

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

[1] Civil Revision Application NO. 157 OF 2018

Ramniklal Dhanji Chhadwa	...Applicant
<i>Versus</i>	
M/s. Popatbapa & Sons	
And Ors.	...Respondents

....

Mr. P.K. Dhakephalkar, Senior Advocate a/w. P.S. Dani, Senior Advocate a/w. Atul Daga, Ravi Gandhi, M.A. Kamdar, Rashwin Jain, Rishabh Kanga i/b. Kanga & Co., for the Applicant.

Mr. G.S. Godbole, Senior Advocate i/b. Ms. Kavita S. Shah, for the Respondents.

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With

[2] Civil Revision Application NO. 158 OF 2018

Jatin Ramniklal Chhadwa	...Applicant
<i>Versus</i>	
M/s. Popatbapa & Sons	
And Ors.	...Respondents

....

Mr. P.S. Dani, Senior Advocate a/w. Atul Daga, Ravi Gandhi, M.A. Kamdar, Rashwin Jain, Rishabh Kanga i/b. Kanga & Co., for the Applicant.

Mr. G.S. Godbole, Senior Advocate i/b. Ms. Kavita S. Shah, for the Respondents.

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With

[3] Civil Revision Application NO. 159 OF 2018

Ramniklal Dhanji Chhadwa	...Applicants
And Anr.	
<i>Versus</i>	
M/s. Popatbapa & Sons	
And Ors.	...Respondents

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Mr. P.S. Dani, Senior Advocate a/w. Atul Daga, Ravi Gandhi, M.A. Kamdar, Rashwin Jain, Rishabh Kanga i/b. Kanga & Co., for the Applicant.

Mr. G.S. Godbole, Senior Advocate i/b. Ms. Kavita S. Shah, for the Respondents.

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CORAM : R. G. KETKAR, J.

RESERVED ON : 02nd APRIL, 2018

PRONOUNCED ON : 20th APRIL, 2018

ORDER :

1. Heard Mr. P.K. Dhakephalkar, learned Senior Counsel for the applicant in C.R.A. No.157/2018, Mr. P.S. Dani, learned Senior Counsel for the applicant in C.R.A. No.158/2018 & C.R.A. No.159/2018 and Mr. G.S. Godbole, learned Senior Counsel for the respondents in all the Applications, at length.
2. C.R.A. No.157/2018 takes exception to the judgment and decree dated 9.2.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai (Bandra Branch) in (A-1) Appeal No.15/2013. By that order, the Appellate Court allowed the appeal preferred by the respondents, hereinafter referred to as the 'plaintiffs', and quashed and set aside the judgment and decree dated 27.11.2012 passed by the learned Judge, Court Room No.36 of the Court of Small Causes at Mumbai (Bandra Branch) in R.A.E. Suit No.297/683 of 2003. The

Appellate Court decreed the suit and directed the applicant, hereinafter referred to as the 'defendant', to deliver vacant and peaceful possession of Shop No.4 situate on the ground floor of building known as 'Surang Shopping Centre', Santacruz (West), Mumbai – 400 054 within two months from the date of the decree.

3. C.R.A. No.158/2018 takes exception to the judgment and decree dated 9.2.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai (Bandra Branch) in (A-1) Appeal No.13/2013. By that order, the Appellate Court allowed the appeal preferred by the respondents, hereinafter referred to as the 'plaintiffs', and quashed and set aside the judgment and decree dated 27.11.2012 passed by the learned Judge, Court Room No.36 of the Court of Small Causes at Mumbai (Bandra Branch) in R.A.E. Suit No.295/681 of 2003. The Appellate Court decreed the suit and directed the applicant, hereinafter referred to as the 'defendant', to deliver vacant and peaceful possession of Shop No.5 situate on the ground floor of building known as 'Surang Shopping Centre', Santacruz (West), Mumbai – 400 054 within two months from the date of the decree.

4. C.R.A. No.159/2018 takes exception to the judgment and decree dated 9.2.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai (Bandra Branch) in (A-1) Appeal No.14/2013.

By that order, the Appellate Court allowed the appeal preferred by the respondents, hereinafter referred to as the 'plaintiffs', and quashed and set aside the judgment and decree dated 27.11.2012 passed by the learned Judge, Court Room No.36 of the Court of Small Causes at Mumbai (Bandra Branch) in R.A.E. Suit No.296/682 of 2003. The Appellate Court decreed the suit and directed the applicant, hereinafter referred to as the 'defendant', to deliver vacant and peaceful possession of Shop No.6 situate on the ground floor of building known as 'Surang Shopping Centre', Santacruz (West), Mumbai – 400 054 within two months from the date of the decree.

5. Since common questions of law and facts arise in these applications, same can conveniently be disposed of by this common order. To appreciate the controversy between the parties, the facts from C.R.A. No.157/2018 are taken into consideration for the sake of brevity and convenience.

6. The respondents instituted the suit against Ramniklal Dhanji Chhadwa for recovery of possession of shop No.4, situate on the ground floor of building known as 'Surang Shopping Centre', Santacruz (West), Mumbai – 400 054 (for short, 'suit premises') *inter alia* on the ground that plaintiff No.2 had given the suit premises to the defendant on monthly tenancy basis under the tenancy agreement. The defendant is

carrying on business in the name of "SIA". Though the tenancy agreement was executed between plaintiff No.2 and the defendant, plaintiff No.1 is issuing rent receipts to the defendant. The defendant has been paying the rent to plaintiff No.1. During pendency of the suit, plaintiff No.4 expired. Plaintiffs No.4(a) to 4(d) and plaintiffs No.5 and 6 are his heirs and legal representatives. It is the case of the plaintiffs that during pendency of the suit, plaintiffs No.3 to 6 have acquired the suit property where the suit premises is situate and as such they are entitled to continue with this suit.

7. It is the case of the plaintiffs that the defendant's son Jatin Chhadwa is a tenant in respect of adjoining shop No.5. Defendant and his other son Vinay Chhadwa are the joint tenants of the plaintiffs in respect of shop No.6 situate on other side of shop No.5. The plaintiffs had given separate tenancies for Shops no.4, 5 and 6. Separate rent bills are issued for three shops. At the time of giving tenancy to the defendants and his sons, there were load bearing walls in between three shops. The defendant has demolished the wall between shops No.4 and 5 and wall between shops No.5 and 6 so as to make three shops into one shop without permission from the plaintiffs. Thus the defendant has carried out additions and alterations in the suit premises and has changed the nature and character of the suit premises. The original suit

premises which was let out to the defendant is merged with adjoining shops and consequently defendant has rendered himself liable for eviction.

8. The plaintiff further contended that in July, 2000 the defendant's son had demolished a part of the wall situate on the backside of the suit premises as the defendant and his sons were intending to use the small office situate on the back side of three shops for constructing a capsule lift to reach the first floor where the defendant has office premises. On 22.7.2000, the plaintiffs issued notice through Advocate pointing out that the defendant and his sons had demolished two load-bearing walls situate between two shops. The defendant has made an opening on the backside of shop No.5.

9. On 2.8.2000, the defendant gave reply. The defendant admitted that tenancy of each shop is separate tenancy. He, however, denied that there were walls existing in between said three shops. On 8.8.2000, the plaintiffs sent rejoinder and disputed the false contentions raised by the defendant in respect of non-existence of load bearing walls between three shops. It was reiterated that the defendant along with his son had demolished the common walls situate at between shops No.4, 5 and 6 and made three shops into one single shop. In addition to it, the defendant had partly demolished the wall on the backside of shop No.5.

The defendant falsely contended that he rebuilt the wall to the satisfaction of the plaintiffs. Apart from that the defendant along with his sons cut open R.C.C. slab situate above shop No.6. One of the partners of the plaintiff Dineshbhai visited the shops to verify as to whether RCC slab had cut open or not. The defendant has taken Dineshbhai on the first floor of Shop No.6. As the dummy tiles were put on the opened slab, Dineshbhai could not locate and see the broken slab. However, at the insistence of Dineshbhai and his daughter to inspect shop No.6, it was found that the defendant along with his sons cut open the RCC slab. The plaintiffs, therefore, issue letter dated 31.7.2001 calling upon the defendant to vacate the shop premises. Though the defendant received said notice, he failed to reply it. The plaintiffs, therefore, issued reminder on 17.10.2001.

10. It is the case of the plaintiffs that as the defendant has carried out unauthorized permanent additions and alterations without permission of the plaintiffs, he is liable to be evicted from the suit premises. The defendant has changed the character and identity of the premises. The defendant has damaged the property. In substance, the plaintiffs have sought possession of the suit premises under Section 16(1)(b) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

11. The defendant resisted the suit by filing written statement

below Exhibit-9 *inter alia* contending that the suit is filed with a view to harassing the defendant. The suit is not maintainable as there is no cause of action to file the suit. The defendant admitted that he is tenant of shop No.4 and that his son Jatin Chhadwa is tenant of shop No.5. The defendant and his another son Vinay Chhadwa are tenants in respect of shop No.6. The defendant contended that the suit premises was rented out to him in the year 1995. As per clause-6 of the tenancy agreement, the defendant was authorized to carry out any work of alterations, repairs, renovation and improvements in respect of the suit premises as may be required from time to time at his cost. As per clause-8 of the agreement, the defendant was permitted to sublet or give the premises on leave and license basis. The defendant contended that in view of clause-6 of the agreement, he is entitled to carry out such work.

12. The defendant further contended that there was no interconnecting walls between shops No.4 and 5 when the suit premises was let out. Shops No.4 and 5 were taken at the same time in the year 1995. When the three separate tenancy agreements were executed there were no walls between shops No.4 & 5 and shops No.5 & 6. The defendant did not remove any wall as alleged. The premises are in the same condition when it was let out to the defendant. There is inter-

connecting door between shops No.5 & 6. There was no wall between shops No.4 & 5. The defendant denied that in July, 2000 part of the wall on the backside of the suit premises was demolished. In the year 2000 some changes were made by the defendant for beneficial use of the premises pursuant to the tenancy agreement. The plaintiffs, therefore, cannot raise this objection. In the year, 2000 plaintiff No.1 had raised objections about certain alterations made in the suit premises. In order to maintain cordial relations with the landlord, the walls were put up in the same conditions. It was denied that the defendant along with his sons were intending to use small office situate on the backside of three shops by constructing capsule lift to reach first floor as alleged. The defendant further contended that in the year 1995, there was inauguration of shops No.4 and 5 and photographs were taken at that time. These photographs do not reveal existence of interconnecting wall in the year 1995. It was denied that the suit premises let out to him has been merged with adjoining shops. In the year 2007, no wall of backside of shop No.5 was demolished by the defendant. However, in order to maintain good relations the wall was rebuilt to the satisfaction of plaintiff No.1. The defendant gave appropriate reply to the plaintiffs letter. It was not necessary to give reply to the plaintiffs letter dated 31.7.2001.

13. On the basis of pleadings of the parties, the learned trial Judge framed the necessary issues. The parties adduced evidence. After considering the evidence on record, the learned trial Judge dismissed the suit. Aggrieved by that decision, the plaintiffs preferred appeal. By the impugned order, the learned Appellate Court allowed the appeal. It is against this decision, the defendant has instituted the present C.R.A.

14. In support of this C.R.A., Mr. Dhakephalkar submitted that plaintiffs No.3 and 4 were the tenants in respect of shops No.1, 2, 3 and 7 and subsequently they acquired the suit premises. The evidence was adduced by the subsequent purchasers which is a hear-say evidence. As the plaintiffs claimed that the defendant has removed the internal walls between shops No.4 and 5 and shops No.5 and 6, they have to establish existence of the walls in the shops. In order to substantiate this fact, the plaintiffs have not produced any plans showing existence of the internal walls.

15. Mr. Dhakephalkar submitted that M/s.Deepchand Brothers, the landlords executed tenancy agreement on 25.11.1994 in favour of M/s. Surang Shopping Centre creating tenancy in respect of entire ground-floor (except one room near to stair case). The landlords permitted M/s. Surang Shopping Centre to carry out such structural repairs, alterations, renovations, improvements in the tenanted premises.

He also invited my attention to clauses-6 and 8 of that agreement.

16. Mr. Dhakephlakar invited my attention to the tenancy agreement dated 15.9.1995 between M/s. Surang Shopping Centre and Chandresh P. Shah. In this tenancy agreement, reference was made to the tenancy agreement dated 25.11.1994 executed between M/s. Deepchand Brothers on one hand and M/s. Surang Shopping Centre in respect of entire ground floor area for running a restaurant in Rang Mahal Building. He submitted that obviously the plaintiffs were running a restaurant in shops No.1, 2, 3 and 7 and, therefore, there could not be internal walls in these premises. Even in respect of the suit premises in these applications, there were no internal walls. He invited my attention to the cross-examination of PW-1 Ashok Popatlal Shah. He admitted that prior to purchase of the suit property, he and his family members were carrying on business of Garments in shops No.1, 2, 3 and 7. Those shops were taken on tenancy basis in or about 1995. In the shops taken by them, there were no dividing walls. When he was shown the photograph, he admitted presence of his parents in that photograph. When he was shown another photograph, he admitted that his parents were performing pooja. In another photograph, PW-1 and his brother were shown. He was shown a photograph of shop No.4, where defendant Ramniklal was seen. All these photographs were taken on

record and marked Exhibits-41 to 44. PW-1 admitted that the opening ceremony was performed on 11.12.1995 and on that day he along with brother and parents were present at that function. He was put question as to whether the dividing walls existed between shops No.4 and 5. He answered by saying that he does not remember whether on that date there were dividing walls in between shops No.4 and 5. Though he said that he has to take search of the original plan of the building, he said that there is no City Survey plan. He further deposed that since last 40 years they are carrying on business of Sarees in Santacruz (West). Prior to that there was Surang Restaurant. He was not aware whether one part is divided for air-condition and the other for Non-A.C. He did not know whether the partition of A.C. and non-A.C. in that restaurant was wooden partition. In that restaurant premises, seven shops were constructed. Relying upon the cross-examination of PW-1 Ashok Popatlal Shah, Mr. Dhakephalkar submitted that the plaintiffs failed to establish the existence of internal walls between shops No.4 & 5 and 5 & 6. He submitted that the learned trial Judge dismissed the suit. As against this, the findings recorded by the Appellate Court are based upon conjectures and surmises.

17. Mr. Dhakephalkar invited my attention to paragraph-18 of the Appellate Court's judgment. The Appellate Court recorded that the

tenancy in respect of the suit premises, namely, shop No.5 and tenancy in respect of shop No.5 was created on the same day i.e. 12.9.1995. The tenancy in respect of shop No.6 was created on 1.4.1998. These developments indicate that at the time of creation of tenancy, the suit premises were separate and independent, otherwise the shops could not have been referred as shops No.4, 5 and 6. They could have been referred as one single unit. He submitted that in fact the Appellate Court recorded that in the event of PW-1 Ashok Popatlal Shah, it has come on record that shops No.1 to 3 and 7 situate in the same building on the ground floor and there is no common dividing wall existing between them. The Appellate Court however rejected that submission on the ground that on the basis of situation of shops No.1, 2, 3 and 7 no inference can be drawn that the same situation was existing in respect of shops No.4 and 6. He invited my attention to paragraph-20 of the Appellate Court's judgment and submitted that the Appellate Court committed serious error in drawing inference that there was dividing load-bearing wall between shops No.5 and 6.

18. In paragraph-23, the Appellate Court observed that though the tenancy agreement authorized the defendants to carry out additions and alterations with a view to beneficially enjoying the suit premises, it cannot be interpreted to mean that the defendants can carry on

structural changes in the suit premises by demolishing / removing the walls. Mr. Dhakephalkar submitted that in fact no finding was recorded by the Appellate Court in respect of the alleged additions and alterations of permanent nature in respect of shop No.6. For all these reasons, he submitted that the application requires consideration.

19. In support of C.R.A. Nos. 158/2018 and 159/2018, Mr. Dani substantially adopted the submissions of Mr. Dhakephalkar. In addition, he submitted that in view of the recitals of the tenancy agreement dated 12.9.1995 and also in view of clause-6, the defendant was entitled to carry out such structural repairs, alterations, renovations and improvements in the premises as may be required from time to time. It is, therefore, not necessary for the defendant to obtain previous written permission of the plaintiffs. He submitted that the Appellate Court committed error in holding that the defendant has carried out structural alterations.

20. On the other hand, Mr. Godbole supported the impugned order. He invited my attention to

- (i) the letter dated 22.7.2000 addressed on behalf of the plaintiffs to the defendant; and
- (ii) reply dated 2.8.2000 wherein it was admitted that the defendants are lawful tenants in respect of shops No.5 and 6 respectively

of Surang Shopping Centre and the tenancy of each shop was a separate tenancy. The defendant also admitted that in the month of September, 1995, they became tenants in respect of shops No.4 & 5 and subsequently in the month of April, 1999 (in fact it should be 1.4.1998) the tenancy in respect of shop No.6 was created. It was however contended that when the defendants became tenant in respect of shops No.4 and 5 at that time no walls were in existence.

21. Mr. Godbole submitted that the plaintiffs gave reply on 8.8.2000 and issued notice on 31.7.2001. In paragraph-5 of the notice dated 31.7.2001, it was specifically stated that the defendant had cut open the RCC wall situate above shop No.6 which seriously endangered the stability of the building. However, the defendant did not give reply. Reminder was therefore issued on 30.8.2001. Though the reminder was received, the defendant did not give reply.

22. Mr. Godbole invited my attention to the cross-examination of DW-1 Ramniklal Dhanji Chhadwa, where he deposed that out of four shops, he took one shop. However, it was given shops No.4 and 5. There were two shutters in shops No.4 and 5. He submitted that the very fact that shops No.4 & 5 had two shutters, it conclusively establishes that there were internal dividing walls between shops No.4 and 5. He submitted that admittedly tenancy in respect of shop No.6 was created

on 1.4.1998. It is, therefore, inconceivable that there was no internal wall between shops No.5 and 6. He submitted that as far as shop No.6 is concerned, the defendant had cut open the slab as also demolished the wall behind shop No.5 for construction of capsule lift. He, therefore, submitted that no case is made out for interfering with the impugned order.

23. 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 plaintiffs have instituted suits for recovery of possession of shops No.4, 5 and 6 on the ground that the plaintiffs had given shops No.4, 5 and 6 on the basis of separate tenancies. Separate rent bills are issued in respect of three shops. Separate tenancy agreements are executed between the parties. In respect of shops No.4 and 5, tenancy agreements are executed on 12.9.1995. In respect of shop No.6, tenancy agreement was executed on 1.4.1998. It is the case of the plaintiffs that the defendant has carried out additions and alterations in the suit premises and has changed the nature and character of the suit premises. The defendant has carried out structural alterations by demolishing internal walls between shop No.4 & shop No.5 as also shop No.5 & shop No.6. In July, 2000 the defendant's

son has demolished a part of wall situate on the backside of the suit premises as the defendant and his sons were intending to use the small office situate on the backside of three shops for constructing the capsule lift to reach the first floor where the defendant has office premises. By order dated 27.11.2012, the learned trial Judge dismissed the suits. The Appellate court decreed the suit only under Section 16(1)(b) of the Act.

24. In order to appreciate the submissions advanced by the learned Counsel for the parties, it is necessary to consider the notices exchanged between the parties prior to institution of the suits. The plaintiffs issued notice dated 22.7.2000 at Exhibit-35 through Advocate to the defendant. In paragraph-1 of that notice it was contended that the tenancy of each shop is a separate tenancy. Each shop had dividing walls. After taking all these three shops on tenancy basis, the defendants have demolished the load-bearing walls and have made three shops into one shop without any permission of the plaintiffs. In paragraph-2, it is asserted that the defendant Ramniklal has taken first floor in the building for office purpose. The defendant Ramniklal wanted to use said office for constructing a capsule lift to reach the first floor. Jatin, tenant of shop No.5 demolished part of the wall on the backside of shop No.5. The defendant Ramniklal intended to demolish the backside wall of shop No.4. In paragraph-3, it was asserted that by

demolishing the load-bearing walls between shops No.4, 5 and 6 and by demolishing the wall on the backside of shop No.5, they have made structural changes in the tenanted premises. The defendants were called upon to hand over vacant and peaceful possession of these shops.

25. On 2.8.2000, reply Exhibit-36, was given by the defendants. In paragraph-2 of that reply, it was admitted that tenancy of each shop was a separate tenancy. It was, however, denied that there was any wall in existence dividing three shops as alleged. It was further admitted that in the month of September, 1995 the defendants became tenants in respect of shops No.4 & 5 and subsequently in the month of April, 1999 (it should be 1.4.1998), the defendant became tenant of shop No.6. It was asserted further that at the time when shops No.4 & 5 were given on tenancy basis there were no walls in existence and it is only after lapse of five years, the plaintiffs were making imaginary allegations about removal of walls dividing three shops. In paragraph-3, it was admitted that they are tenants in respect of first floor premises and Mr. Mahesh Shah is the landlord in respect of first floor and backside shop of the said building. It was further admitted that the office on the ground floor is taken by the defendant on tenancy basis. The defendants had made a door from shop No.4 to back shop. However, when

objection was raised by Dinesh Shah, one of the Partners of the plaintiffs, said door was closed to the satisfaction of the plaintiffs. It was denied that the defendants want to use said office for constructing capsule lift to reach the first floor as alleged. The defendants also denied that they have demolished part of the wall on the backside of shop No.5 and also intend to demolish the backside wall of shop No.4 as alleged. The rest of the issues raised in the notice were also denied.

26. The plaintiffs gave reply on 8.8.2000 at Exhibit-37. In paragraph-1 it was asserted that the defendants accepted that there are separate tenancies in respect of shops No.4, 5 & 6. In paragraph-2 it was asserted that in respect of shops No.4 & 5, the tenancies were created in September, 1995 and tenancy in respect of shop No.6 was created in April, 1998. It was contended that in shops No.4 & 5, the defendants were conducting the business in the name and style of M/s. Sia. In shop No.6, the defendants were conducting the business in the name and style of M/s. Sitara Impex. It was contended that even according to the defendants there were dividing walls between shops No.4, 5 & 6. In paragraph-3 it was contended that recently the walls between shops No.4, 5 & 6 were removed. It was reiterated that the defendants have made structural changes which has endangered the stability of the building and as such the defendants are liable to be

evicted from three shops let out separately by the plaintiffs. It was also noted that the defendants have admitted that they made a door from backside of shop No.4.

27. On 31.7.2001 the plaintiffs again issued notice at Exhibit-38 to the defendants. In this notice they have reiterated the structural changes made by the defendants by demolishing internal walls between shops No.4 & 5 and shops No.5 & 6. In paragraph-5, it was contended that the defendants have cut open the RCC slab situate above shop No.6, which has endangered the stability of the building. One of the Partners of the plaintiffs Dineshbhai visited the shop to verify this aspect. In order to suppress and hide the said fact Ramniklal and his son Vinay took Dineshbhai on the first floor situate above shop No.6 where dummy tiles were put on the open slab. Dineshbhai could not locate and see the broken slab. At the instance of Dineshbhai, the defendants allowed Dineshbhai and his daughter to inspect shop No.6 and it was found that in fact the slab was demolished.

28. As the defendants did not give reply to the notice dated 31.7.2001, the plaintiffs issued notice dated 17.10.2001 referring to the correspondence exchanged between the parties and instructed the defendants to restore the RCC slab and reconstruct all the walls failing which the plaintiffs will be filing eviction suits.

29. In support of the plaintiffs' case, PW-1 Ashok Popatlal Shah, Partner of the plaintiff firm filed affidavit in examination-in-chief and he was cross-examined. On behalf of the defendants, Ramniklal Chhadva was examined. During the course of cross-examination he deposed that out of four shops on the ground floor, he took one shop, however, it was given shops numbers 4 and 5. He admitted that there were two shutters in that shops No.4 and 5. He admitted that shops No.4 and 5 were taken on tenancy basis in the year 1995 and shop No.6 was subsequently taken on tenancy basis. He admitted that he did not obtain permission from the Municipal Corporation of Greater Mumbai while demolishing the wall between shop No.4 and office as also before making door between shops No.5 & 6.

30. The Appellate Court has considered this aspect from paragraphs-13 to 31. In paragraph-14, the Appellate Court noted that the suits are based on three allegations, namely:

- (1) demolition of load bearing walls between shops No.4 & 5 and shops No.5 & 6,
- (2) demolition of backside of wall of shop No.5 for construction of a capsule lift, and
- (3) cutting open of RCC slab of shop No.6.

31. In paragraph-15, it was noted that on 15.4.2002 during pendency of the suit, the plaintiffs No.3 to 6 have purchased the suit

property. Prior to purchase of the suit premises, plaintiffs No.3 to 6 were tenants of shops No.1, 2, 3 and 7 situate in the same building. It, therefore, can be inferred that they were aware of the situation and condition of the suit premises prior to purchasing it.

32. In paragraph-17, the Appellate Court referred to the photographs at Exhibits-41 to 44 and observed that only people are seen therein and the structure of shop premises cannot be seen in said photographs and, therefore, they are of no use to the defendants to establish that no internal walls were existing in shops No.4, 5 and 6. The very fact that separate tenancies were created in respect of each shop indicates that separate walls were existing in each shop.

33. In paragraph-18, it was also noted that shops No.4 and 5 were given on tenancy basis by tenancy agreements dated 12.9.1995 and tenancy in respect of shop No.6 was created on 1.4.1998 and indicates that at the time of creation of the tenancy suit premises were separate and independent otherwise shops could not have been referred as shops No.4, 5 and 6. They could have been referred as one single unit. The Appellate court also noted that in the evidence of PW-1 Ashok Shah it came on record that in shops No.1 to 7 there are no common dividing walls. The Appellate Court noted the submissions of the defendants that same situation was there in respect of shops No.4, 5

and 6. It was observed that on the basis of situation of shops No.1, 2, 3 & 7, no inference can be drawn that same situation prevailed in respect of shops No. No.4, 5 and 6. The Appellate Court has proceeded to observe that assuming for the sake of argument that no internal walls were existing in shops No.4, 5 and 6, why this fact was not mentioned in the tenancy agreements. Nothing prevented the parties for mentioning the same in the tenancy agreements. If there were no dividing walls then the tenancy could not have been created separately after a gap of more than two and half years when in the tenancy agreement at Exhibit-64 the premises are described separately.

34. In paragraph-20, the Appellate Court noted that the defendant admitted existence of door between shops No.5 & 6. The Appellate Court observed that after perusing the tenancy agreement Exhibit-65, it appears that the defendants were authorized to use the suit premises as separate and not common. After considering the evidence on record, the Appellate Court has drawn inference that there were dividing load-bearing walls which and same were demolished and shop No.5 is merged with shops No.5 & 6 and its identity is totally changed and destroyed.

35. In paragraph-21, the Appellate Court considered clause No.6 of the tenancy agreements and observed in paragraph-23 that the

tenancy agreement Exhibit-65 authorized the defendants to carry out additions and alterations with a view to allowing the defendants to enjoy the suit premises beneficially. It cannot be interpreted to mean that it was to carry out structural changes in the suit premises. The defendants did not obtain permission of the Corporation as also written permission of the plaintiffs. The alterations made by the defendant were dangerous to entire building.

36. In paragraph-25, the Appellate Court dealt with demolition of backside wall of shop No.5 and rebuilding the same. After considering copies of letters Exhibits-48 & 49, the Appellate Court recorded that the defendants admitted demolition of wall and again rebuilding it to the satisfaction of the plaintiffs.

37. In paragraph-27, the Appellate Court dealt with demolition of walls situate behind shop No.5 to construct a capsule lift to reach the first floor. The plaintiffs had issued letter Exhibit-49 to that effect. The defendants replied it and admitted that the wall was demolished and it was rebuilt. Thus it shows that the work of permanent alteration and construction was carried out by both the acts of the defendants without permission of the Corporation as also the plaintiffs. Even in written statement, notice reply dated 2.8.2000 Exhibit-36, evidence of DW-1 there is clear cut admission that the wall was demolished and rebuilt,

which amounts to carry out permanent constructions / alterations.

38. In paragraph-28, the Appellate Court dealt with the allegation of cutting open the RCC slab of shop No.6. The evidence of DW-1 shows that there is admission in respect of notice replied by the defendants. In the said reply as also in paragraph-11 of the written statement, the defendant admitted that he has carried out additions and alterations.

39. Mr. Dhakephalkar and Mr. Dani submitted that the plaintiffs did not produce the sanctioned plans to establish existence of internal walls between shops No.4 & 5 and shops No.5 & 6. It also did not prevent the defendant from bringing the sanctioned plan on record. The defendants could have also brought on record the sanctioned plan showing non-existence of internal walls. In view thereof, I do not find any merit in the submission of Mr. Dhakephalkar and Mr. Dani that the plaintiffs failed to produce the sanctioned plans to establish existence of internal walls between shops No.4 & 5 and shops No.5 & 6.

40. After considering the evidence on record, I do not find that the Appellate Court committed any error in decreeing the suit.

41. In the case of **Shri M.L. Sethi vs. Shri R.P. Kapur, (1972) 2 SCC 427**, the Apex Court has considered the scope of revision under Section 115 of C.P.C. In paragraph-12 of that decision, the Apex Court

observed that the jurisdiction of the High Court under Section 115 of C.P.C. is a limited one. The Apex Court considered following decisions :

- (i) **Rajah Amir Hassan Khan vs. Shoo Baksh Singh, (1884) LR 11 IA 237;**
- (ii) **Balakrishna Udayar vs. Vasudeva Aiyar, (1917) LR 44 IA 261, 267;**
- (iii) **N.S. Venkatagiri Ayyangar vs. Hindu Religious Endowments Board, Madras, (1948-49) LR 76 IA 73;**
- (iv) **Manindra Land and Building Corporation Ltd., vs. Bhutnath Banerjee and others, AIR 1964 SC 1336;**
- (v) **Vora Abbasbhai Alimahomed vs. Haji Gulamnabi Haji Safibhai, AIR 1964 SC 1841; &**
- (vi) **Pandurang Dhuni Chowgule vs. Maruti Hari Jadhav, AIR 1966 SC 153.**

42. The Apex Court quoted the observations of Privy Council in **Rajah Amir Hasan Khan** (supra) which is to the following effect :

“The question then is, did the judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.”

43. The Apex Court further quoted its observations in the case of **Pandurang Chowgule** (supra) as under :

“The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may be, or even errors "of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of Section 115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the Court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under Section 115.”

44. The above decision reiterates that under Section 115 of C.P.C., the High Court has to satisfy itself on three matters, namely,

- (a) that the order of the subordinate Court is within its jurisdiction;
- (b) that the case is one in which the Court ought to exercise jurisdiction, and
- (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provisions of law, or with material irregularity,

that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied on these three matters, it has no power to interfere because it differs from conclusion of the subordinate Court on question of facts or of law.

45. Applying the tests laid down by the Apex Court, as aforesaid, to the facts of the present case, it cannot be said that the defendants have made out a case for invocation of powers under Section 115 of C.P.C.. The defendants are not in a position to demonstrate that the findings recorded by the Appellate Court are perverse, being based upon no evidence or that they are contrary to the evidence on record. The defendants are also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the

Appellate Court. Merely because on the basis of evidence on record another view is possible, that itself is no ground for invocation of powers under Section 115 of C.P.C. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Civil Revision Applications fail and the same are dismissed with no order as to costs.

46. At this stage, Mr. Dani orally applies for stay of this order for a period of twelve weeks from today. Mr. Dani states that the applicants are in possession of the suit premises and they have neither created third party interest nor parted with the possession. They will hereafter neither create third party interest nor part with the possession. He further states that the applicants and all adult family members using the suit premises are ready and willing to give usual undertaking on or before 3.5.2018, with copy in advance to other side. Learned Counsel for the respondents opposes said prayer.

47. Having regard to the fact that applicants desire to challenge this order before the Apex Court, in my opinion, ends of justice would be met by staying operation of this order for a period of twelve weeks from today subject to the applicants and all adult members using the suit premises giving usual undertaking to this Court on or before 3.5.2018 incorporating therein:

- (i) that they are in actual possession of the suit premises and

nobody else is in possession;

- (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises;
- (iv) that they will pay the arrears of rent, if any, to the respondents within two weeks from today; and
- (v) that in case the applicants are unable to obtain suitable orders within twelve weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondents.

48. In view thereof, notwithstanding dismissal of Civil Revision Applications, this order shall remain stayed for a period of twelve weeks from today, subject to the applicants filing undertaking in the aforesaid terms on or before 3.5.2018, with copy in advance to the other side. In case the applicants do not file undertaking in the above terms and/or arrears of rent are not paid on or before 3.5.2018, the interim order shall stand vacated without further reference to the Court. List the applications for reporting compliance on 4.5.2018. Order accordingly.

(R. G. KETKAR, J.)