

Mr. Shriram S. Kulkarni for Petitioner.
Mr. J. S. Kini i/b. Ms S. S. Krishnappa for Respondent No.1.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'obstructionist', has challenged the judgment and order dated 04.11.2016 passed by the learned Judge, Small Causes Court, Pune below exhibit-51 in Darkhast No.21 of 2014 as also the judgment and order dated 15.01.2018 passed by the learned District Judge-12, Pune in Civil Appeal No.991 of 2016. By these orders, the Courts below dismissed the application exhibit-51 made by the obstructionist inter alia praying for - injunction restraining the decree-holder and his agent, nominee, representative from disturbing the his possession in respect of two rooms admeasuring 350 sq.ft. on the ground floor of C.T.S.No.510, Raviwar Peth, Pune (for short 'suit premises'); permitting the obstructionist to lead oral evidence, documentary evidence in support of his case; setting aside the decree passed in Civil Suit No.71 of 2008; staying proceedings of Darkhast No.21 of 2014; and staying possession warrant issued in respect of the suit premises.

3. In support of this Petition, Mr. Kulkarni submitted that earlier, Harbansingh Punjabi had instituted Civil Suit No.253 of 1987 against the defendant No.1 - Waman Baburao Wanawadikar (for short '**Waman**'), defendant No.2 - Ramakant Baburao Vedpathak (for short '**Ramakant**'). During the pendency of the Suit, defendant No.2 - **Ramakant** died and his widow and son Anil were brought on record as legal representatives. One of the issues framed in that Suit was whether plaintiff proves that only defendant No.1 is his tenant. After considering the evidence on record, the learned trial Judge held that defendant No.1 **Waman** was not the only tenant and defendants No.1 and 2 were also the tenants in respect of the suit premises. By order dated 28.02.2006, the learned trial Judge dismissed the Suit. This order was not challenged and had attained finality.

4. Mr. Kulkarni submitted that on 17.12.2007, son of Harbansingh instituted Civil Suit No.71 of 2008 impleading only **Waman** as defendant. He submitted that **Waman** in fact had stopped carrying on business in the suit premises and he was served at the address of - (i) Jejuri, Taluka Purandar, District Pune and (ii) Anpatwadi, Taluka and District Satara. In other words, defendant **Waman** was not served at the address of the suit premises. By order dated 26.08.2010, the learned trial Judge decreed the Suit. Appeal preferred by legal representatives of **Waman** against that decree was dismissed by the District Court on 01.01.2014. Writ Petition No.8257 of 2014 was dismissed by this Court on 26.04.2016. S.L.P. was dismissed by the Apex Court on 08.06.2016.

5. Mr. Kulkarni invited my attention to the application exhibit-51 filed by the obstructionist under Order XXI, Rule 97 read with Rule 105 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), and in

particular paragraphs 2 to 5, grounds (a)(i), (ii), (iii), (iv) and (vi) as also prayers made in the application. He submitted that it is not in dispute that obstructionist is one of the sons of **Ramakant**. After the death of **Ramakant**, the tenancy of the suit premises will devolve upon his heirs. Obstructionist, being one of the heirs of **Ramakant**, has interest in the suit premises. Admittedly, **Ramakant** was not impleaded in the second Suit namely, Civil Suit No.71 of 2008. He submitted that the decree-holder did not challenge the trial Court's judgment and decree dated 28.02.2006 passed in Civil Suit No.253 of 1987 which held that **Waman** and **Ramakant** are the tenants of the suit premises. He submitted that the decree passed in Civil Suit No.71 of 2008, though confirmed right upto the Supreme Court, is not binding on the obstructionist. He has taken me through various documents filed by the obstructionist to establish the fact that he is carrying on business in the suit premises. He submitted that as the decree in the first Suit held that it is a case of joint tenancy, non-impleadment of one of the joint tenants will render the decree unexecutable and the decree is a nullity. In support of this submission, he relied upon the decision of this Court in **Trilokchand Kapoorchand vs Basubai Vastimal Oswal, AIR 1983 Bombay 12**. He further submitted that the decree passed in Civil Suit No.71 of 2008 deserves to be set aside thereby directing the decree-holder to implead obstructionist and thereafter Suit should proceed on merits. In support of this submission, he relied upon **Textile Association (India) Bombay Unit v/s Balmohan Gopal Kurup, (1990) 4 SCC 700**.

6. Mr. Kulkarni submitted that in the present case, the obstructionist has raised the questions, which are legally arising between the parties and these questions are relevant for consideration and determination between the obstructionist and the decree-holder. He relied upon the decision of **Silverline Forum Pvt. Ltd. Vs. Rajiv Trust, (1998) 3 SCC**

723, and in particular, paragraphs 12 and 16. In paragraph 16, the Apex Court considered decision in *Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal*, (1997) 3 SCC 694.

7. Mr. Kulkarni also submitted that on 24.10.2016, obstructionist filed application for separately registering and numbering the application filed by him. Instead of deciding this application first, the learned trial Judge simply rejected the application on the ground that since the application made by obstructionist is rejected, the present application is filed. He submitted that this is wholly unsatisfactory way of disposing of the application.

8. Mr. Kulkarni further submitted that as the obstructionist has raised triable issues, the learned trial Judge ought to have permitted him to lead evidence to substantiate his case. In so far as the order passed by the learned District Judge is concerned, he submitted that there is absolutely no finding recorded by the learned District Judge while dismissing the appeal. In substance, he submitted that the judgment of the learned District Judge is totally unsatisfactory. He, therefore, submitted that Petition requires consideration.

9. On the other hand, Mr. Kini supported the impugned orders. He submitted that after dismissal of the first Suit, decree-holder instituted Civil Suit No.71 of 2008. **Waman** was impleaded as defendant. He invited my attention to the written statement filed by **Waman** in that Suit where he admitted that he had taken the suit premises 60 years back from one Harbansingh Popali @ Punjabi and that said Harbansingh is the landlord and the defendant was and is his tenant. In other words, **Waman** did not contend that **Ramakant** is also a joint tenant along with him and that Suit is bad for non-joinder of a necessary party. He

submitted that on behalf of **Waman**, Anil Ramakant Vedpathak, brother of obstructionist appeared as his Power of Attorney. Even he did not depose that Suit is bad for non-joinder of legal representatives of **Ramakant**. Defendant has examined three witnesses including Anil. The learned trial Judge decreed the Suit on 26.08.2010. Appeal preferred by legal representatives of **Waman** was dismissed on 01.01.2014. Before the District Court, no plea was taken that the Suit is bad for non-joinder of necessary party namely, legal representatives of **Ramakant**. The legal representatives of **Waman** instituted Writ Petition in this Court, which was summarily dismissed on 26.04.2016. Even before this Court, no such contention was raised. The S.L.P. preferred by the legal representatives of **Waman** was also dismissed by the Apex Court on 08.06.2016. He submitted that even in the application at exhibit-51, the obstructionist is merely alleging that he is carrying on business in the suit premises. Obstructionist has nowhere claimed any right, title or interest in the suit premises. As obstructionist has not claimed any right, title or interest, he is precluded from obstructing the execution of the decree.

10. Mr. Kini submitted that in paragraph 7, the learned trial Judge rightly observed that obstructionist is not claiming any independent right, and therefore, he cannot raise any objection for obstructing the execution of the decree. The learned trial Judge further observed that during the pendency of the proceedings, **Waman** expired and the names of his legal heirs were disclosed by Anil Ramakant Vedpathak, none other than the brother of the obstructionist. The Suit was contested by Anil. At no point of time, objection was raised as regards maintainability of the Suit on the ground of non-joinder of necessary party. The learned trial Judge further observed that in the written statement, **Waman** admitted that he is the only tenant in respect of the suit property. On one

hand, obstructionist claims that he is residing jointly and carrying on joint business together and on the other, had expressed complete ignorance about proceedings of Civil Suit No.71 of 2008. He, therefore, submitted that the learned trial Judge rightly rejected application exhibit-51.

11. As far as the order of the learned District Judge is concerned, he submitted that in paragraph 18, the learned District Judge observed that obstructionist is contending that he is occupying the suit premises as a member of joint family. He is claiming tenancy rights with Vedpathak family. In other words, obstructionist is not claiming independent rights in the suit premises. In the proceedings of Civil Suit No.71 of 2008, nowhere Anil pleaded that obstructionist is occupying the suit premises. Even after the death of **Waman**, brother of obstructionist - Anil did not disclose that the obstructionist is also a legal heir. He never informed names of legal heirs of **Waman**. The learned District Judge, therefore, held that obstructionist has no legal grounds to obstruct the execution of the decree. He, therefore, submitted that no case is made out for interfering with the impugned orders.

12. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Mr. Kulkarni heavily relied upon the finding recorded by the learned trial Judge against issue No.1 in Civil Suit No.253 of 1987 decided on 28.02.2006. In that proceedings, Harbansingh Punjabi (plaintiff) contended that defendant No.1 **Waman** had initially sublet the suit premises to the defendant No.2 **Ramakant**. During the pendency of that Suit, defendant No.2 **Ramakant** died and his widow and son Anil were brought on record. Anil was examined at exhibit 86. In paragraph 15, the learned trial Judge referred to rent receipts produced by the plaintiff's witness at exhibits-116 to 120, which were in the name of

defendant No.1 **Waman**. Defendant produced notice dated 09.10.1985 at exhibit-100, which was sent by the plaintiff through his Advocate Shri Bhagwat to his different tenants. The said notice was sent to 4 tenants namely, (i) Pralhad Narhar Soundankar, (ii) Ramakant Baburao Banwadikar (defendant No.2), (iii) Indrayani Bhagwat, (iv) Kissan Gundappa Khardikar. The learned trial Judge, therefore, held that the very fact that the plaintiff had sent notice to the defendant No.2 - **Ramakant** by referring him as a tenant goes to show that plaintiff admitted that defendant No.2 was also his tenant.

13. In paragraph 18, the learned trial Judge reiterated that finding. Thus, the learned trial Judge held that defendant No.2 is also tenant solely on the basis of notice dated 09.10.1985 and did not deal with the rent receipts exhibits 116 to 120 issued in favour of the defendant No.1. It is no doubt true that plaintiff did not challenge that order and had attained finality. Be that as it may, Civil Suit No.71 of 2008 was instituted only against **Waman**, and **Ramakant** was not impleaded therein. It is material to note that in the written statement filed by **Waman**, no plea was taken that Suit is bad for non-joinder of the necessary party namely, **Ramakant** or his legal representatives as in the earlier Suit, **Ramakant** was also recognized as a tenant along with **Waman**. In fact, in the written statement filed by **Waman**, he admitted that he had taken the suit premises 60 years back from one Harbansingh Popali @ Punjabi and that Harbansingh is the landlord and defendant was and is his tenant. On behalf of the defendant No.1, **Waman**, obstructionist's brother Anil appeared as Power of Attorney. Even he did not depose that Suit is bad for non joinder of legal representatives of **Ramakant**. Defendant had examined three witnesses including Anil. The learned trial Judge decreed the Suit on 26.08.2010. Appeal preferred by legal representatives of **Waman** was dismissed on 01.01.2014. Even before the District Court, no plea was taken that Suit

is bad for non-jonder of necessary party, namely the legal representatives of **Ramakant**. The legal representatives of **Waman** instituted Writ Petition in this Court, which was summarily dismissed on 26.04.2016. Even before this Court, no such contention was agitated. The legal representatives of **Waman** preferred S.L.P. before the Apex Court, which was dismissed on 08.06.2016.

14. It is also interesting to note that perusal of application exhibit-51 filed by the obstructionist shows that he merely alleged that he is carrying on business in the suit premises. Obstructionist nowhere claimed that he has any right, title or interest in the suit premises. Mere carrying on business in the suit premises that by itself will not mean that obstructionist has right, title or interest in the suit premises. Mr. Kulkarni submitted that obstructionist is son of **Ramakant** is not in dispute. Upon death of **Ramakant**, tenancy will devolve upon his legal representatives, and therefore, the tenancy rights will also devolve upon the obstructionist. Mr. Kulkarni submitted that the Court may taken judicial notice of this fact. He relied upon paragraphs 2 to 5, grounds (a) (i) to (iv) and (vi) of the application exhibit-51. It is not possible to accept this submission for more than one reason. I will proceed on the premise that obstructionist is really carrying on business in the suit premises. No explanation, worth the name, is given by the obstructionist as to why he did not file application under Order I, Rule 10 of C.P.C. for his impleadment in Civil Suit No.71 of 2008. It is inconceivable that obstructionist will not be aware of litigation in respect of the suit premises where he claims to be carrying on business. This is to be appreciated on the backdrop of the fact that his real brother Anil had participated in the earlier Suit as also in the subsequent Suit. Thus, even if I accept that legal representatives of **Ramakant** were not impleaded, nothing precluded obstructionist from filing application under Order I, Rule 10 for his impleadment. Secondly, though ample opportunity was

available to the defendant at various stages of the Suit, no plea was taken that Suit is bad for non-joinder of necessary party. In the proceedings of Civil Suit No.71 of 2008, nowhere Anil came out with the case that obstructionist is occupying the suit premises. Even after the death of **Waman**, brother of obstructionist Anil did not disclose that the obstructionist is also legal heir of **Ramakant**. Thirdly, as Anil, one of the heirs of Ramakant contested the Suit right upto the Apex Court, estate of deceased Ramakant was represented.

15. The learned trial Judge has observed in paragraph 7 that the obstructionist is not claiming any independent right. For the reasons recorded in paragraph 7, I do not find that the learned trial Judge committed any error in rejecting application exhibit-51.

16. In so far as the District Court is concerned, the learned District Judge considered this aspect in paragraphs 16 to 18 and dismissed the Appeal. For the reasons recorded in these paragraphs, I do not find that the learned District Judge committed any error in dismissing the appeal. The obstructionist was not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. Obstructionist was also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below.

17. That apart, in my opinion, this is not a fit case for invocation of powers under Article 227 of the Constitution of India. Civil Suit No.71 of 2008 was decreed as far back as on 26.08.2010 and the said decree was challenged right upto the Apex Court. A perusal of the Apex Court order shows that legal representatives of **Waman** were given three months time to vacate the suit premises subject to filing a usual

undertaking within a period of two weeks stating that they will not create third party interest in the suit premises and shall pay occupational charges to the respondents and shall peacefully vacate the suit premises concerned at the end of three months, without fail. Though time was taken, during the course of hearing, Mr. Kulkarni stated that no undertaking is filed in the Apex Court and no possession is handed over. In view of the conduct of the legal representatives of **Waman** as also the conduct of the obstructionist in maintaining silence during the proceedings of Civil Suit No.71 of 2008, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

18. At this stage, Mr. Kulkarni orally applies for continuation of the ad-interim order dated 01.03.2018 for a period of six weeks. He assures that within two weeks from today, the petitioner and all adult family members residing / using the suit premises will furnish undertaking, with advance copy to the other side, incorporating therein that,

- (a) they are in possession and nobody else is in possession of the suit premises;
- (b) they have neither created third party interests nor parted with possession of the suit premises;
- (c) they will hereafter neither create third party interests nor part with possession of the suit premises;
- (d) they will deposit the arrears of rent, if any, in this Court within 2 weeks from today, under intimation in writing to the learned Counsel for the respondent No.1;
- (e) in case they are unable to obtain suitable orders from the higher Court within six weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondent No.1;

19. In view thereof, notwithstanding dismissal of the Petition, subject to the petitioner filing the undertaking in the aforesaid terms within two weeks from today, ad-interim order dated 01.03.2018 shall remain in force for a period of six weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within two weeks from today and/or in case petitioner commits breach of any of the conditions of the undertaking, respondents will be at liberty to proceed with the matter in accordance with law. In case, petitioner is unable to obtain suitable orders from higher Court within a period of six weeks and does not hand over possession of the suit premises to the respondents, the respondents will be at liberty to proceed with the matter in accordance with law. Order accordingly.

20. List the Petition for reporting compliance on 19.07.2018. Order accordingly.

(R. G. KETKAR, J.)

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