

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.5960 OF 2018

Shivanand P. Hulyalkar	]	Petitioner
Vs.		
Wendy Leslie Pereira	]	Respondent

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Mr. G.S. Godbole, Sr. Advocate a/w Mr. Uday Warunjikar i/b Ms. Rachana Kailas Divekar, for Petitioner.
Mr. R.A. Thorat, Sr. Advocate i/b Denzil D'Mello, for Respondent.

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CORAM : R.G. KETKAR, J.

RESERVED ON:31ST JULY, 2018.
PRONOUNCED ON:8TH AUGUST, 2018.

P.C.

Heard Mr. Godbole, learned Senior Counsel and Mr. Warunjikar, learned Counsel for the petitioner and Mr. Thorat, learned Senior Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged;

[1] the judgment and order dated 2nd December, 2017 below application for leave to defend (for short 'first order'),

[2] the judgment and order dated 2nd December, 2017 allowing application No. 69 of 2017 filed by the respondent under section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') (for short 'second order')

both passed by the Competent Authority (Rent Act) Konkan Division, Mumbai (for short 'Competent Authority') and

[3] order dated 28th May, 2018 passed by Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner') in Revision Application No.1249 of 2017.

By the first order dated 2nd December, 2017, the Competent Authority rejected the application made by the petitioner for leave to defend Application No.69 of 2017 filed by the respondent under section 24 of the Act. By the second order dated 2nd December, 2017, the Competent Authority allowed the application filed by the respondent under section 24 of the Act and directed the petitioner herein to hand over vacant and peaceful possession of Flat No.8, 8th Floor, Windemere , Bandra (West), Mumbai 400 050 (for short 'suit premises') to the respondent. The petitioner is directed to pay to the respondent double the rate of monthly licence fee being Rs. 52,500 x 2 = Rs.1,05,000/- from 30 days i.e 15th March, 2017 after the notice of the date of termination of leave and licence on 13th February, 2017 till handing over vacant possession of the suit premises. By order dated 28th May, 2018, the Commissioner has dismissed the Revision Application filed by the petitioner under section 44 of the Act.

3. In support of this Petition, Mr. Godbole strenuously contended that the impugned orders are liable to be set aside on the ground that they have been passed in gross violation of the principles of natural justice. He submitted that the respondent filed application under section 24 of the Act in May, 2017. On 14th July, 2017, the petitioner filed application for leave to defend and the matter was adjourned to 31st July, 2017. On 31st July, 2017, the matter was adjourned to 13th September, 2017 for reply of the respondent on the application filed by the petitioner seeking leave to defend. On 13th September, 2017, the matter was adjourned to 4th October, 2017 for reply of

the respondent. On 4th October, 2017, the respondent filed reply and the matter was adjourned to 1st November, 2017 for arguments. Copy of the reply of the respondent was not served on the petitioner. On 1st November, 2017, as the petitioner was absent, the matter was adjourned to 15th November, 2017 for arguments. On 15th November, 2017, Advocate for the respondent was present. The petitioner was absent. The arguments were heard and the matter was closed for orders. Mr. Godbole submitted that on 22nd November, 2017, application was filed by the petitioner for recalling the order passed by the Competent Authority. He submitted that while rejecting the application for leave to defend on 2nd December, 2017 and allowing the application filed by the respondent under section 24 of the Act on 2nd December, 2017, the Competent Authority did not advert to the application dated 22nd November, 2017. Without disposing of that application, application for leave to defend filed by the petitioner was rejected and on the same date, without giving any opportunity to the petitioner, application filed by the respondent under section 24 was allowed.

4. Mr. Godbole submitted that the Competent Authority passed order in gross violation of principles of natural justice as in the first place, copy of the reply filed by the respondent on 4th October, 2017 was not served on the petitioner and secondly, without deciding application dated 22nd November, 2017 filed by the petitioner, the impugned orders were passed by the Competent Authority on 2nd December, 2017. He submitted that this point was specifically agitated in paragraph 3(f) of the Memo of Revision Application filed before the Commissioner. In paragraph 3(j) of the Memo of Revision Application, a reference was specifically made of the application dated 22nd November, 2017 filed by the petitioner for setting aside ex-parte order and allowing him to produce record and proceeding of the suit filed by the respondent before this Court. He submitted that in paragraph 8 though the

Commissioner has referred to the contention raised by the petitioner about not giving opportunity to him, the same was not dealt with by the Commissioner.

5. Mr. Godbole further submitted that the Authorities below failed to consider that on 14th May, 2015, the parties entered into Memorandum of Understanding/Agreement for Sale whereby the respondent agreed to sell the suit premises to the petitioner for a valuable consideration of Rs. 1,90,00,000/- (Rs. 1 Crore, 90 lakhs). Out of that, the petitioner had paid Rs. 12,00,000/- by way of cash. He submitted that apart from paying Rs. 12,00,000/- by way of cash, the petitioner has paid substantial amount to the respondent by way of cheque. He invited my attention to the affidavit dated 27th February, 2018 filed by James Ery, Branch Manager, I.C.I.C.I Bank Limited Branch Office, Pune, 411 030. Between 19th June, 2015 and 18th July, 2016, the petitioner had paid around Rs. 88,00,000/- to the respondent. Mr. Godbole submitted that on 4th September, 2017, the respondent has instituted suit on the original side of this Court for cancellation of MOU/Agreement for Sale dated 14th May, 2015. In December, 2017, the petitioner has instituted suit on the original side of this Court for specific performance of the contract. Both the suits are pending.

6. Mr. Warunjikar invited my attention to the Affidavit of James Ery as also Roznama of the proceedings before the Competent Authority. He also invited my attention to the application dated 30th July, 2018 made before Registrar General and the Prothonotary and Senior Master for clubbing suits filed on the Original Side with this Petition and placing before one and the same Judge as all the proceedings are inter connected, involving the same subject matter and between the same parties. He, therefore, submitted that till such time, order is passed by the Hon'ble Acting Chief Justice, hearing of this petition may be deferred.

7. On the other hand, Mr. Thorat supported the impugned orders. He submitted that the proceedings under section 24 of the Act were filed in May, 2017. The summons were issued and the petitioner was present on 13th June, 2017. On behalf of the petitioner, Advocate filed Vakalatnama on 5th July, 2017. The petitioner was allowed to file application for leave to defend on or before 14th July, 2017. On 14th July, 2017, the petitioner filed application for leave to defend. It was adjourned to 31st July, 2017 for the reply of the respondent. On 31st July, 2017, the matter was adjourned to 13th September, 2017. On 13th September, 2017, the petitioner was absent and the respondent was present. It was adjourned to 4th October, 2017 for filing reply by the respondent. On 4th October, 2017, Advocate for the respondent was present. The petitioner and his Advocate both were absent. On 4th October, 2017, reply was filed by the respondent before the Competent Authority. He submitted that a practice is followed before the Competent Authority by which the parties file their proceedings before the Competent Authority and the other side collects copies from the office of the Competent Authority. He submitted that even the respondent was not served copy of the application for leave to defend by the petitioner and respondent collected copy of that application from the Office of the Competent Authority. The petitioner was supposed to collect copy of the reply filed by the respondent on 4th October, 2017. On 4th October, 2017, neither the petitioner nor his Advocate was present and the matter was adjourned to 1st November, 2017 for arguments on the application for leave to defend. On 1st November, 2017, the petitioner was absent and the matter was adjourned to 15th November, 2017. On that date, the petitioner was absent. Arguments were concluded and the matter was kept for orders on leave to defend application as also on the eviction application filed by the respondent.

8. By the first order dated 2nd December, 2017, the Competent Authority rejected leave to defend application. By the second order dated 2nd

December, 2017, the Competent Authority allowed application filed by the respondent. He submitted that basically the petitioner has not raised any triable issues. He submitted that it is not in dispute that registered leave and licence agreement was entered into by and between the parties on 14th May, 2015. The petitioner was inducted as a licensee in the suit premises. The suit premises was given on leave and licence basis for the purpose of residential user on the terms and conditions contained therein. He submitted that the petitioner filed application for leave to defend on 14th July, 2017 and in his presence, the matter was adjourned to 31st July, 2017 at 11.00 a.m. On 31st July, 2017, Advocate for the respondent was present and the matter was adjourned to 13th September, 2017 for filing reply by the respondent. On 13th September, 2017, Advocate for the respondent was present and the petitioner was absent and the matter was adjourned to 4th October, 2017 for filing reply. On 4th October, 2017, on behalf of the respondent, reply was filed. The petitioner and his Advocate were absent and the matter was adjourned to 1st November, 2017. On 1st November, 2017, the petitioner was absent and the matter was adjourned to 15th November, 2017 at 11.00 a.m. On 15th November, 2017, again, the petitioner was absent. Arguments were heard and the matter was kept for orders. He submitted that basically an application filed by the petitioner on 22nd November, 2017 for recalling the ex-parte order was wholly mis-conceived as no ex-parte order was passed prior to filing of that application on 22nd November, 2017. As no order was passed prior to 22nd November, 2017, there was no question of deciding that application. He submitted that a perusal of application dated 22nd November, 2017 will show that grievance was not made about not serving the reply filed by the respondent on 4th October, 2017. He submitted that all that the petitioner is contending that by virtue of so-called MOU/Agreement for Sale dated 14th May, 2015, as the suits are pending on the Original Side of this Court, the petitioner has raised triable issues.

9. Mr. Thorat relied on the decision of this Court in the case of **Surendra B. Agarwal Vs. Aml Merchandising Pvt. Ltd; 2010 (1) Mh. L. J. 223**. He submitted that in paragraph 10, the learned Single Judge has held that in view of the special procedure laid down in Chapter VIII of the Act, applications filed under section 24 are required to be disposed of in a summary manner and pendency of a suit governed by section 33 of the Act or a suit on title cannot prevent the Competent Authority from deciding the application for eviction. There is no statutory power vesting the Competent Authority to stay the proceedings of the application under section 24 of the Act on the ground of pendency of a civil suit relating to the property. In paragraph 13, reference was made to the decision in the case of **Rajendra B. Nair Vs. Suresh D. Dyanmothe, AIR 2002 Bombay 382** and it was observed that merely because suit for specific performance is pending, that is not the ground for not proceeding with the application filed under section 24 of the Act. He relied on Explanation (b) to Section 24 to contend that an agreement of licence in writing is a conclusive evidence of fact stated therein

10. Mr. Thorat further submitted that application dated 30th July, 2018 made by the petitioner for clubbing this Petition along with the suits is nothing but abuse of process of Court. He submitted that the suits are pending on the Original Side of this Court since 2017. In fact, the learned Single Judge of this Court passed order on 20th December, 2017 in Notice of Motion No.2049 of 2017 taken out in Suit No.546 of 2017 observing therein that the said order will not preclude the plaintiff namely respondent herein from executing the decree of eviction which is challenged in the Civil Revision Application No.1249 of 2017. That apart, the present Petition is heard by this Court from time to time right from 4th June, 2018. As the matter was adjourned from time to time, by order dated 26th July, 2018, it was kept on supplementary board on 31st July, 2018 under the caption 'for dismissal'. It is

only thereafter the application is made on 30th July, 2018 for clubbing these matters. This is nothing but forum shopping. He, therefore, submitted that the Petition deserves to be dismissed by imposing exemplary costs.

11. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. The matter was heard on 31st July, 2018 and during the course of hearing, a suggestion was given to the petitioner that if the petitioner is ready and willing to first hand over possession of the suit premises to the respondent, the Court will consider setting aside the impugned orders. The arguments were concluded and the matter was kept at 4.30 p.m so as to enable the petitioner to give response to the suggestion given by the Court. The Registry was also directed to place copy of this order before the Hon'ble Acting Chief Justice. The order was reserved as the petitioner had moved a praecipe for clubbing the proceedings together and placing the proceedings before one and the same Court. At 4.30 p.m, the Registry has placed before me the order passed by the Hon'ble Acting Chief Justice assigning this Writ Petition and the suits to this Court.

12. Mr. Godbole submitted that the petitioner is agreeable to the suggestion recorded in the order dated 31st July, 2018. He, however, submitted that 4 weeks time may be given for handing over possession of the suit premises to the respondent. Mr. Thorat was not agreeable to this and submitted that at the highest, the petitioner may be directed to hand over possession within one week from today and opposed to grant 4 weeks time. As the same is not agreeable to the petitioner, this Petition is being decided on merits.

13. As noted earlier, it is not in dispute that the parties entered into registered leave and licence agreement on 14th May, 2015. A perusal of this agreement shows that the suit premises were give on licence to the petitioner for residential purpose. Explanation (b) to Section 24 of the Act lays down that an agreement of licence in writing is a conclusive evidence of fact stated therein. In the case of **Surendra B. Agarwal** (supra), the learned Single Judge has observed in paragraph 10 and 13 thus;

“10. Thus, the special provision has been made under the said Act for evicting the licensees of premises given on licence for residence. A special procedure laid down under Chapter VIII governs the application made under section 24 of the said Act. The said Act contemplates a summary disposal of the applications. By the very nature of the proceedings as reflected from the aforesaid statutory provisions, the jurisdiction of Competent Authority is very limited. It can decide a dispute between a landlord (lincesor) and the licensee. It is obvious that considering the summary nature of the proceedings, issue of title to the disputed premises can never be decided in such proceedings. The sub-section (1) of section 24 starts with non-obstante clause. Moreover section 39 of the said Act gives overriding effect to the provisions of Chapter VIII. Therefore, pendency of a suit governed by section 33 of the said Act or a suit on title cannot prevent the competent authority from deciding an application for eviction. There is no statutory power vesting the Competent Authority to stay the proceedings of the application under section 24 of the said Act on the ground of pendency of a civil suit relating to the property.

13. In the case of *Rajendra B. Nair* (supra), [2002 (4) Mh. L.J. 93], this Court was dealing with an identical provision viz; section 13A-2 of the Bombay Rents, Hotel & Lodging House Rates (Control) Act, 1947. This Court considered the effect of pendency of a declaratory suit filed by the licensee claiming a declaration of tenancy. Paragraph 12 of the said decision reads thus:

"The pendency of the declaratory suit which has been filed by the respondent before the Small Causes Court cannot detract from the legal position which ensues under S.13-A2 or affect the jurisdiction,

statutorily conferred upon the competent authority of ordering the eviction of a licensee whose entitlement to occupy the premises has come to an end upon the expiry of the licence. The provisions of S.13-A2 have effect, notwithstanding anything contained in the Rent Act. A licensee cannot claim an immunity from the obligation cast upon him by S.13-A2 to vacate the premises upon the expiry of the licence by the institution of a Declaratory Suit in the Small Causes Court. Nor can he claim an immunity from the jurisdiction of the competent authority to order him to vacate when he fails to do so upon the expiry of the licence. Section 13-A2 frowns upon such subterfuge and it is the plain duty and obligation of the Court to give effect to the legislative mandate."(Emphasis added)

What is held by this Court squarely applies to proceedings under section 24 of the said Act. Therefore, the revisional Authority has committed a gross error by directing that the Competent Authority cannot proceed with application under section 24 of the said Act merely because a declaratory suit filed by the respondent is pending and merely because the suit for specific performance filed by a third party is pending. If the third party who has filed a suit for specific performance succeeds, it is obvious that on the basis of the said decree the third party can take appropriate steps.

14. The respondent has instituted suit bearing No.546 of 2017 on the Original Side of this Court for cancellation of MOU/Agreement for Sale dated 14th May, 2015. The respondent has instituted Suit (L) No.654 of 2017 on the Original Side of this Court for specific performance of the Agreement. Both the suits are pending. I have also perused the orders passed by the learned Single Judge of this Court in those proceedings from time to time.

15. Mr. Godbole and Mr. Warunjikar submitted that the reply filed by the respondent on 4th October, 2017 was not served on the petitioner and this amounts to gross violation of principles of natural justice. During the course of the argument, the submission of Mr. Thorat that a practice is followed before the Competent Authority by which the parties file their proceedings before the Competent Authority and the other side collects copies from the office of the

Competent Authority was not disputed. It was further submitted that the Competent Authority rejected the application for leave to defend on 2nd December, 2017 without first deciding the application dated 22nd November, 2017 filed by the petitioner. A perusal of that application shows that along with that application, the petitioner did not annex the order which was passed ex-parte. Mr. Thorat submitted that basically no order was passed ex-parte. I find merit in the submission of Mr. Thorat. Even, in this Writ Petition, neither such order is annexed nor produced during the course of hearing. In short, it has to be held that application dated 22nd November, 2017 was wholly mis-conceived as there was no ex-parte order passed against the petitioner.

16. A perusal of Roznama shows that the petitioner was absent before the Competent Authority consistently from 13th September, 2017. The petitioner, therefore, on one hand remained absent before the Competent Authority and on the other, is complaining of gross violation of principles of natural justice. I, therefore, do not find any merit in the submission advanced by Mr. Godbole and Mr. Warunjikar that as reply filed by the respondent on 4th October, 2017 was not served on the petitioner and that application dated 22nd November, 2017 was not disposed of by the Competent Authority, the impugned orders are liable to be set aside.

17. As noted earlier, it is not in dispute that the parties entered into registered leave and licence agreement dated 14th May, 2015. Explanation (b) to Section 24 reads thus;

24. Landlord entitled to recover possession of premises given on licence on expiry:-

(1)...

(2)...

(3)...

Explanation._ for the purposes of this section,_

(a)...

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.”

18. In view thereof and in view of the decision of **Surendra B. Agarwal** (supra), I do not find that the Authorities below committed any error in passing the impugned orders. Hence, the Petition fails and the same is dismissed. Mr. Godbole submitted that as the Petition is being disposed of, the petitioner will move the Hon'ble Acting Chief Justice for placing the suits filed on the Original Side, before the regular Court. Liberty is reserved to the parties to move the Hon'ble Acting Chief Justice for that purpose.

19. Before parting with the matter, it is necessary to consider a praecipe dated 30th July, 2018 filed by the petitioner before Prothonotary & Senior Master as also Registrar General for clubbing the suits and Writ Petition together and placing it before one and the same Court. The suits were pending right from 2017. The Motion was heard by the learned Single Judge on 20th December, 2017. The order categorically records that the said order will not preclude the plaintiff, the respondent herein from executing the decree of eviction which is challenged before the Commissioner. In other words, the petitioner did not pray for staying the proceedings before the Competent Authority or before the Commissioner. Not only that, this Petition was heard from time to time right from 4th June, 2018 onwards. On none of the dates, prayer was made for clubbing suits along with this Petition and placing it before one and the same Court. It is only when on 26th July, 2018, the matter was ordered to be listed in the Supplementary Board on 31st July, 2018 under the caption “for dismissal” that time, the petitioner moved a praecipe for clubbing the suits along with the Petition. I repeatedly called upon the learned Counsel for the petitioner to substantiate whether praecipe moved by the petitioner is bona fide or not. It was conceded that the praecipe moved was not bona fide. After considering the conduct of the petitioner, I am of the firm

opinion that it was an attempt of forum shopping on the part of the petitioner. The said practice deserves to be deprecated in the strongest terms. Apart from deprecating the practice, it is also necessary to impose exemplary costs on the petitioner for indulging into forum shopping.

20. The praecipe filed by the petitioner is not bona fide. It also amounts to forum shopping. This is, therefore, a fit case for imposing exemplary costs on the petitioner. 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)”

21. 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.

22. 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.”

23. 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.”

24. In the case of **Ramrameshwari Devi** (supra), the Apex Court observed that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. 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. 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 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.

25. In case of **Maria Margarida Sequeria Fernandes** (supra), the Apex Court observed that 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.

26. In the case of **Messrs Holdings Ltd** (supra), the Apex Court observed that enormous amount of judicial time of this Court and two High Courts was spent on the litigation. Most of it is avoidable and could have been well spent on more deserving cases.

27. Hence, Petition is dismissed with exemplary costs quantifying @ Rs. 50,000/-. Costs shall be deposited in this Court within 4 weeks from today, failing which the same shall be recovered by Collector Mumbai Suburban District from the petitioner as arrears of land revenue. The Registry shall transmit copy of this order to Collector Mumbai Suburban District. After the deposit of the amount, the costs shall be transmitted to the Maharashtra Legal Aid Committee.

28. At this stage, Mr. Warunjikar orally applies for stay of this order for a period of 8 weeks from today. Mr. Thorat opposed grant of 8 weeks time and submits that 4 weeks time may be granted. In view of the conduct of the petitioner, I am not inclined to grant stay for 8 weeks. As the petitioner intends to challenge this order in the Supreme Court and in the interest of justice, this order is stayed for 4 weeks from today. Mr. Warunjikar assures that the

defendant and all the adult family members residing with him/using the suit premises will file usual undertaking in this Court within one week from today, after giving advance copy to the other side incorporating therein that:

- [a] they are in possession and nobody else is in possession of the suit premises;
- [b] they have neither created third party interest nor parted with possession of the suit premises;
- [c] they will hereafter neither create third party interest nor part with possession of the suit premises;
- [d] within four weeks from today, the defendant will deposit arrears @ Rs. 1,05,000/-, if any, in this Court, under intimation in writing to the learned Counsel for the plaintiff and will go on depositing the said amount covering period of 4 weeks from today.
- [e] in case they are unable to obtain suitable orders from the higher Court within 4 weeks from today, they will hand over vacant and peaceful possession of the suit premises to the plaintiff;

29. In view thereof, notwithstanding dismissal of the Writ Petition, subject to the defendant filing undertaking in the aforesaid terms within one week from today, this order shall remain stayed for the period of 4 weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within one week from today and/or the petitioner commits breach of any of the conditions of the undertaking, interim order shall stand vacated without further reference to the Court and respondent will be at liberty to execute eviction order in accordance with law.

30. List the Petition for reporting compliance on 30th August, 2018.

[R.G. KETKAR, J.]