted that the said order was challenged before the Apex Court and S.L.P. was dismissed on 28.10.2002. The order passed by the learned single Judge of this Court was subsequently followed by this Court (Coram: S.V.Vazifdar, J.)(as his Lordship then was) in Civil Revision Application No.80 of 2007 Shri Sudam M. Patilhande Vs. Smt.Sunanda w/o Ramakant B.Desai and Ors.

13. Mr. Dhakephalkar further submitted that the plaintiffs had instituted R.A.E.& R.Suit No.539/1003 of 1999 against Ghesubhai

Jain under section 13(1)(e), 13(1)(g), 12(3) and 12(2) of the Act. In fact, the suit was instituted in the year 1992 and was numbered in 1999. The suit was decreed by the learned trial Judge on 16th & 17th September, 2003. Aggrieved by that decision, Ghesubhai Jain preferred Appeal before the Appellate Bench of the Small Causes Court. The Appeal was dismissed on 22.6.2005. The said decisions were not challenged and thus attained finality. He submitted that the obstructionists claim to have purchased interest of Ghesubhai Jain in the year 1993, that is to say, during the pendency of the suit. While decreeing the suit instituted by the plaintiffs, the Courts recorded a categorical finding about relationship of landlord and tenant between the plaintiffs herein and Ghesubhai Jain. Thus, status of Ghesubhai Jain as a tenant was concluded in these proceedings. Ghesubhai Jain, in turn, cannot convey better title in favour of the obstructionists. In short, he submitted that as the obstructionists are claiming through Ghesubhai Jain, they are bound by the decree passed by the Courts below. The obstructionists have no independent right, title and interest in the suit premises. For all these reasons, he submitted that the Application deserves to be rejected.

14. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused

the material on record. As noted earlier, the suit instituted by the plaintiffs against the tenant Ghesubhai Jain was decreed by the trial Court on 16th & 17th September 2003. The Appeal preferred by Ghesubhai Jain was dismissed on 22.6.2005. It is not in dispute that these decisions attained finality. In these decisions, it is categorically held that Ghesubhai Jain was tenant in the suit premises. Obstructionists are claiming on the basis of conveyance executed in the year 1993 in their favour by Ghesubhai Jain. Once it is held that Ghesubhai Jain was the tenant in the suit premises, he could not have conveyed better title in favour of the obstructionists. As these decisions passed by the Courts below were not challenged by Ghesubhai Jain, he is bound by the said decisions so also the obstructionists herein.

15. It has also come on record that similarly situated 8 tenants had instituted Writ Petition No.3669 of 2002 and other companion writ petitions. Those writ petitions were dismissed by this Court on 27th August and 3rd September 2002. In paragraphs 4 and 5 it was observed thus:

“4. The learned counsel appearing for petitioners took me through the observations of the authorities under the Cooperative Societies Act as also the observations in the Judgment of the learned Single Judge of this Court as also observations of the Division Bench of this Court in Letters Patent Appeal arising out of the proceedings initiated for grant of membership of the society in favour of the petitioners and submitted that the ownership of the plots as also the buildings always vest with the Cooperative society

and the plaintiffs had constructed the building for and on behalf of the society, therefore, it was always the society which was the owner of the building. In the alternative, it was submitted by referring to various observations made by the authorities under the Cooperative societies Act in orders passed in relation to change of classification of the society, that as a result of change of classification, the plaintiffs cannot claim to be the owner of the building.

5. So far as the first submission of the learned counsel is concerned, as the tenancy in favour of the petitioners was admittedly created by the plaintiffs after constructing the building in terms of provisions of section 116 of the Evidence Act, the petitioners are estopped from claiming that at the time when the tenancy was created, the plaintiffs were not owners of the building and therefore title does not vest in them. Section 116 of the Evidence Act reads as under :-

“116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

Thus, the tenants cannot say that when the building was constructed by the respondents, they were not the owners of the building and that the society was the owner of the building. So far as the second aspect of the argument is concerned that is considered by the Appeal Court and the Appeal Court has given cogent reasons for holding that by virtue of an order passed by under the Cooperative Societies Act in relation to change of classification of a Cooperative Society from one sub-class to another sub-class, title in immovable property does not get transferred. The learned counsel was not in a position to point out to me anything which would even remotely suggest that the reasons that have been given by the Appeal Court for holding that merely because of an order passed under the Cooperative societies Act effecting change in classification of the society, title of

the structure gets transferred to the society. It is thus clear that as the defendants were disputing the title of the plaintiffs, a decree on the ground of disclaimer was liable to be passed in favour of the plaintiffs. The decree has been passed in favour of the plaintiffs and against the tenants also on the ground that they are not willing to pay rent. Admittedly, the petitioners are not paying any rent to the plaintiffs for a longtime. They have not paid any rent even after receiving the demand notice, they have not deposited rent in court and therefore a decree on the ground that they are not ready and willing to pay the rent was liable to be passed against them which has been passed by the Appellate Court. In this view of the matter therefore, I find that there is no substance in these petitions. Petitions fail and are dismissed. Rule is discharged with no order as to costs."

Aggrieved by this order, S.L.P. was preferred before the Apex Court and the same was dismissed on 28.10.2002.

16. Apart from that, similarly situated eight tenants had instituted C.R.A. No.80 of 2007 in this Court and the same was disposed of by this Court (Coram: S.J.Vazifdar, J.) (as His Lordship then was) on 16.4.2008. The order passed in Writ Petition No.3669 of 2002 was also relied before the learned Single Judge.

In paragraphs 5, it was observed thus:

"5. Similar contentions have been raised in the present proceedings by the petitioner who is another tenant admittedly identically situated and whose stand and conduct has been identical to that of the tenants before the learned judge in the other matters. In the present case the petitioner after having accepted the relationship between herself and the respondents as that of one between a tenant and landlords and having paid rent from 1955 to 1989 i.e. for a period of 39 years sought to deny the relationship. On the basis of this contention the petitioner also admittedly stopped paying rent for a number of years leading to the

filing of the present proceedings. In this view of the matter it was not open to the lower courts to take a different view in the present matter. Nor is it open to me to take a different view in the present case as admittedly the facts in this regard and the findings are binding on me. This is more so in view of the fact that the order and judgment of the learned judge has been confirmed by the Supreme Court.”

17. While dismissing the Appeal on 13.1.2016, in paragraph 26

Appellate Bench has observed thus:

“26. It may be pointed out that, it is case of the Obstructionists that, they are the lawful and bonafide purchasers of the suit premises. According to them, the suit building/suit premises has not been constructed by the plaintiffs or their predecessor-in-title R.B.Desai, but by the Naigaum Co-op. Hsg Soc. Ltd. Defendant no.1 is not a purchaser of the suit premises. The Obstructionists are claiming the suit premises through society of which Obstructionist no.1 is a bonafide member. Thus, the Obstructionists claim independent title, interest and right in the suit premises from the society. However, it is an admitted fact that the Obstructionists have purchased the suit premises from defendant no.1 (Gesubhai Jain) by virtue of the Conveyance deed. Admittedly, defendant no.1 has been adjudged the tenant of the plaintiffs in the decree passed in RAE&R Suit No.539/1003 of 1999 right upto the Appellate Court. The decree has attained finality. It has been also established in the present suit upto the Appellate Court and eight suits filed by the plaintiffs against their different tenants of different tenements in the suit building right from the trial Court to the Hon'ble Apex Court, that the plaintiffs are owners and landlords of Dulaba Prasad Building. Admittedly, the said finding has been recorded within the limited jurisdiction of the Rent Court regarding the issue of title of the plaintiffs over suit building (Dulaba Prasad Building). It is also pertinent to note that the plaintiffs and Naigaum Co-op.Hsg Soc. Ltd in Writ Petition No.515 of 1993 by consent order have kept the issue of ownership of the suit building open. Therefore, in the aforesaid circumstances, it is for Naigaum Co-op.Hsg. Soc. Ltd or the Obstructionists to get it decided from the competent Civil Court or forum that the society has

constructed the said building. Till today, no decree or order of any such court has been produced on record by the obstructionists showing that the society is the owner of Dulaba Prasad Building. Therefore, in our view, in absence of such an order or decree from the competent Civil Court or Forum showing that the suit building has been constructed and owned by Naigaum Coop Hsg Soc. Ltd the case of the obstructionists cannot be accepted that the society is the owner of Dulaba Prasad Building and therefore the Obstructionists are the bonafide purchasers of the suit premises. Since the obstructionists have purchased the suit premises from defendant no.1 Gesubhai Jain who has been adjudged to be tenant by the competent rent Court, he could not transfer better title to the obstructionists which did not have."

18. Perusal of paragraph 5 of the order dated 27th August and 3rd September, 2002, extracted herein above, shows that the contention that the tenants cannot say that when the building was constructed by the respondents (plaintiffs herein), they were not the owners of the building and that the society was the owner of the building, was considered by the Appellate Court and it was held that by virtue of an order passed under the Cooperative Societies Act in relation to change of classification of a cooperative society from one sub-class to another sub-class, title in immovable property does not get transferred. In the present case also, it cannot be said that the tenancy rights of Ghesubhai Jain were transformed into ownership rights.

19. It has come on record that the obstructionists did not enter into witness box. On their behalf, they examined four witnesses,

namely, O.W.1 Shri Shivanand Damodar Shanbhag, Power of Attorney holder of the obstructionists, O.W.2 Arkal Vaman Shenoy, Chairman of Naigaum Co-op. Hsg.Soc Ltd, O.W. 3 Shri Anilkumar Mathur, Handwriting Expert and O.W.4 Sanjay Dagdu Lokhande only to produce certain documents. On behalf of the plaintiffs, P.W.1 Gajanan Ramakant Desai (Plaintiff no.2) was examined. The Courts below considered the evidence adduced by the parties. In particular, in paragraph 22 the Appellate court referred to decisions in (1) Janki Vashudeo Bhojwani Vs. Indus-Ind Bank, AIR 2005 SC 439, (2) Man Kaur Vs. Hartar Singh (2010) 10 S.C.C. 512 and held that the evidence adduced by O.W.1 was a hearsay evidence and cannot be safely relied upon. The obstructionists cannot delegate their power to O.W. 1 to depose on their behalf.

20. In paragraph 23, the Appellate Court noted that O.W. 2 has deposed in the suit on behalf of defendant no.1 being his witness and supported his case. The Appellate Court further observed that his evidence has no much value and the learned trial Judge has rightly not given weightage to his evidence. As he was examined by defendant no.1 being his witness in the suit, he supported the obstructionists.

21. In paragraph 24, the Appellate court observed that the evidence of O.W. 3 Anilkumar Mathur is liable to be ignored

because there is no issue with regard to declaration that the document is forged or not. His evidence is beyond the scope of the obstructionists' proceedings and as such is liable to be discarded.

22. Mr. Godbole relied upon the decisions referred in paragraph 10. In the case of Lalchand (supra), respondent-Radha Krishan had instituted suit for recovery of possession of 5 rooms on the ground floor and 2 rooms on the second floor let out to Lachand. He had instituted suit for evicting (1) Lalchand, (2) Kesho Ram, (3) Jhangi Ram (4) Nandlal and (5) Smt. Kakibai on the grounds that he required the premises for his own use and occupation among other grounds. The learned trial Judge decreed the suit only on the ground of requirement and turned down other grounds. The Appellate Court confirmed the decree. The High Court upheld these orders. As the suit property was situated in a slum area, the respondent filed an application under section 19(2) of the Slum Areas (Improvement and Clearance) Act, 1956 for permission of the Competent Authority to execute the decree. After taking into account factors mentioned in Section 19(4) of that Act, the Competent Authority passed an order permitting the respondent to execute decree in respect of two rooms situate on the second floor only. The respondent was expressly refused permission to execute the decree in regard to the premises

situate on the ground floor. The respondent filed Appeal before the Chief Commissioner of Delhi who confirmed the order of the Competent Authority. Pursuant to his order, the defendants handed over possession of the two rooms on the second floor to the respondent.

23. Respondent, thereafter instituted fresh suit against (1) Lalchand (2) Kesho Ram (3) Jhangi Ram for possession of the remaining rooms on the ground floor. The trial Court decreed the suit. Against this order, Lalchand, Kesho Ram and Jhangi Ram filed Appeal. During the pendency of that Appeal, Lalchand died whereupon, his widow Bhiranwan Bai and his son Khemchand applied for being brought on record of the appeal as his legal representatives. Application was rejected on the ground that by reason of ejectment decree, Lalchand had ceased to be a tenant and upon his death during pendency of the appeal, the right to sue did not survive on the heirs. The Appellate Court also dismissed the appeal. Legal representatives of Lalchand, Kesho Ram and Jhangi Ram instituted Second Appeal in the High Court which was dismissed. In so far as the present controversy is concerned, the Apex Court referred to the decision of the authorities under Slum Clearance Act and held that the Competent Authority had given permission to execute the decree in respect of only of the two rooms on the second floor and

specifically refused permission in respect of the premises situate on the ground floor. In paragraph 19, the Apex Court held that the suit is barred by the principles of res judicata. The fact that Section 11 of C.P.C. cannot apply on its terms, the earlier proceeding before the Competent Authority not being a suit, was no answer to the extension of principle underlying that section to the instant case. Section 11, it is long since settled, is not exhaustive and the principle which motivates that section can be extended to cases which do not fall strictly within the letter of the law. The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded on equity, justice and good conscience which require that a party who has once succeed on an issue, should not be permitted to be harassed by a multiplicity of proceedings involving determination of the said issue. In my opinion, this decision does not assist obstructionists and rather helps the plaintiffs.

24. As far as the decision in the case of Anita Enterprises (supra) is concerned, the respondent - Belfer Cooperative Housing Society Limited Bandra(W), Mumbai was a tenant co-partnership Housing society. It held both lands and flats constructed thereon. Respondent no.2 before the Apex Court was admitted as member of the society in 1962. Flat no.4 on the

ground floor was allotted to him. On 3.6.1982, he inducted appellant no.1- M/s Anita Enterprises in room no.2. On 3.10.1983, the appellant no.1 was also inducted in room no.3. Respondent no.2 thereafter inducted M/s Anita Medical System Pvt Ltd -appellant no.2 in room no.1. The appellants instituted two separate suits before the Small Causes Court for declaration that they were tenants with regard to the aforesaid premises and for injunction restraining respondent no.2 from interfering in any manner with their possession over the premises in question. The Society was, however, not made a party. The trial Court dismissed both these suits. The Appeals were allowed and it was held that the appellants were inducted as tenants in the premises in their occupation.

25. In the meantime, the society had instituted Dispute before the Cooperative Court under section 91 of the Maharashtra Cooperative Societies Act, 1960, inter alia, for evicting the appellants and for direction against respondent no.2 to occupy the premises. The Cooperative Court made award in favour of the society. In Appeal, the said order was upheld. In High Court three petitions were filed; one by the appellants, arising from the orders passed under the Cooperative Societies Act and other two petitions by respondent no.2 against the order passed by the Appellate Bench of the Small Causes Court decreeing the suits

filed by the appellants. A learned Single Judge of the High Court, by a common judgment, dismissed the writ petition filed by the appellants, thereby, upholding the orders passed under the Cooperative Societies Act. Writ Petitions filed by respondent no.2 were allowed and the order passed by the Appellate Bench of the Small Causes Court was set aside and that of the trial Court was restored whereby declaratory suits were dismissed.

26. After considering the provisions of Cooperative Societies Act and the Rules made thereunder as also the Rent Act in paragraph 37, the Apex Court held that in case of tenant co-partnership housing society, the ownership of the land and building both remains with the society and member cannot be said to be co-owner, but in the case of tenant ownership housing society, the ownership of the land remains with the society, but ownership of buildings/flats vests in the members. So far as tenant within the meaning of section 5(11) of the Rent Act, he has a mere right to occupy. He is entitled to the protection of the statute so long as grounds for eviction are not made out and he can be evicted only by instituting a suit in a court enumerated under section 28 of the Rent Act.

27. Ultimately in paragraph 41, the Apex Court held that the status of a member in the case of tenant co-partnership housing society cannot be said to be that of a tenant within the meaning

of section 5(11) of the Rent Act. As such there was no relationship of landlord and tenant between the society and the member. In paragraph 48, the Apex Court held that the relationship of landlord and tenant between the appellants and respondent no.2-member was not duly created, and as such they were not entitled to claim protection under the Rent Act and the bar created under section 28 would not operate. In paragraph 50, the Apex Court held that the High Court was justified in setting aside the decrees passed by the Appellate Bench of the Small Causes Court and restoring those of the trial Court whereby suits for declaration were dismissed after recording a finding that there was no relationship of landlord and tenant between respondent no.2 - member and the appellants. In my opinion, this decision also does not advance the case of the obstructionists as basically they are claiming through the erstwhile tenant against whom eviction decree had attained finality.

28. In the case of Dhondusa Sitaram Pawar, the question that fell for consideration was whether in view of Section 5(3) of the Bombay Rent Act, the respondent was landlord or not. On facts, this Court found that the respondent was neither owner nor landlord within meaning of Section 5(3). In my opinion, the said decision does not advance the case of the obstructionists. In

view thereof, reliance placed by Mr. Godbole on the decisions referred herein above does not advance the case of the obstructionists, more so when they have obtained conveyance from Ghesubhai Jain during pendency of the suit. The applicants/obstructionists were not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of material on record, no reasonable person would have come to the conclusions arrived at by the Courts below. In the light of the aforesaid discussion, I do not find that the applicants have made out any case for invocation of powers under section 115 of C.P.C. In the result, Application fails and the same is dismissed.

29. At this stage, Mr. Godbole orally applies for stay of this order for a period of 12 weeks from today. He states that the applicants/obstructionists are in possession of the suit premises and nobody else is in possession. The applicants have neither created third party interest nor parted with possession and they will hereafter neither create third party interest nor part with possession. Mr. Godbole assures that within two weeks from today, the applicants and all adult family members and power of attorney holder of the obstructionists using/residing in the suit premises will file usual undertaking in this Court, after giving

advance copy to other side, incorporating therein:

- (i) that they are in possession of the suit premises and nobody else is in possession;
- (ii) that they have neither created any third party interest nor parted with possession;
- (iii) that they will hereafter neither create third party interests nor part with possession;
- (iv) that the obstructionists will pay arrears of compensation/rent at the rate of 15,000/- per month till date to the plaintiffs within two weeks from today and shall go on paying rent at the rate of Rs.15000/- per month for a period of 12 weeks from today on or before 10th day of next succeeding month/s.
- (v) that they will not apply for further extension of time;
- (vi) that in case they are unable to obtain suitable orders from higher Court within 12 weeks from today, they will vacate and hand over vacant and peaceful possession of the suit premises to the respondents-plaintiffs.

30. In view thereof, notwithstanding dismissal of Civil Revision Application, this order shall remain stayed for a period of twelve weeks from today subject to the applicants and all adult family members and power of attorney holder of the obstructionists using/residing in the suit premises filing undertaking in the

aforesaid terms within two weeks from today and serving copy in advance to other side. It is made clear that if the undertaking in the aforesaid terms is not filed and arrears upto and inclusive of 12 weeks from today are not paid within two weeks from today, the interim order shall stand vacated. It is further made clear that in case the obstructionists do not pay compensation/rent at the rate of Rs.15000/- per month for a period of 12 weeks from today, interim order shall stand vacated without further reference to the Court.

31. List the Application for reporting compliance after three weeks.

(R.G.KETKAR, J.)