

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO.3818 OF 2018

|                                                                       |     |                         |
|-----------------------------------------------------------------------|-----|-------------------------|
| Vinay Asharam Rathi and another Vs. Ramgopal Gupta (decd) and another | ... | Petitioners Respondents |
|-----------------------------------------------------------------------|-----|-------------------------|

WITH  
WRIT PETITION NO.4105 OF 2018  
WITH  
WRIT PETITION NO.4106 OF 2018  
WITH  
WRIT PETITION NO.4107 OF 2018

|                                   |     |             |
|-----------------------------------|-----|-------------|
| Mridula Vinay Rathi               | ... | Petitioner  |
| Vs.                               |     |             |
| Ramgopal Gupta (decd) and another | ... | Respondents |

Mr. R. D. Soni i/b. Mr. Sandeep S. Sharma for Petitioner in W.P.No.3818 of 2018.

Mr. Uday Warunjikar i/b. Mr. Sandeep S. Sharma for Petitioner in W.P.  
No.4106 of 2018

Mr. Sandeep S. Sharma for Petitioner in W.P.No.4105 of 2018 and W.P.No.4107 of 2018.

Ms Johan Ora Sarkhot i/b. Ms Radhika Samant for Respondents in all the Petitions.

**CORAM : R. G. KETKAR, J.**  
**DATE : APRIL 13, 2018**

**P.C. :**

Heard Mr. Soni, learned Counsel for petitioner in Writ Petition No.3810 of 2018, Mr. Warunjikar, learned Counsel for petitioner in Writ Petition No.4106 of 2018, Mr. Sharma, learned Counsel for petitioner in Writ Petitions No.4105 of 2018 and 4107 of 2018 and Ms Sarkhot, learned Counsel for respondents in all the Petitions at length.

2. This is a classic case depicting ordeal faced by the ordinary litigant when opponent is a practising lawyer and how there could be

abuse of process of Court as also abuse of process of law.

3. Writ Petition No.3818 of 2018 is instituted by petitioner No.1- Vinay Asharam Rathi (hereinafter referred to as 'Vinay') and petitioner No.2 - Mridula Vinay Rathi, who is wife of the petitioner No.1, hereinafter referred to as 'Mridula', against respondent No.1 - Ramgopal Gupta (since deceased), hereinafter referred to as 'Ramgopal' and respondent No.2 - Neelkumar Ramgopal Gupta, son of respondent No.1, hereinafter referred to as 'Neelkumar' (plaintiffs / decree-holders), challenging the judgment and order dated 28.06.2017 below exhibit-22 as also the judgment and order dated 16.02.2018 below exhibit-34 in Execution Application No.157 of 2017 passed by the learned Judge, Court Room No.7 of the Court of Small Causes at Mumbai. By order dated 28.06.2017, below exhibit-22, the learned trial Judge allowed the application made by Ramgopal (since deceased) and Neelmumar and issued possession warrant under Order XXI, Rule 35 of C.P.C. The Court Bailiff Mr. Vishwambhar was directed to execute the possession warrant by breaking open the lock of Cabin No.7 / Room No.7 and part of Cabin / Room No.3 and its extended portion situate on the western side of big size room on the second floor, building No.35 in Haman Street, Fort, Bombay 400 023 (for short 'suit premises'), if the suit premises were found locked and put the decree-holders in possession of the same. By order dated 16.02.2018, the learned trial Judge allowed the application exhibit-34 taken out by plaintiffs - decree holders and directed Vinay (defendant / judgment-debtor) and Mridula / Obstructionist to remove their remaining articles, goods, belongings, etc. lying in the suit premises within a period of 6 weeks from the date of the order with the help of the Bailiff of the Court. Till then, plaintiffs were directed to take care of remaining articles of defendant / obstructionist. If the defendant / obstructionist is failed to comply with the order within

the prescribed period, plaintiffs were at liberty to remove the remaining goods, belongings, etc. of defendant / obstructionist from the suit premises with the help of Bailiff J. G. Bhogte and shift the same to some other place at the risk and costs of the defendant / obstructionist.

4. Writ Petition No.4105 of 2018 is instituted by Mridula challenging the same orders namely, orders dated 28.06.2017 below exhibit-22 and 16.02.2018 below exhibit-34 in Execution Application No.157 of 2017. In addition, she has challenged order dated 16.02.2018 below exhibit-35 rejecting her application for appointing Court Receiver to take possession of the suit premises from Neelkumar, the respondent - plaintiff and restore the same to her.

5. Writ Petition No.4106 of 2018 and Writ Petition No.4107 of 2018 are instituted by Mridula challenging the same orders namely, orders dated 28.06.2017 below exhibit-22 and 16.02.2018 below exhibit-34 in Execution Application No.157 of 2017. Since common questions of law and fact arise in these Petitions, the same can conveniently be disposed of by this common order. For appreciating the controversy raised in these Petitions, the facts from Writ Petition No.3818 of 2018 are taken into consideration.

6. In support of Writ Petition No.3818 of 2018, Mr. Soni submitted that in L.E.&C. Suit No.52/60 of 1991 instituted by Ramgopal and Neelkumar, decree was passed on 23.05.1991. Execution Application No.157 of 2017 was filed in the year 2017. He submitted that in view thereof, bar under Order XXI, Rule 22 is clearly attracted. No notice was given to Vinay and ex-parte order was passed. Even without hearing Vinay, warrant of possession was issued. Mr. Soni invited my attention to- (1) prayers (a) and (b) of Miscellaneous Notice No.48 of 2002 and (2) order dated 30.09.2005 passed by this Court in Notice of

Motion No.1545 of 1996, and in particular, paragraph 1(i) and (iii). Clause (i) recorded that the statement made on behalf of Ramgopal and Neelkumar that they will not in any way interfere with the use, occupation and possession of the premises which is presently in occupation of Mridula being Cabin No.7 and part of Cabin No.3, till the hearing and final disposal of the Suit. Clause (iii) recorded undertaking of Neelkumar to the effect that in so far as the area occupied by Mridula is concerned, he will keep the same access free and Mridula will be permitted to use the said premises freely which is in her occupation. The said undertaking was accepted and Motion No.1545 of 1996 was disposed of.

7. Mr. Soni submitted that provisions of Order XXI, Rule 22 are mandatory. He relied upon decision of the Apex Court in ***Satyanarain Bajoria Vs. Ramnarain Tibrewal***, AIR 1994 SC 1583, and in particular, paragraph 13, which is to the following effect:

“13. ... It will be noticed that the decree was passed as far back as 1964. The present application was filed in 1968 more than 2 years after dismissal of earlier execution application and, therefore, for further proceedings in pursuance of a fresh execution application, the court was duty bound to issue notice and serve notice of the execution application on the judgment-debtor as provided for in Order 21 Rule 22 of the Code which contemplates inter alia that if an application for execution is made more than two years after the date of the decree, the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show causes, on a date to be fixed, why the decree should not be executed against him. ...”

8. He also relied upon the decision of ***Gauri Lal Vs. Sujham Devi***, AIR 1986 Himachal Pradesh 3, and in particular paragraphs 4 and 5 thereof. In paragraph 4, it was observed that execution proceedings in that case were instituted nearly 6 years after the passing of the decree and no show cause notice was served on the judgment debtor before

warrant of possession was issued nor was the service of the show cause notice dispensed with by an order of the Court. Order XXI, Rule 22 (1) provides for a notice to show cause to issue against execution in certain cases and one of the cases in which such notice is necessary is where an application for execution is made "more than two years after the date of the decree". It was further observed that proviso is not applicable on the facts and in the circumstances of the case. He submitted that admittedly in the present case, no notice was issued to Vinay. He, therefore, submitted that the order passed by the learned trial Judge on 28.06.2017 below exhibit-22 issuing warrant of possession under Order XXI, Rule 35 is liable to be set aside. Even the order dated 16.02.2018 passed below exhibit-34 is liable to be set aside thereby restoring possession of the suit premises to Vinay.

9. In support of Writ Petition No.4106 of 2018, Mr. Warunjikar invited my attention to the consent terms dated 16.05.1991 that were entered into between Ramgopal and Neelkumar, being plaintiffs on one hand and Vinay, defendant on the other. He submitted that Mridula was not party to the consent terms. In clause 2 of the consent terms, Ramgopal and Neelkumar recognized Mridula and her children as their regular licensees / occupants and they were implicated in the plaint. Thus, Ramgopal and Neelkumar recognized Mridula's status as a licensee in the suit premises. He invited my attention to the order dated 25.07.1995 passed by the Appellate Bench in Revision Application No.62 of 1993 filed by Mridula and Kamladevi Asharam Rathi, mother of Vinay, hereinafter referred to as 'Kamladevi'. By that order, the Appellate Court set aside the trial Court's order dated 26.08.1993 passed in Miscellaneous Notice No.540 of 1991 and substituted it by setting aside the consent decree passed in L.E.&C. Suit No.52/60 of 1991 against Mridula and Kamladevi. He submitted that Ramgopal and

Neelkumar did not challenge that order and thus that order attained finality. While setting aside the consent decree, in paragraph 11, the Appellate Court observed that the Suit was filed by Ramgopal and Neelkumar only against Vinay and consent decree came to be passed not only against Vinay but against his wife Mridula and her children and Kamladevi. The consent terms were not signed by Mridula, her daughters and Kamladevi. There was no notice of the Court calling upon them to appear before it. As the applicants were not parties to the Suit as also to the consent terms and despite that the consent terms came to be passed against them, binding them along with Vinay, the consent decree is liable to be set aside. He submitted that the consent decree recognized Mridula as a licensee of the suit premises, Neelkumar also accepted her occupation. In these circumstances, the learned trial Judge was not justified in issuing warrant of possession under Order XXI, Rule 35 and thereby dispossessing Mridula from the suit premises.

10. Mr. Warunjikar invited my attention to the order dated 22.06.2009 passed by the learned Single Judge of this Court in Writ Petition No.3924 of 2009 whereby this Court set aside the direction of the Appellate Court of Small Causes Court to treat reply of Neelkumar as an application under Order XXI, Rule 97 of C.P.C. and Miscellaneous Notice as reply to the said proceeding. He submitted that by order dated 19.10.2005 passed in Writ Petition No.6745 of 2005, this Court directed that in view of the order dated 30.09.2005 passed in Notice of Motion No.1545 of 1996 and Notice of Motion No.1399 of 2002 in Suit No.1434 of 1996, in the event of the appeal and revision application in the Small Causes Court are decided adversely to the interest of Mridula and others, the said orders will be implemented only after seeking liberty from this Court in Suit No.1434 of 1996. He submitted that no such liberty was sought from this Court for implementing the orders passed in Appeal and Revision Application. He further submitted that in

the order dated 30.09.2005, and in particular paragraph 1, clauses (i) and (iii), this Court recorded statement of Neelkumar that he will not in any manner interfere with the use, occupation and possession of Mridula, which is presently in occupation of Cabin No.7 and part of Cabin No.3 till the hearing and final disposal of the Suit. He submitted that Suit No.1434 of 1996 instituted under Section 6 of the Specific Relief Act, 1963 is pending as on date. Thus, by executing the decree and obtaining possession, Neelkumar has committed contempt of the undertaking recorded in clauses (i) and (iii) of the order dated 30.09.2005. In fact, Contempt Petition (L) No.54 of 2017 instituted by Mridula on the Original Side of this Court was admitted on 20.07.2017 after recording that prima facie case of contempt is made out.

11. He submitted that the attention of the learned trial Judge was specifically invited to order dated 19.10.2005 passed by this Court in Writ Petition No.6745 of 2005 as also fact that contempt proceedings are pending before this Court. The learned trial Judge however discarded that submission. He invited my attention to paragraph 15 of the order dated 16.02.2018. In that paragraph, the learned trial Judge noted that Mridula has filed written arguments at exhibit-69 and appeared in person. The learned trial Judge thereafter did not deal with the contentions raised by Mridula in the written arguments as also in the course of oral arguments. In paragraph 21, it was contended on behalf of Mridula that the decree was obtained by fraud, and therefore, not binding on her. In support of this proposition, several authorities were cited. The learned trial Judge observed that, with respect, those authorities are not applicable to the present case because the City Civil Court dismissed the Suit No.373 of 1994 and no case of prima facie fraud was made out. The learned trial Judge further observed that though the order dated 25.07.1995 was passed by the Appellate Bench

of the Small Causes Court in Revision Application No.62 of 1992 and the same order was not challenged by Neelkumar, that will not help Mridula, as subsequent Obstructionist Notice No.135 of 2014 was dismissed by the Executing Court on 31.08.2015 and the said order was not challenged by her. He submitted that Mridula is claiming independent right, title and interest in the suit premises. It is in these circumstances, the orders dated 28.06.2017 below exhibit-22 and 16.02.2018 below exhibit-34 are liable to be quashed and set aside thereby restoring possession of the suit premises to her.

12. In support of Writ Petition No.4105 of 2018 and Writ Petition No.4107 of 2018, Mr. Sharma substantially adopted the submissions advanced by Mr. Soni and Mr. Warunjikar. In so far as the order dated 16.02.2018 below exhibit-35 is concerned, he submitted that petitioner may be permitted to delete the challenge raised in Writ Petition No.4105 of 2018 with liberty to file appeal before the Appellate Bench of the Small Causes Court and restrict the challenge to the order dated 28.06.2017 passed below exhibit-22 and 16.02.2018 below exhibit-34 in Execution Application No.157 of 2017 in L.E.&C. Suit No.50/62 of 1991.

13. On the other hand, Ms Sarkhot, appearing on behalf of Neelkumar in all the matters, has supported the impugned orders. She has invited my attention to clause (4) of the consent terms dated 16.05.1991 where reference is made to the letter dated 28/29.12.1990 addressed by Vinay to Ramgopal. She submitted that L. E. & C. Suit No.50/62 of 1991 was filed only against Vinay. Clause (2) thereof recorded that Ramgopal and Neelkumar recognized Mridula and her minor daughters as regular licensees and occupants and that decree will be binding on them. That was by way of abundant



caution. She invited my attention to the proceedings instituted by Mridula namely, Revision Application No.62 of 1993 where occupation of Mridula and Kamladevi was shown as household as also S.C.Suit No.373 of 1994 instituted by Mridula and Kamladevi along with Vinay where their occupation was shown as household. She has taken me through the assertions made in - (i) S.C.Suit No.373 of 1994 filed by Vinay, Mridula and Kamladevi in the City Civil Court at Bombay; (ii) Revision Application No.62 of 1993 filed by Mridula and Kamladevi preferred against the order dated 26.08.1993 passed by the learned trial Judge in Miscellaneous Notice No.540 of 1991; (iii) Miscellaneous Notice No.48 of 2002 filed by Mridula under Section 151 read with Order XXI, Rule 29 and Order XXIII, Rule 3 and other applicable provisions of C.P.C.

14. She has invited my attention to the orders dated 28.03.1994 passed by this Court in Writ Petition No.5293 of 1993 and of the Apex Court dated 10.11.1994 in S.L.P. Even in the cause title of the Writ Petition No.5293 of 1993, occupation of Mridula was shown as household. She invited my attention to the prayers made in S.C. Suit No.373 of 1994 and in particular prayer clauses (a) and (c1) where Vinay, Mridula and Kamladevi prayed for declaration that the consent decree was obtained by Ramgopal and Neelkumar by practising fraud and by committing forgery of signature of Vinay on the consent terms. She submitted that Mridula has not produced a single document to establish her possession in respect of the suit premises. In other words, she submitted that Mridula was never in possession of the suit premises, which is office premises. She submitted that S.C.Suit No.373 of 1994 instituted in the City Civil Court was dismissed on 21.01.2016 and Vinay, Mridula and Kamladevi have not challenged the said decree till date.

15. She also relied upon the proviso to Order XXI, Rule 22 of C.P.C., which lays down that no notice under sub-rule (1) would be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person, the Court has ordered execution to issue against him. In any case, Ms Sarkhot submitted that sub-rule (2) lays down that nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice. She also invited my attention to the list of cases filed by Vinay against Ramgopal and Neelkumar as also cases filed by Mridula against Ramgopal and Neelkumar. She submitted that a perusal of the list of cases filed by Mridula and Vinay will show that they are misusing the machinery of the Court. The proceedings initiated by them are abuse of process of Court as also abuse of process of law. She therefore, submitted that no case is made out for interfering with the impugned orders.

16. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Before I deal with the rival contentions advanced by the learned Counsel for the parties, it is necessary to consider the background of the case and the various proceedings and orders passed therein. Initially, Ramgopal and Neelkumar had instituted L.E.&C. Suit No.50/62 of 1991

on 19.04.1991 against Vinay for recovery of possession of the suit premises on the ground that Vinay was inducted as a licensee in the suit premises in pursuance of his letter dated 28/29.12.1990. A perusal of that letter shows that Vinay sought permission of Ramgopal and Neelkumar to start using the suit premises on leave and licence basis. It was further stated that he will be sitting more or less like a visitor and that too, only between 9:30 and 18:30 hours (Monday to Friday) and upto 1530 hours on Saturdays. He stated that he would use the suit premises just for 11 to 13 months from January, 1991. He also thanked for trusting and permitting him to start occupation. This letter unequivocally shows that it is only Vinay who sought permission to occupy the suit premises on leave and licence basis. In other words, Mridula and her children as also Kamladevi were not in picture at all. The premises were not taken by them on leave and licence basis at all.

17. During the pendency of that Suit, Vinay filed consent praecipe dated 16.05.1991 requesting therein to give the urgent Suit No. in the matter, to be heard today before Her Worship as he was proceeding out of Station that evening for an urgent work and as the parties have to file the consent terms in the above Suit to keep the occupation of the suit premises in his possession. On behalf of the plaintiffs, their Advocate consented.

18. On the same day, the learned Vacation Judge, presiding over Court Room No.9, Mrs. J. S. Kalyanpur passed order recording that Advocate for the plaintiff was present. Plaintiff was present. Defendant (Vinay), who is an advocate was present in person. By consent of both the Advocates, the prayer in the instant application was granted. The office was directed to give the suit number urgently. On 17.05.1991, another learned Judge passed the following order:

“ As per the note of the learned Judge, Mrs. J. S. Kalyanpur, Vacation Judge, this matter is kept before me today.

Plaintiff and Advocate present. Defendant is present in person.

They want to file consent terms, which are taken on record. The matter be kept 'for orders' on 22.05.1991 at 11.00 a.m.

Presence of the parties is dispensed with.”

19. It appears that 22.05.1991 was declared as a holiday. Hence, the matter was taken up on Board on 23.05.1991. It was also noted that the consent terms and the copy of the consent terms were filed. On 23.05.1991, the learned trial Judge decreed the Suit in view of the consent terms at exhibit-A, with no order as to costs. Clauses 2, 3, 4 and 6 of the consent terms read thus,

“(2) The defendant admits and that each and every statement of the plaintiffs in the Complaint and their affidavit in support of the notice, they are all true and the defendant is liable for the reliefs and orders as prayed for in them (Complaint / notice) and submit to decree for possession and arrears as prayed for in the complaint and the suit premises is to be one as per the sketch hereto annexed and marked as Exhibit ' ' hereto as while arriving at these terms the defendant has adjusted himself in the portion/s so shown in the sketch to form as a part of his consent terms and decree herein; the plaintiffs have also recognised Mrs. Rathi and her / their children as their regular licensees / occupants and as they were implicated in the complaint and decree for possession and arrears and other orders shall be binding on them along with the defendant abovenamed; such decrees be executed any time before and even after two years period without needing statutory notice from the Hon'ble Court before executing even after 24 months and the same is requested to be disposed with by the Hon'ble Court right today.

(3) The plaintiffs hereby acknowledge receipt of from the defendant of the sum mentioned in the annexure 'B' hereto and the defendants i.e. the one abovenamed and other whose names have been mentioned in No.2 above through their agent and person, the defendant abovenamed also give their solemn undertaking to the Hon'ble Court to pay all these sums / cheques mentioned in the said annexure 'B' on their

due dates. The defendants also give their undertaking to vacate the suit premises portion referred to any time before 2 years i.e. upto 30.4.1993 and not to create third party in suit premises portion and to take no one else as their partner/s on their or to start any other business except to carry on their of name and style as M/s. S. R. Distributors being a Company Secretary.

(4) The Defendants have carried out certain decorations, paintings, etc. in the suit premises portion and which sums be not claimed by them from the plaintiffs and they would take care of the coming monsoon leakages over and around their portion including for the next year / and they are not permitted by the plaintiffs to carry out any further decorations and divisions of the portion even inside anywhere. The defendants acknowledge the receipt of the new lock put by the plaintiffs replacing the old one which was hitherto and defendants be not given a duplicate key of any of the door/s through which they have pass through to reach the suit premises and they would not change the said lock or enter into earlier and remain later than the permitted hours and days, the defendant letter dated 28/29.12.1990 is treated for the suit potions as per the annexure of same and defendants liabilities to pay as per the Annexure 'A' hereto.

(6) The defendant has declared to the plaintiffs that the two cheques given by him to them having been drawn by one Mrs. Rathi and 2 others are none other than his wife and children and these consent terms and decree be binding upon them as well as against him.”

20. A perusal of the above consent terms and in particular, clause (2) thereof shows that Ramgopal and Neelkumar recognized Mrs. Rathi and her / their children as their regular licensees / occupants and as they were implicated in the plaint, decree for possession and arrears and other orders will be binding on them along with defendant abovenamed (Vinay). It is, at this juncture, relevant to note that Ramgopal and Neelkumar are laymen. As against this, Vinay is a Company Secretary and a practising Advocate. At the time of entering into compromise terms, being an Advocate, it was his responsibility to ensure that the consent terms entered into between the parties are lawful. Though the

consent terms provided for impleadment of Mridula and her children in the Suit, they were not impleaded. They were not given notice. Their signatures were not obtained. Still, it provided that that eviction decree will bind them. That apart, even leave of the Court under Order XXIII, Rule 3-B permitting Vinay to represent them was not sought and consequently obtained. It is unfortunate that this aspect did not strike to the learned Counsel representing Ramgopal and Neelkumar at the time of entering into the consent terms.

21. On 13.08.1991, Vinay took out Miscellaneous Notice No.539 of 1991, and as expected, Miscellaneous Notice No.540 of 1991 was taken out by Mridula and Kamladevi for setting aside the consent terms and the consent decree on the ground that fraud was played upon the Court. It is material to note that neither in the Suit nor in the consent terms, Kamladevi was in picture. The consent decree was not passed against her. Mridula and Kamladevi contended that they were not party in the Suit. No summons were served upon them. They have not signed the consent terms. Ramgopal and Neelkumar filed affidavit in reply opposing the applications, inter alia contending that the consent terms were finalized by Vinay, being Advocate. By order dated 26.08.1993, the learned trial Judge discharged the notices on the ground that the notices tantamount to a Suit and under Section 19 of the Presidency Small Causes Courts Act, 1882 (for short 'P.S.C.C. Act'), a Suit for declaration that the decree is void or voidable is specifically barred and consequently, notices were not maintainable. It was further held that after passing of the consent decree, the Court became *functus officio* and in such circumstances, the notices cannot be considered.

22. Aggrieved by these orders, Vinay preferred Revision Application No.61 of 1993. Mridula and Kamladevi preferred Revision Application No.62 of 1993. By order dated 25.07.1995, the Appellate Bench

dismissed the Revision Application No.61 of 1993 preferred by Vinay, and allowed Revision Application No.62 of 1993 preferred by Mridula and Kamladevi. In the cause title of that Revision, occupation of Mridula and Kamladevi was shown as household. There were shown as residing at 34, Shantiniketan, Dr. Ambedkar Marg, Matunga, Bombay 400 019. As far as Vinay is concerned, he was made third respondent. His occupation was shown as Advocate and his address was that of the suit premises. In other words, Mridula and Kamladevi did not show that they are occupying the suit premises and that they are carrying on any profession or business in the suit premises, which is admittedly, office premises. In paragraph 1 of that Revision Application, it was specifically stated that they are residing at 34, Shantiniketan, Dr. Ambedkar Road, Matunga, Bombay 400 019 and that they are housewives. Vinay was not having any separate office room prior to 1991 and was desirous of obtaining an office near to Civil Courts and preferably in Fort area. In paragraph 2, it was asserted that in or about February, 1991, Ramgopal offered to give part of the ground floor consisting of a cabin and some space near about for the purpose of Vinay's profession. Since Vinay was in dire need of premises, he agreed to occupy the 2<sup>nd</sup> floor of the premises (more particularly shown in the plan annexed to the consent decree) with effect from 16.05.1993. They came to know of so called consent terms much later from Vinay when he obtained certified copy thereof. Vinay told them that the consent terms were executed by him under duress and without his free consent. In paragraph 3, reference was made to the application made by them objecting to the execution of the consent decree. The contentions raised in Miscellaneous Notice No.540 of 1991 were referred.

23. In paragraph 5(c), part of the consent terms was reproduced. In clause (d), grievance was made that the learned trial Judge, while

passing the decree in terms of the consent terms, did not even read what was written about them in paragraph 2 of the purported consent terms, either at the time of passing of the decree or at the time when the learned trial Judge passed order on 26.08.1993. Had he done so, he would have immediately realized that “Mrs. A. Rathi and her/their children who were recognized as 'their regular licensees / occupants” were not in fact, impleaded in the suit or decree, much less had they signed the consent terms presented before the learned trial Judge, much less had they remained present and admitted the consent terms. It was patent that by saying that “Mrs. A. Rathi and her / their children” were impleaded in the plaint and the decree. The respondents (Ramgopal and Neelkumar) patently misled the learned trial Judge by making a false statement which could have been easily verified by the learned trial Judge by a mere look at the title of the plaint and the signatures on the consent terms. In paragraph 5(f), grievance was made that the learned trial Judge ignored provisions of Order XXIII, Rule 3 as he did not record that the consent terms were lawful.

24. The learned Appellate Bench, while allowing the Revision Application No.62 of 1993, observed that in view of Order XXIII, Rule 3-B of C.P.C., no agreement or compromise in a representative suit can be entered into without the leave of the Court expressly recorded in the proceedings and any such agreement or compromise entered into without the leave of the Court so recorded would be void. In the present case, the parties, much less Vinay, did not obtain leave of the Court to represent Mridula and their children so that they would be bound by the consent decree. The consent decree was not signed by them. There was no notice of the Court calling upon them to appear before it while passing such a consent decree. The learned Appellate Bench accordingly set aside the trial Court's order dated 26.08.1993 and substituted it in the



following terms:

“The consent decree passed against the applicants in L.E.&C. Suit No.50/62 of 1991 is set aside with no order as to costs.”

25. It is inconceivable that Mridula and Kamladevi were kept in dark by Vinay while executing consent terms. Even assuming that they were unaware, it cannot be digested that Vinay will keep them in dark after disposal of the Suit as per the consent decree till filing of Miscellaneous Notice on 13.08.1991. I will also presently point out the contention that Vinay executed consent terms under duress and without free consent is palpably false.

26. In the meantime, Vinay instituted Writ Petition No.5292 of 1993 in this Court inter alia praying for quashing and setting aside the consent decree as well as the warrant of possession and orders passed by the trial Court as well as by the appellate Court of Small Causes Court in different applications thereby restoring the Suit to be decided on merits; directing the trial Court to investigate into the allegations of forgery of the signature of the petitioner (Vinay), who was defendant in the Suit and the notices issued in the execution proceedings to mark the service to snatch order by ex-parte and after being satisfied initiate the proceedings against the culprits in accordance with the provisions of the law; for issuing writ, order or direction directing the trial Court to issue suo motu contempt of Court for interfering with the administration of justice against the contemptors; for directing Registrar to procure the signature of Ramgopal and Neelkumar and their specimen signature for the purpose of comparison and also their writings as a specimen writing and after procuring the same, and sending it to the hand-writing expert for opinion. Pending the hearing and final disposal of the Petition, Vinay prayed for stay to the execution of the decree and warrant of possession against his wife (Mridula), minor children and mother

Kamladevi.

27. By order dated 28.03.1994, the learned Single Judge of this Court (Coram: S. H. Kapadia, J. as the learned Chief Justice of India then was) dismissed the Petition after observing that the Court below had come to the conclusion that the consent decree dated 23.05.1991 was passed in accordance with law; that there was nothing to indicate fraud as alleged by Vinay; that in the application made under Order XXIII of C.P.C. by Vinay, there was no allegation of fraud or coercion made out and in any event, there is nothing to indicate that fraud was practised on Vinay. Essentially these are the questions of facts. After going through the application under Order XXIII, this Court found that there is no whisper of fraud alleged in the said application. In any event, consent application dated 23.05.1991 (it should be '16.05.1991') was signed on the letter-head of Vinay. The consent praecipe dated 16.05.1991 was presented to the trial Court and accordingly the consent decree came to be passed. Writ Petition was accordingly rejected. Aggrieved by that decision, Vinay instituted S.L.P. before the Apex Court, which was dismissed on 10.11.1994.

28. In the meantime, on 28.12.1993, Vinay, Mridula and Kamladevi instituted Suit, which was numbered as Suit No.373 of 1994, for declaration that Ramgopal and Neelkumar (defendants therein) had practised fraud in obtaining the consent terms and consent decree against them and have committed forgery of signatures of Vinay and signature on consent terms were obtained by fraud and for perpetual injunction restraining Ramgopal and Neelkumar from executing the warrant of possession so obtained in execution application taken out in the Suit. In the cause title of that Suit, occupation of Mridula and Kamladevi was shown as 'household'. Their address was shown as 34, Shantiniketan, Dr. Ambedkar Road, Matunga, Bombay 400 019. As far as Vinay, who

was plaintiff No.1, his occupation was shown as Advocate and qualified Company Secretary and address of suit premises was mentioned. In paragraph 1, it was contended that plaintiff No.1 (Vinay) is a practising Advocate living with plaintiff No.2 (Mridula) and plaintiff No.3 (Kamladevi) along with their minor children. Mridula is a household lady and wife of Vinay. Kamladevi is mother of Vinay and widow staying with Vinay. In paragraph 2, it was contended that Vinay was not having any office premises prior to May 1991 and was desirous of obtaining an office near City Civil Court in Bombay and preferably if available in Fort area. In paragraph 3, it was contended that Vinay on knowing the availability of the premises with Ramgopal and Neelkumar approached them some time in the month of December 1990 and reference was made to the agreement dated 28.02.1991, which was annexed as exhibit-A to the plaint.

29. On 19.02.2002, Mridula and others filed Miscellaneous Notice No.48 of 2002 in Revision Application No.62 of 1993 in Miscellaneous Notice No.540 of 1991 before the Small Causes Court under Section 151 read with Order XXI, Rule 29 and Order XXIII, Rule 3 and other applicable provisions of C.P.C. inter alia praying for following reliefs:

“a) No order of any execution of Decree or Warrant of possession of the suit premises situated at Bldg. No.35, Ambalal Doshi Marg (Hamam Street), 2<sup>nd</sup> floor, Room No.7 and half part of Room No.3, presently in the exclusive occupation and possession of applicant's herein, be issued to respondent No.1 & 2 herein be issued to respondent No.1 & 2 herein and if issued be called back / cancelled in L.E.&C.Suit No.50/62 of 1991 looking with the facts of the case.

b) That Registrar, Head Bailiff and concerned Bailiff of this Hon'ble Court be directed immediately not to execute any such Decree, Warrant of Possession so issued and if lodged for execution by Respondent No.1 & 2 herein in above L.E.&C. Suit No.50/62 of 1991 until further directed by this Hon'ble Court.”

30. In paragraph 1, for the first time, Mridula claimed that since 16.05.1996, she is in a continuous and peaceful occupation and possession of the suit premises along with Kamladevi, Vinay and her children. In the suit premises, they were inducted by Ramgopal by an alleged consent decree passed on the basis of the alleged consent terms between Ramgopal and Neelkumar on one hand and Vinay, who was respondent No.3 therein on the other. In paragraph 2, it was contended that in the consent terms, they were shown as defendant's (Vinay) wife, children and mother respectively and were recognized by Ramgopal and Neelkumar as their regular licensees / occupants and the alleged consent terms were made binding on them. They were not impleaded as necessary party and Ramgopal and Neelkumar obtained the order behind their back. Reference was made to Miscellaneous Notice No.540 of 1991 and the order dated 26.08.1993 passed by the trial Court as also Revision Application No.62 of 1993 filed by them before the Appellate Bench of the Small Causes Court and the order dated 25.07.1995 passed thereon. In paragraph 5, it was contended that order dated 25.07.1995 passed in Revision Application No.62 of 1993 was not challenged by Ramgopal and Neelkumar and thus attained finality. Ramgopal and Neelkumar are facing two Suits instituted by them along with Vinay on the Original Side of this Court, one under Section 6 of the Specific Relief Act, 1963 and other for damages and the same are pending.

31. On 19.03.2002, Neelkumar filed reply opposing Miscellaneous Notice No.48 of 2002. It was inter alia contended that the order dated 25.07.1995 was not challenged as Mridula and Kamladevi were not party to the Suit. They did not consider them as licensees as the decree against Mridula and Kamladevi has been set aside. It was contended that Mridula and Kamladevi were never in use, occupation and possession of the suit premise. Reference was made to the averments

made in the Revision Application No.62 of 1993. Even in the plaint of S.C.Suit No.373 of 1994, occupation of Mridula and Kamladevi was shown as household residing at 34, Shantiniketan, Dr. Ambedkar Road, Matunga, Mumbai 400 019.

32. By order dated 15.07.2002, the learned trial Judge discharged the Miscellaneous Notice No.48 of 2002 and another Miscellaneous Notice No.49 of 2002 taken out for setting aside the order dated 18.02.2002 passed in Execution Petition No.403 of 2002 as also for cancellation of warrant of possession. Though no orders / proceedings are produced by either of the parties challenging the order dated 15.07.2002, it appears that Miscellaneous Notice No.48 of 2002 was restored. On 31.08.2015, the learned trial Judge dismissed the notice in default for want of prosecution by passing the following order:

“

Order

When called Mrs. Mridula V. Rathi and others are absent. Her Id. Adv. Shilpa Dhupker is also absent. Ori. Pltff no.2 Neel Kumar Gupta is present with Id. Adv. Shri Bharat Mehta. She is absent i.e. Mridula since long in view of order passed dt. 2.2.15 10.8.15 below Exh.2. Hence, obstructionist notice is dismissed in default for want of prosecution in view of report of index clerk at exh.25.

sd/-  
31.8.15”

33. Mr. Soni and Mr. Warunjikar relied upon the following orders:

a. Order dated 30.09.2005 passed by this Court (Coram: S. U. Kamdar, J.) in Notice of Motion No.1545 of 1996 and Notice of Motion No.1399 of 2002 taken out by Mridula and others in Suit No.1434 of 1996, and in particular paragraph 1(i) and (iii). That Suit was instituted under Section 6 of the Specific Relief Act, 1963;

b. Order dated 19.10.2005 passed by this Court (Coram : Mrs. Nishita Mhatre, J.) in Writ Petition No.6745 of 2005, and in particular paragraph 6 thereof; and

c. Order dated 22.06.2009 passed by this Court (Coram : Mrs. Nishita Mhatre, J.) in Writ Petition No.3924 of 2009, and in particular paragraph 3 thereof.

34. Paragraph 1, clauses (i) and (iii) of the order dated 30.09.2005 read thus,

(i) In so far as Notice of Motion No.1545 of 1996 is concerned, Learned counsel for the defendant makes a statement on receiving instruction from his client, that the defendant will not in any manner interfere with the use, occupation and possession of the premises which is presently in occupation of the plaintiff being Cabin No.7 and part of Cabin No.3, till the hearing and final disposal of the Suit.

(iii) Learned Counsel for the defendant further undertakes that in so far as the area in occupation of the plaintiff is concerned he will keep the same access free and the plaintiff will be permitted to use the said premises freely which is in his occupation. In view of the undertaking as aforesaid which are accepted by the Court, nothing survives further in the motion and accordingly the same is disposed off.”

35. A perusal of paragraph 1(i) shows that on behalf of defendant Ramgopal and Neelkumar, statement was made that they will not interfere with the use, occupation and possession of the suit premises, which is presently in occupation of Mridula till the final hearing and disposal of the Suit. Clause (iii) recorded their undertaking that they will keep the same access free and permit them to use the premises freely which is in their occupation. In my opinion, the said order will not advance the case of Mridula as the case made out by Mridula itself shows that she was not in possession of the suit premises. The reliance placed on that order, therefore, does not advance her case. Reliance was also placed upon the order dated 19.10.2005 passed by this Court in Writ Petition No.6745 of 2005. Paragraph 6 thereof reads thus,

“6. However, in view of the order passed by this Court in Notice of Motion No.1545 of 1996 and Notice of Motion

No.1399 of 2002, in the event the Appeal and Revision Application are decided by orders adverse to the petitioners, the orders will be implemented only after seeking liberty from this Court in Suit No.1434 of 1996. Petition rejected.”

36. A perusal of that order shows that at that time, S.C.Suit No.373 of 1994 was pending in the City Civil Court . That Suit was dismissed on 21.01.2016 and Vinay, Mridula and Kamladevi have not challenged that order. In view thereof, the said order does not advance their case. In any case, Neelkumar is executing the consent decree dated 23.05.1991. Paragraph 1(i) did not preclude Neelkumar from following due process of law and in obtaining possession in execution proceedings. As far as the order dated 22.06.2009 is concerned, in that order, it was observed in paragraph 3 that appellate Court was not justified in directing the trial Court to treat the reply of Neelkumar Gupta as application under Order XXI, Rule 97 of C.P.C. and Miscellaneous Notice filed by Mridula and others as their reply. In my opinion, the said order also does not advance their case.

37. In view of the order dated 28.03.1994 passed by this Court in Writ Petition No.5293 of 1993 and order dated 10.11.1994 passed by the Apex Court dismissing S.L.P. against the order dated 28.03.1994 as also the decision dated 21.01.2016 of the City Civil Court dismissing S.C.Suit No.374 of 1994, the contentions advanced by Vinay, Mridula and Kamladevi that consent terms were executed by Vinay under duress and without his free consent, and that consent decree was obtained by practising fraud are palpably false to their knowledge.

38. This brings me to the contention advanced by Mr. Soni that bar under Order XXI, Rule 22 is attracted in the present case as the consent decree was passed on 23.05.1991 and the execution application is filed

in the year 2017. he submitted that no notice of execution proceedings was given to Vinay. Without hearing Vinay, ex-parte order was passed and warrant of possession was issued. The warrant was also executed on 14.07.2017. I do not find any merit in any of these submissions. I have already extracted clause 2 of the consent terms, which specifically records that consent decree can be executed any time before and even after two years period without needing statutory notice from the Court before executing decree even after 24 months and the same was dispensed with. Vinay, Mridula and Kamladevi had unsuccessfully challenged the consent decree in S.C.Suit No.373 of 1994. Vinay's challenge to the consent decree by filing W.P.No.5293 of 1993 also failed right upto the Apex Court. I have already held that Mridula, her children, Kamladevi were never in possession of the suit premises at any point of time. The notice under Order XXI, Rule 22 was dispensed with. Reliance was placed upon the decision of the learned Single Judge in **Gauri Lal** (*supra*). In paragraph 4, it was observed thus,

“4. The short question which arises for consideration is whether there is any jurisdictional error in the decision recorded by the executing Court. The fact that the execution proceedings were instituted nearly six years after the passing of the decree is not and cannot be disputed. The further fact that no show cause notice was served on the defendants (judgment-debtors) before the warrant for possession was issued **nor was the service of the show cause notice dispensed with by an order of the Court is also not in dispute.** Order 21, Rule 22, Sub-rule (1) provides for a notice to show cause to issue against execution in certain cases and one of the cases in which such notice is necessary is where an application for execution is made "more than two years after the date of the decree". There is a proviso which is not applicable on the facts and in the circumstances of the case and it need not detain us. Sub-rule (2), which is in the nature of an overriding provision, enacts that nothing in Sub-rule (1) shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, "if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice". An amendment made in Sub-rule (2), which applies in Himachal Pradesh, further enacts that failure to record such reason shall be considered an irregularity not amounting to a defect in jurisdiction.

*(emphasis supplied)*”



39. A perusal of paragraph 4 shows that the proviso was not applicable in the facts and circumstances of that case and that the service of show cause notice in that was not dispensed with by an order of the Court. In the present case, in terms of clause (2), the notice of execution of the decree after 24 months was specifically dispensed with. That apart, sub-rule (2) of Order XXI, Rule 22 lays down that nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice. In the facts and circumstances of the present case, I am more than satisfied that the trial Court was justified in not issuing notice as it could have defeated the ends of justice.

40. Mr. Soni relied upon the decision of **Satyanarain Bajoria** (*supra*) to contend that notice under Order XXI, Rule 22 is mandatory and in particular paragraph 13 thereof. For the reasons recorded hereinabove, I am of the opinion that the said decision is not applicable to the facts of the present case.

41. That apart, it is not in dispute that Vinay had challenged the consent decree right upto the Apex Court and he had failed there. Though he gave solemn undertaking that on or before 30.04.1993, he would handover vacant and peaceful possession of the suit premises to Ramgopal and Neelkumar, still he did not handover possession. Instead one after another, proceedings were initiated by him and by his wife and mother. They have also instituted Suit for declaration that consent decree was obtained by Ramgopal and Neelkumar by practising fraud and by committing forgery of signature of Vinay on the consent terms. That Suit was also dismissed on 21.01.2016. I have already held that Mridula and her children and Kamladevi were not in occupation of the

suit premises. Her occupation was shown as household and suit premises is office premises. Still on the basis of the order dated 25.07.1995, she filed various proceedings on the ground that they are recognized as regular licensees / occupants and that consent decree was set aside. I have already held that once the consent decree against them is set aside, their status as licensee also stood terminated. In fact Kamladevi was not party in the Suit as also consent terms. Despite that position, she continued to file one proceeding after the other instead of ensuring implementation of the consent decree. Vinay has filed as many as 63 proceedings. Mridula has filed as many as 18 proceedings. Vinay and Mridula have filed as many as 25 proceedings against Ramgopal and Neelkumar. Even Vinay has instituted as many as 8 criminal cases against the police officers. In the fact of the present case, I am more than satisfied that the proceedings adopted by Vinay and Mridula are abuse of process of Court as also abuse of process of law.

42. In the case of ***Ramrameshwari Devi Vs. Nirmala Devi, (2011) 8 SCC 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.**

(emphasis supplied)”

43. 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.

44. 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* (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.”

45. In the case of *Messer Holding Ltd Vs. Shyam Madanmohan Ruia*, AIR 2016 SC 1948, in paragraph 44, the Apex Court referred to the decision of *Ramrameshwari Devi* (supra) and observed thus:

“44. This case should also serve as proof of the abuse of the discretionary jurisdiction of this Court under Article 136 by the rich and powerful in the name of a 'fight for justice' at each and every interlocutory step of a suit. Enormous amount of judicial time of this Court and two High Courts was spent on this litigation. Most of it is avoidable and could have been well spent on more deserving cases.”

46. Though the consent decree was passed on 23.05.1991 and Vinay's challenge to that decree failed upto Apex Court, he filed 63 proceedings. He is a practising advocate and a Company Secretary. Mridula was

never in occupation of the suit premises. While setting aside ex-parte decree, her status as regular licensee / occupant was also set aside. She cannot claim that the consent decree to the extent of recognizing her status as licensee remained in tact and to the extent that the decree binds her being adverse to her interest is set aside. The consent decree stands set aside against her in its entirety. She has instituted 18 proceedings. Kamladevi had no concern with the suit premises whatsoever, still, she was joined in various proceedings.

47. In my opinion, the present proceedings are nothing but 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*), **Maria Margarida Sequeria Fernandes** (*supra*) and **Messer Holding Ltd.** (*supra*), this is a fit case for imposing exemplary costs against the petitioners. Writ Petitions fail and the same are dismissed with exemplary costs quantified at Rs.4,00,000/- and Rs.1,00,000/- to be deposited by Vinay and Mridula respectively, in this Court, within a period of 4 weeks from today, failing which, Collector, Mumbai shall recover it as arrears of land revenue. The costs shall be paid to Neelkumar.

48. Ms Sarkhot submitted that Vinay has not paid arrears of Rs.74,400/-. Mr. Soni assures that within 4 weeks from today, arrears will be paid by issuing cheque in favour of Neelkumar.

49. At this stage, Mr. Sharma, Mr. Soni and Mr. Warunjikar, orally apply for stay of this order for a period of four weeks. Having regard to the conduct of the petitioners as also the fact that they have filed frivolous proceedings, the request made by petitioners is not reasonable. Hence, oral prayer made for stay of this order is rejected. Order accordingly.

**(R. G. KETKAR, J.)**