

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

CIVIL REVISION APPLICATION NO. 500 OF 2016

Mr. Irfan Ahmed Ansari s/o
Habibullah

..Applicant

Vs

1.The Hume Memorial
Congregational Church and Ors.

.. Respondents

Mr. Jayesh Bhatt, Advocate for Applicant.
Mr. E.K.Sasidharan, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 25/08/2016

PC:

1. Heard Mr. Jayesh Bhatt, learned counsel for the applicant and Mr.E.K.Sasidharan, learned counsel for respondent no.1 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the Judgment and decree dated 24.6.2016 passed by the learned Judge, presiding over Court Room no. 15 of the Court of Small Causes at Mumbai below Exhibit-16 in Execution Application No.495 of 2015 in R.A.D. Suit No.291 of 1999 as also the Judgment and decree dated 30.7.2016 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Misc. Appeal No.331 of 2016. By these orders, the Courts below dismissed the application filed by the applicant, inter-alia, praying for

declaration that the decree passed in R.A.D. Suit No. 291 of 1999 is null and void and is not binding on him and for staying the said decree perpetually.

3. Respondent no.1, hereinafter referred to as 'decree holder', had instituted suit for declaration of its tenancy rights against (1) Khatijabai Salebhai Khalil Trust, (2) Mrs G.T.Fatehi, (3) Mr T.T.Fatehi, (4) Mr. Aziz Honda, (5) Mrs Jyotsna Chandrakant Bhalerao and (6) Mrs Vijayamala Dinkar Patole. During pendency of the suit, decree holder took out application for injunction restraining the defendants from disturbing its possession over the suit premises. The learned trial Judge allowed the application. During pendency of the suit, it was brought to the notice of the trial Court that defendant no. 4 had created tenancy rights in favour of the applicant herein. In paragraph 37, while decreeing the suit, the learned trial Judge observed that defendant no.4- Aziz Honda did not prove that Ms Diana Tauro had surrendered the suit premises to him. The learned trial Judge, therefore, held that the alleged induction of the applicant herein is not legal and did not confer any legal right upon him. Eventually, the learned trial Judge decreed the suit on 29.3.2005.

The operative order of the trial Court order reads thus:-

1. The suit is hereby decreed.
2. It is hereby declared that the plaintiffs are the tenants

of the defendant no.4- Mr Aziz Honda in respect of the Flat no.11, situated on 2nd floor, Honda House, Byculla, Bombay 400 008.

3. The defendant no.4 is hereby directed to restore the possession of the suit premises to the plaintiff on or before 30.6.2005.

4. Defendant no.4 to pay the costs of the suit to the plaintiff.

5. Decree be drawn up accordingly.”

4. Aggrieved by this decision, defendant no. 4- Aziz Honda preferred Appeal. The Appellate Court dismissed the appeal and directed the defendants as also the applicant herein to deliver vacant possession of the suit premises to the decree holder within three months. Aggrieved by this decision, defendant no.4 instituted Civil Revision Application No. 470 of 2013 before this Court. Contention was advanced before this Court to the effect that direction to hand over possession cannot be issued against defendant no. 4 as also third party (applicant herein). The said contention was repelled by relying upon the decision of this Court in Keshrimal Jivji Shah Vs. Bank of Maharashtra , 2004 (3) Mh.L.J. 894, wherein it was held that the transfer made in contravention of interim order was not legal and valid and the said transfer will not create any right, title and interest in favour of the transferee. Aggrieved by this decision, Civil Revision Application was dismissed on 21.10.2013. Against these

decisions, S.L.P was preferred before the Apex Court by defendant no.4 – Aziz Honda. By order dated 14.10.2014, the S.L.P. was dismissed reserving liberty to defendant no.4 to initiate proceedings in regard to his ownership, if he is so desirous.

5. In March 2015, decree holder filed Execution Application No. 495 of 20 of 2015 for execution of decree passed in declaratory suit by issuing warrant of possession against defendant no.4 by executing the warrant of possession and handing over vacant possession of the suit premises to the decree holder. On 20.10.2015 the Court ordered issue of show cause notice to defendant no.4 and his tenant (applicant herein) as per Order 21, Rule 22 of C.P.C. On 3.2.2016, the applicant filed application Exhibit-16 inter alia praying for declaration that the decree passed in R.A.D suit is null and void and is not binding on him and for staying the said decree perpetually. By the impugned orders, the Courts below had rejected that application. It is against these decisions, the applicant has instituted the present Civil Revision Application.

6. In support of this C.R.A, Mr. Bhatt strenuously contended that the decree passed in R.A.D. suit is null and void and the same is not binding on the applicant. The applicant was admittedly not made a party in that suit. He submitted that on 19.9.2002 defendant no.4 has executed tenancy agreement in

favour of the applicant and since then the applicant is in possession of the suit premises. The tenancy agreement is a registered instrument. He submitted that he is a bonafide transferee and is not bound by the declaration given in R.A.D. suit. He submitted that the decree holder, in fact, was not in possession and had misled the Courts in obtaining interim order. He has taken me through the trial Court's order in R.A.D. suit and in particular issue no.6 and the finding recorded against issue no.6. While answering issue no.6 viz. whether the plaintiffs (decree holder herein) are entitled to get injunction as sought for? The learned trial Judge answered that issue in the negative. In paragraph 45, the learned trial Judge while answering issue no.6 held that the plaintiff is not entitled to get injunction restraining the defendants from obstructing their possession of the suit premises.

7. He also invited my attention to the prayers made by the decree holder in R.A.D suit. Decree holder, inter alia, prayed for (a) declaration that they are the lawful tenants in respect of the suit premises, viz. flat no.11, second floor, Khalil Mansion, Plot No.6, Spence Road, Byculla, Mumbai 400 008; (b) in the alternative to prayer clause (b) for declaration that they are lawful sub-tenants and/or protected licensees and, therefore, deemed tenants in respect of the suit premises; (c) for injunction

restraining defendants no.1 to 4 from dispossessing the plaintiffs from the suit premises and/or in any manner interfering with the plaintiffs' exclusive possession, use and enjoyment thereof, otherwise than by due process of law.

8. During pendency of the suit, the plaintiffs (decree holder) prayed for injunction restraining the defendants from dispossessing the plaintiffs from the suit premises. In short, he submitted that as the plaintiffs were not in possession of the suit premises, they should have prayed for restoration of possession of the suit premises. In the absence of prayer to that effect, the learned trial Judge was not justified in directing defendant no.4 to restore possession of the suit premises to the plaintiffs.

9. Mr. Bhatt further submitted that in paragraph 2 of the R.A.D suit, decree holder contended that defendant no.1 are the owners and landlords of the building Khalil Mansion. Defendant no.4 has nothing to do with the suit premises but he claims to have purchased or is negotiating to purchase Khalil Mansion from defendant no. 1. Plaintiff is not aware of the truth of the said contention of defendant no.4. In short, he submitted that the decree holder did not admit the claim of defendant no.4 that he is owner/landlord of Khalil Mansion.

10. Mr. Bhatt invited my attention to the Appellate Court's order. While dismissing the Appeal preferred by defendant no.4,

the Appellate Court directed the defendants and the applicant herein to deliver vacant possession of the suit premises to the plaintiff within three months. He submitted that the said direction is nullity as admittedly the applicant was not a party to the said proceedings. He also relied upon following decision to contend that unless specific prayer is made, the Court has no power to issue direction.

(i) Gulzarilal Chhotalal Khokhawala (Vaishya) Vs Ulfat Begum Mohamed Hanif, AIR 2000 Bombay 327.

11. Mr. Bhatt further submitted that the Courts below have not adjudicated the case of the applicant. In particular, the Appellate Court observed that it is not necessary to record evidence. In fact, the decree holders were not justified in filing proceedings under Order 21, Rule 22 and should have taken out obstructionist proceedings as contemplated by Order 21, Rule 97 of C.P. C. He also relied upon the decision of Anwarbi Vs. pramod D.A.Joshi (2000) 10 S.C.C 405 to contend that obstructionist in possession can only be dispossessed in accordance with law. Person in possession of immovable property claiming legal entitlement thereto and obstructing execution of decree for possession cannot be dispossessed till his rights are adjudicated in appropriate proceedings. For all these reasons, he submitted that the Application requires consideration.

12. On the other hand, Mr. Sasidharan supported the impugned orders. He submitted that admittedly the decree holder had instituted suit in the year 1999. Applicant claims tenancy rights on the basis of tenancy Agreement executed on 19.9.2002. This was during the pendency of the suit instituted by the decree holder. He has also taken me through the decision rendered in declaratory suit instituted by the decree holder and submitted that the applicant cannot go behind the decree. In fact, his rights were concluded in the declaratory proceedings. The Courts below are, therefore, justified in rejecting the application Exhibit-16. He, therefore, submitted that no case is made out for invocation of powers under section 115 of C.P.C.

13. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. It is not in dispute and is a matter of record that the decree holder had instituted suit in the year 1999. Applicant claims rights on the basis of tenancy Agreement dated 19.9.2002 which was entered into between defendant no.4 and the applicant during the pendency of the suit. As far as the trial court's judgment in declaratory suit is concerned, in paragraph 37 the learned trial Judge has referred to the contention advanced on behalf of defendant no.4 based upon tenancy agreement (Exh.14) that he has inducted applicant herein as

tenant in the suit premises and the suit is bad for nonjoinder of the applicant. The learned trial Judge repelled that contention by observing that on the date of filing of the suit the applicant herein was not in occupation and possession of the suit premises. Ms. Diano Tauro unlawfully without any right claimed to be tenant. Defendant no.4 did not prove that she had surrendered the suit premises to him. In these circumstances, the alleged induction of the applicant herein is not legal and did not confer any legal right upon him.

14. In paragraph 45, the learned trial Judge observed that evidence of defendant no.4 shows that vide Exhibit 12 dated 9.9.2002, Ms Diano Tauro surrendered possession of the suit premises to defendant no.4. His oral evidence and agreement of tenancy dated 19.9.2002 showed that he inducted the applicant in the suit premises. From his evidence, it was clear that the plaintiff is not in possession of the suit premises. The learned trial Judge, therefore, held that the plaintiff is not entitled to get injunction restraining the defendants from obstructing their possession over the suit premises and accordingly answered issue no.6 in negative. While decree the suit, the learned trial Judge directed defendant no.4 to restore possession of the suit premises to the plaintiff. Aggrieved by that decision, defendant no.4 preferred Appeal. The contention that the trial Court was not

justified in issuing direction to defendant no.4 to restore possession, was advanced before the Appellate Court. This aspect was considered by the Appellate Court in paragraph 35. It was observed that during the pendency of the suit, the plaintiff took out application for injunction. The defendants were restrained from dispossessing the plaintiff without due process of law. That order was operating during pendency of the suit. In spite of that, by committing breach of injunction order, possession of the suit premises was taken over by defendant no.4 during the pendency of the suit. In paragraph 36 the Appellate Court referred to Section 52 of the Transfer of Property Act, 1882. While dismissing the Appeal, the Appellate Court directed the defendants and the applicant herein to deliver possession of the suit premises. Operative part of order of the Appellate Court reads thus:

“Appeal is dismissed with costs.

Defendants and tenant of the defendant no.4 Ansari Irfan Ahmed Habibullah to deliver vacant possession of the suit premises to the plaintiff within three months from the date of this order”.

15. Aggrieved by this decision, defendant no.4 instituted Civil Revision Application No. 470 of 2013 in this Court. This aspect was considered in paragraph 11 and it was observed that the Appellate Court was justified in directing defendant no.4 to

restore possession of the suit premises to the plaintiff. In paragraph 12, the contention that after taking over possession of the suit premises, defendant no.4 had inducted 3rd party (applicant herein) and, therefore, direction cannot be issued to defendant no.4 to restore possession as also third party is not impleaded as a party defendant in the suit and, therefore, that direction cannot be issued was also agitated. The said decision was repelled relying upon the decision of Keshrimal Shah (supra) and it was held that the transfer made in contravention of the interim order is not legal and valid and such transfer cannot create any right, title and interest in respect of transferee. According Civil Revision Application was dismissed on 21.10.2013. S.L.P. preferred against that decision was also dismissed on 14.10.2014.

16. Section 52 of the Transfer of Property Act reads thus:

“52. Transfer of property pending suit relating thereto. – During the [pendency] in any Court having authority [within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by [the Central Government] [***] of [any] suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

[Explanation - For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

17. Mr.Bhatt submitted that unless specific prayer for restoration of possession is made, the Court has no power to issue such direction. He relied upon the decision in Gulzarilal Chootala Khokhawala (supra). Mr. Bhatt further submitted that the obstructionist in possession can only be dispossessed in accordance with law. Person in possession of immovable property claiming legal entitlement thereto and obstructing execution of decree for possession cannot be dispossessed till his rights are adjudicated in appropriate proceedings. He relied upon the decision of Anwarbi (supra).

18. As noted earlier, the learned trial Judge decreed the R.A.D.Suit No. 291 of 1999 and directed defendant no.4 to restore the possession of the suit premises to the plaintiff. While dismissing the Appeal preferred by defendant no.4, the Appellate Court directed defendant no.4 and his tenant (applicant herein) to deliver vacant possession of the suit premises to the plaintiffs. The said decision was challenged by defendant no.4 in this Court

by filing Civil Revision Application which was dismissed by this Court on 21.10.2013. S.L.P. preferred against that decision was dismissed on 14.10.2014. In these proceedings it was held that the applicant herein has no right, title and interest in the suit premises. In other words, the applicant's rights were adjudicated in the earlier round of litigation. In view thereof, I do not find that the reliance placed by Mr. Bhatt on these decisions advances the case of the applicant. In my opinion, the Courts below were justified in dismissing the application Exh.16 made by the applicant in execution proceedings. In particular, the Appellate Court observed in paragraph 38 that the tenancy was created in favour of the applicant in the year 2002 and the applicant has raised objection in the year 2016 which is after more than 14 years.

19. Admittedly, tenancy agreement was executed during the pendency of the suit. Mr. Bhatt submitted that the applicant is a bonafide tenant. He was not made party in declaratory suit. I do not find any merit in this submission. The applicant is trying to reopen issue which was concluded in the declaratory suit. Decree passed in the declaratory suit was confirmed right upto the Apex Court. The executing Court also cannot go behind the decree. In my opinion, the applicant cannot claim to be bonafide tenant as admittedly tenancy agreement was executed during the

pendency of the suit. In the earlier round of litigation it was already concluded that it did not confer any right, title and interest upon the applicant herein. In my opinion, the proceedings is abuse of process of court as also abuse of process of law.

20. In the case of Ramrameshwari Devi Vs. Nirmala Devi, (2011) 8 Supreme Court Cases 249, the Apex Court has observed that time has come for imposing realistic costs for delaying litigation as also for raising frivolous pleas. In paragraphs 52 and 54, it was observed thus:

“52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties. This must be done immediately after civil suits are filed.

B. The Court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Act. If this exercise is carefully carried out, it would focus the controversies involved in the case and help the court in arriving at truth of the matter and doing substantial justice.

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary

adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

D. The Court must adopt realistic and pragmatic approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits.

E. The courts should be extremely careful and cautious in granting ex-parte ad interim injunctions or stay orders. Ordinarily short notice should be issued to the Defendants or Respondents and only after hearing concerned parties appropriate orders should be passed.

F. Litigants who obtained ex-parte ad interim injunction on the strength of false pleadings and forged documents should be adequately punished. No one should be allowed to abuse the process of the court.

G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice.

H. Every case emanates from a human or a commercial problem and the Court must make serious endeavour to resolve the problem within the framework of law and in accordance with the well settled principles of law and justice.

I. If in a given case, ex parte injunction is granted, then the said application for grant of injunction should be disposed of on merits, after hearing both sides as expeditiously as may be possible on a priority basis and undue adjournments should be avoided.

J. At the time of filing of the plaint, the trial court should prepare complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment and the courts should strictly adhere to the said dates and the said time table as far as possible. If any interlocutory application is filed then the same be disposed of in between the said dates of hearings fixed in the said suit

itself so that the date fixed for the main suit may not be disturbed.

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.”

In paragraph 55, the Apex Court observed that the other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts.

21. In the case of Maria Margarida Sequeria Fernandes Vs. Erasmo Jack de Sequeria, AIR 2012 S.C. 1727, the Apex Court referred to the decision of Ramremeshwari Devi (supra). In paragraphs 84 and 85, it was observed thus: -

“False claims and false defences

84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will

tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

85. This Court in a recent judgment in Ramrameshwari Devi and Ors (AIR 2011 SC (Civ) 1776: 2011 SCW 4000) (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings."

22. In my opinion, the present proceedings are nothing but to abuse of process of court as also abuse of process of law. In view of the decision of the Apex Court in Ramrameshwari Devi (supra), this is a fit case for imposing exemplary costs against the applicant. Civil Revision Application fails and the same is dismissed with exemplary costs of Rs.50,000/-. Costs shall be paid by the applicant within 4 weeks from today. Copy of this

order may be forwarded to Collector, Mumbai for recovering of this amount as land revenue from the applicant. In case the applicant obtains suitable order from higher Court, the applicant shall forthwith communicate the said order to the Collector, Mumbai Order accordingly.

23. At this stage, Mr. Bhatt orally applies for stay of this order for a period of eight weeks from today. He states that the applicant is in possession of the suit premises. The applicant has neither created third party interest nor parted with possession. The applicant will hereafter neither create third party interest nor part with possession. He has tendered photocopy of Aadhar Card which is taken on record and marked 'X' for identification.

24. Mr. Bhatt states that within two weeks from today, the applicant and all adult family members residing with him, 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;
- (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 8 weeks from today, they will vacate and hand over vacant and peaceful possession of the suit premises to the plaintiff.

25. Hence, notwithstanding dismissal of Civil Revision Application, subject to the applicant and all adult family members residing in the suit premises giving undertaking in the aforesaid terms and serving copy in advance to other side within two weeks from today, this order shall remain stayed for a period of eight weeks from today. It is made clear that if within two weeks from today, undertaking in the aforesaid terms is not filed, the interim order shall stand vacated without further reference to the Court. Order accordingly.

26. List Civil Revision Application for reporting compliance after three weeks.

(R.G.KETKAR, J.)