

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.12271 OF 2017

Prabhakar Sadashiv Gokhale & Ors.] Petitioners

Vs.

Ramesh Shankar Ladkat (H.U.F.)]

through its Karta Ramesh Shankarrao Ladkat & Ors.] Respondents

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Mr. R.V. Govilkar i/b Govilkar & Associates LLP, for Petitioners.

Mr. S.G. Deshmukh i/b Mr. S.D. Rayrikar, for Respondent No.1.

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CORAM : R.G. KETKAR, J.

DATE : 10TH JULY, 2018.

P.C:

Heard Mr. Govilkar, learned Counsel for petitioners and Mr. Deshmukh, learned Counsel for respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as “defendants No.2 and 3” have challenged the judgment and order dated 23rd October, 2017 passed by the learned 4th Additional Judge, Small Causes Court, Pune below Exhibit 81 in Civil Suit No.371 of 2013. By that order, the learned trial Judge rejected the application made by defendants No.2 and 3 under Order-VII, Rule-11 (a) and (d) of the Code of Civil Procedure, 1908 (for short 'C.P.C') for rejection of the plaint.

3. Respondent No.1, hereinafter referred to as 'plaintiff' has instituted suit against defendants;

- [1] Shri Makarand Sitaram Gokhale
- [2] Prabhakar Sadashiv Gokhale
- [3] Ameya Prabhakar Gokhale
&
S.G. Gokhale and company (mandap)
- [4] Shrikrishna Baheti

inter alia, contending that defendant No.1 is tenant of the suit premises being legal heir of original tenant. There is relationship of landlord and tenant between plaintiff and defendant No.1. The plaintiff has also alleged that defendants No.2 to 4 are illegally and unauthorizedly in possession of portion of the suit property described in paragraph 1 of the plaint. The plaintiff has, therefore, instituted suit for eviction against the defendants and for recovery of possession.

4. During pendency of the suit, defendants No.2 and 3 filed application dated 18th July, 2017 at Exhibit 81 under Order-VII, Rule-11 (a) and (d) of C.P.C. In that application, defendants No.2 and 3 referred to assertions made by the plaintiffs in paragraphs 5, 6 and 7. Defendants contended that in paragraph 5, the plaintiff alleged that prior to filing of the present suit, earlier suit was instituted in the year 1969 and the papers in the earlier suit are not traceable which constrained the plaintiff to institute the present suit. Suit is instituted after termination notice dated 24th August, 2013. It was, therefore, contended that the plaintiff is not claiming relationship as landlord and tenant or licensor or licensee as against defendants No.2 and 3. The plaintiff has claimed possession by filing the suit in the Small Causes Court constituted under Provincial Small Causes Courts Act, 1887 (for short 'Act'). The suit is, therefore, barred by statutory provisions of the Act and the Maharashtra Rent Control Act, 1999 (for short 'Maharashtra Rent Act'). Defendants No.2 and 3 also referred to paragraph 6 of the plaint where the

plaintiff alleged that portion of the suit property is illegally and unauthorizedly possessed and occupied by defendants No.2 to 4. Defendants No.2 to 4 are occupying the suit property without any legal right or authority. The defendants, therefore, contended that the plaintiff is not claiming possession of the suit property from them as tenant and, therefore, suit is barred by law viz the Act and Maharashtra Rent Act.

5. After referring to assertions made in paragraph 7 where plaintiff claimed that suit is within limitation, the defendants contended that the plaintiff had knowledge regarding possession of the suit property initially of Sadashiv Gopal Gokhale, (since deceased) father of defendant No.2. Sadashiv Gopal Gokhale expired on 11th March, 1985. Defendant No.2 being heir of Late Sadashiv Gokhale came into possession of the suit property with his son i.e defendant No.3 of which the plaintiff and plaintiff's father Ramesh Ladkat had a knowledge. Hence, the suit is barred by law of limitation. In short, defendants No.2 and 3 prayed for rejection of the plaint on the ground that suit against defendants No.2 to 4 is not maintainable before the Small Causes Court constituted under the Act as also Maharashtra Rent Act and is also barred by law of limitation. The plaint is liable to be rejected under Order-VII, Rule-11(a) and (d) of C.P.C. It is also claimed that suit is also barred by limitation as it is instituted in the year 2013 when possession of defendants No.2 and 3 was within the knowledge of the plaintiff after the death of Sadashiv Gopal Gokhale. The plaintiffs filed reply dated 11th September, 2017 opposing application. By the impugned order, the learned trial Judge rejected the application with costs. It is against this order, defendants No.2 and 3 have instituted the present Petition.

6. In support of this Petition, Mr. Govilkar reiterated the contentions that were advanced in the application Exhibit 81 as also the submissions

advanced before the trial Court. In substance, he submitted that the plaintiffs have alleged that there is no relationship of landlord and tenant or licensor or licensee between the plaintiffs on one hand and defendants No.2 and 3 on the other. The Small Causes Court will have no jurisdiction to entertain and try the suit. The plaintiffs are not contending that defendants No.2 and 3 are claiming through defendant No.1 or that they are claiming independent right, title and interest in the suit property. The plaintiff has alleged in paragraph 6 that portion of the suit property is illegally and unauthorizedly possessed and occupied by defendants No. 2 to 4 and defendants No.2 to 4 are occupying the suit property without any legal right or authority. He, therefore, submitted that Small Causes Court will have no jurisdiction to entertain and try the suit.

7. In support of his submission, Mr. Govilkar relied on following decisions;

- [1] Sushila Kashinath Dhonde and others Vs. Harilal Govindji Bhogani and others, 1969 (3) Supreme Court Cases 223 and in particular paragraphs 13 to 15 thereof,
- [2] Chandumal S/O Jamnumal Kukreja & Ors. Vs. Gyarsilal S/o Ramjilal Agrawal, 2004 (3) ALL MR 478;
- [3] Bhamabai Wife of Ananda Raut Vs. Sudhir @ Dnyandeo Purushottam Petkar & Ors., Writ Petition No.1173 of 1996 decided on 28th November, 2017 by G.S. Kulkarni, J.

8. Relying on the decision of **Sushila Kashinath Dhonde and others** (supra), Mr. Govilkar submitted that having due regard to the provisions of sections 18 (3) and 28 (1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act'), it is not necessary that there should be relationship of landlord and tenant in respect of all the matters covered by section 28 (1) of that Act, so as to give jurisdiction to the Court of

Small Causes. No doubt, one type of action contemplated under that section, viz; a suit or proceeding for recovery of rent or possession of any premises to which any of the provisions of Part II apply may be between a landlord and a tenant; but in respect of the other matters dealt with in that sub-section, it is not necessary that relationship of landlord and tenant should exist between the parties before the Court.

9. Mr. Govilkar relied on decision of **Chandumal S/o Jamnulal Kukreja & Ors** (supra) to contend that the plaintiffs have alleged that there is no relationship of landlord and tenant or licensor and licensee between the plaintiff on one hand and defendants No.2 and 3 on the other. Thus, the suit is not between the landlord and tenant and, therefore, Small Causes Court will have no jurisdiction to entertain and try the suit. Mr. Govilkar submitted that in the decision of **Bhamabai wife of Ananda Raut** (supra), the learned single Judge has referred to the decision in the case of **Abdulla Bin Ali & Ors Vs. Galappa & Ors**, AIR, 1985 Supreme Court 577 as also decision of **Sushila Kashinath Dhonde and others** (supra). In paragraph 13, the learned Single Judge noted case of defendant No.3 that she had asserted that she offered rent to the plaintiffs by money order, however, it was declined by the plaintiffs. It was a clear assertion of tenancy by defendant No.3/petitioner in her own right. It is in that context, the learned Single Judge observed that eviction suit instituted by the plaintiff against defendant No.3 squarely fell under section 28 (1) of the Bombay Rent Act.

10. On the other hand, Mr. Deshmukh supported the impugned order. Mr. Deshmukh submitted that the issue raised in the application Exhibit 81 filed by defendants No.2 and 3 is no longer *res integra*. The issue is concluded as far as back in the case of **Messrs Importers and Manufacturers Ltd. Vs. Pheroze Framroze**, A.I.R 1953 Supreme Court 73. The said decision

considered section 28 of the Bombay Rent Act. The decision in the case of **Messrs I.M. Ltd** (supra) was considered by the learned Single Judge of this Court in the case of **Chandumal & Ors (supra)**. He submitted that application is made solely with a view to protracting trial. He, therefore, submitted that this is a fit case for imposition of exemplary costs for wasting judicial time.

11. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. It is settled principle that while deciding application under Order-VII, Rule-11, the Court has to consider only the assertions made in the plaint and not the defence set up by the defendants. The pleas taken by the defendant in the written statement are wholly irrelevant. The plaintiff has instituted suit against the defendants, inter alia, contending that Rambhau Ladkat had leased out the suit property including sub plots to one Mr. Sitaram Gopal Gokhale. Lease Deed was executed on 26th March, 1947 between Shri Rambhau Ladkat as karta of HUF on one hand and Sitaram Gopal Gokhale on the other. The Indenture is also duly registered in the Office of Sub Registrar Haveli No.3. As per the lease deed, suit property including all the other sub plots of final Plot No.21 were leased out to Sitaram Gopal Gokhale for a period of 21 years. In paragraph 5, the plaintiff contended that plaintiff is the successor in title of the original lessor while defendant No.1 is the legal heir of the original lessee. Thus, there is relationship of landlord and tenant between the plaintiff and defendant No.1. In paragraph 6, the plaintiff asserted that portion of the suit property is illegally and unauthorizedly possessed and occupied by defendants No.2 to 4. Defendants No.2 to 4 are occupying the suit property without any legal right or authority. However, they are made party defendants to the present suit so that no objection would be raised by them at the time of execution of the decree. In paragraph 8, it is once again reiterated that there is relationship of landlord and tenant between plaintiff and defendant No.1 and the suit is for recovery of

leased property which is situate within the jurisdiction of the Small Causes Court, Pune.

12. Mr. Govilkar submitted that the plaintiff has not claimed relationship of (1) landlord and tenant (2) licensor or licensee between plaintiff and defendants No.2 and 3 and still has asked possession from the Small Causes Court and, therefore, suit is barred under the provisions of the Act . It is not possible to accept this submission.

Section 33 (1) of the Rent Act reads thus;

33. Jurisdiction of courts.

- (1) Notwithstanding anything contained in, any law for the time being in force, but subject to the provisions of Chapter VIII, and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its *jurisdiction*.—
 - (a) *in Brihan Mumbai, the Court of Small Causes, Mumbai.*
 - (b) in any area for which a Court of Small Causes is established under the Provincial Small Causes Courts, Act, 1897, such court, and
 - (c) elsewhere, the court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under this Act (other than the applications which are to be decided by the State Government or an officer authorized by it or the Competent Authority); and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question”.

13. A perusal of Section 33 (1) (b) clearly shows that in any area for which a Court of Small Causes is established under the Act, such Court will

have jurisdiction to entertain and try any suit or proceeding between the landlord and tenant relating to recovery of possession of any premises and to decide any application made under this Act (other than the applications which are to be decided by the State Government or an officer authorized by it or the Competent Authority); and subject to the provisions of sub-section (2), no other Court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question.

14. In fact, position of law is settled as far as back in the year 1953. In the case of **Messrs Importers and Manufacturers Ltd.** (supra), the Apex Court considered Section 28 of the Bombay Rent Act. The said decision was considered by the learned Single Judge of this Court in the case of **Chandumal Jamnumal Kukreja & Ors** (supra). Paragraph 4 of that decision reads thus;

4. Mr. Bhangde, learned counsel for the respondent, has rightly relied on a decision of the Supreme Court in *Messrs I. & M. Ltd. v. Pheroze Framroze* (A.I.R 1953 S.C. 73) wherein the Supreme Court was considering the jurisdiction of the Court under Section 28 of the Bombay Rent Act to maintain a suit against a sub-tenant to whom the premises were illegally sub-let by the tenant. Their Lordships took the view that such a suit for recovery of possession was tenable against an illegal sub-tenant, inter alia, because Section 28 confers jurisdiction on the Court of Small Causes not only to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of the premises but also "to deal with any claim or question arising out of this Act or any of its provisions." Their Lordships took the view that there is no reason to hold that "any claim or question" must necessarily be one between the landlord and the tenant. However, it is clear from para 3 of the judgment that the decision did not rest solely on the existence of the power of the Small Causes Court to "deal with any claim or question arising out of this Act or any of its provisions". In para 3, the Supreme Court has observed as follows:-

"Apart from that section, under the ordinary law a decree for possession passed against a tenant in a suit for ejectment is binding on a person claiming title under or through that tenant and is executable against such person whether or not he was or was not a party to the suit. The non-joinder of such a person does not render the decree any the less binding on him. It is in this sense, therefore, that he is not a necessary party to an ejectment suit against the tenant. It is, however, recognised that such a person is, nevertheless, a proper party to the suit in order that the question whether the lease has been properly determined and the landlord plaintiff is entitled to recover possession of the premises may be decided in his presence so that he may have the opportunity to see that there is no collusion between the landlord and the tenant under or through whom he claims and to seek protection under the Act, if he is entitled to any. Such a person may be joined as a party to the suit from the beginning of the suit or at any later stage of the suit if the Court thinks fit to do so. The joinder of such a proper party cannot alter the character of the suit and does not make the suit any the less a suit between the landlord and the tenant or take it out of Section 28 of the Act. To hold otherwise will be to encourage multiplicity of suits which will result in no end of inconvenience and confusion."

It is, therefore, clear that the absence of the words "to deal with any claim or question arising out of this Act or any of its provisions" would not disable the Small Causes Court to deal with the suit between a landlord and a tenant relating to recovery of possession of any immovable property, merely because one of the parties to the suit is a trespasser claiming through the tenant. As observed by the Supreme Court, the decree passed against such a person would be binding on him even if such a person was not a party. His joinder to such a suit does not alter the character of the suit and does not make the suit "any the less a suit between the landlord and the tenant". It is, therefore, clear that the Supreme Court was of view that a suit between a landlord and a tenant does not cease to be one between a landlord and a tenant merely

because one of the defendants is an illegal tenant and, in my view, as in the present case, a trespasser claiming through the tenant. I am of view that substantively the suit remains one for recovery of possession between a landlord and a tenant and the jurisdiction of the Small Causes Court is not affected because Section 26 does not further empower the Small Causes Court "to deal with any claim or question arising out of this Act or any of its provisions". Indeed, Section 26 of the Act must be taken as providing an exclusive forum for a suit for recovery of possession of any immovable property between a landlord and a tenant. It would indeed be hazardous to interpret the provision in such a manner that a suit between a landlord and tenant would be tenable before the Court of Small Causes and if there is a trespasser claiming through the tenant in the premises, the plaintiff would have to sue him separately in another Court. As observed by the Supreme Court recently in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma*, (2002) 2 S.C.C. 244):”

15. It is not the case of defendants No.2 and 3 that in the present proceedings applications are to be decided by the State Government or an officer authorized by it or by the Competent Authority. Their case is that there is no relationship of landlord and tenant between the plaintiff on one hand and defendants No.2 and 3 on the other.

16. Mr. Govilkar relied on the decision of **Sushila Kashinath Dhonde and others** (supra). In that case, respondent No.1 had instituted suit bearing No.784/6206 of 1963 in the Court of Small Causes at Bombay against Jayantilal Dayalal & Co., respondent No.2 and its three partners, Respondents No.3 to 5 who are Defendants 1 to 4. The appellants were impleaded as Defendants 5 to 7.

17. The plaintiff came with the case that defendants 1 to 4 were owners of an open plot of land known as Jalaram Nagar, situate in Greater Bombay and were doing business of construction. Defendants 1 to 4

represented to the plaintiff that they were putting up a building in the said property according to the plans and specifications submitted to the Municipality. The plaintiff applied to the defendants to let to him, on the basis of a monthly tenancy, a portion of the building to be constructed as soon as the building was ready for occupation. Defendants 1 to 4 agreed to do so on the plaintiff advancing a sum of Rs. 12,500/- as loan towards construction and on his executing a deed of charge, in accordance with the provisions of the Bombay Rent Act. The plaintiff agreed to these conditions and accordingly advanced a sum of Rs. 12,500/- to Defendants 1 to 4 on 12th August, 1959 and the said defendants executed a deed of charge in favour of the plaintiff on the said date, which deed of charge was also registered with the Sub-Registrar of Bombay on the same day. Defendants 1 to 4 completed construction of the building but failed to let out the said premises to the plaintiff in spite of the provisions to that effect in the deed of charge of 12th August, 1959.

18. On the other hand, defendants 1 to 4 let out the same to some third parties in breach of the provisions of the deed of charge. Defendants 5 to 7 had purchased the property from defendants 1 to 4 and as the amount repayable to the plaintiff with interest was a charge on the property, the plaintiff contended that these defendants are also bound and liable to pay the amount together with interest. As the disputes between the parties arose out of the provisions of the Act, the Court of Small Causes where the suit has been instituted has jurisdiction to try and entertain the suit. On the basis of these averments, the plaintiff prayed for a declaration that the sum of Rs. 12,500/- given by him as construction loan shall be a charge on the land as well as the buildings put up thereon and that the plaintiff is entitled to recover from the defendants the amounts mentioned in the plaint together with further interest and that in default the property be sold under the direction of the Court and that liberty be given to obtain a personal decree against the defendants in case

the full amount is not recovered by sale of properties. The plaintiff also asked for certain other consequential reliefs by way of injunction and appointment of receiver.

19. The trial Court decreed the suit after holding that the deed of charge dated 12th August, 1959 complied with all the requirements of section 18 (3) of the Bombay Rent Act and claims set up by the plaintiff arose out of the provisions of section 28 (3) thereof. The decree was confirmed by the Appellate Court as also by this Court. In paragraph 7, contentions of the appellants were referred. In paragraph 8, contentions advanced on behalf of the plaintiff were referred. From paragraphs 11 onwards, the Apex Court considered whether claim made by the plaintiff in the suit was a claim arising out of the Bombay Rent Act. After considering sections 18 (3) and 28 (1) of the Bombay Rent Act, the Apex Court observed in paragraph 13 thus;

“Having due regard to the aspects mentioned above and the provisions of Sections 18 (3) and 28 (1), in our opinion it is not necessary that there should be a relationship of landlord and tenant in respect of all the matters covered by Section 28 (1) of the Act, so as to give jurisdiction to the Court of Small Causes. No doubt, one type of action contemplated under that section, viz. a suit or proceeding for recovery of rent or possession of any premises to which any of the provisions of Part II apply may be between a landlord and a tenant; but in respect of the other matters dealt with in that sub-section, it is not necessary that the relationship of landlord and tenant should exist between the parties before the Court.

In my opinion, instead of advancing the case of defendants No.2 and 3, it really supports the case of the plaintiffs.

20. In paragraph 15, the learned trial Judge referred to the decision of the Apex Court in **E. Parshuraman (deceased by LRs) G. Ramchandran V.**

Doraiswamay (deceased by Lrs), AIR 2006 SC 376. In paragraph 15, the learned trial Judge observed that the Court has to consider averments in the plaint as a whole while deciding the application filed under Order-VII, Rule-11 of the C.P.C. In paragraph 16, the learned trial Judge referred to the decision of the Apex Court in **Messrs Importers and Manufacturers Ltd.,** (supra) and the decision of the learned Single Judge of this Court in the case of **Chandumal s/o Jamnumal Kukreja & Ors (supra)** and observed that the said decisions are applicable to the facts of the present case. The learned trial Judge observed that suit between the landlord and tenant does not cease to be one between a landlord and tenant merely because one of the defendants is a illegal tenant. In paragraph 17, the learned trial Judge referred to section 26 of the Act which lays down that suit or proceedings between licensor and licensee or landlord and tenant for recovery of possession of immovable property or licence fees or rent except those to which other Act apply, lie in the Court of Small causes. In paragraph 18, the learned trial Judge observed that the defendants have not raised issue of limitation at the initial stage and have raised issue at the time of framing of issues. The question of limitation is a mixed question of law and fact which requires evidence of both the sides and therefore, this is not a ground to reject the suit at this stage. In paragraph 19, the learned trial Judge noted that the plaintiff had filed his evidence affidavit on 22nd January, 2016. His further examination-in-chief was recorded on 13th June, 2016. The matter was adjourned for conducting cross-examination of the plaintiff. The parties will have to prove their contents in the pleadings by adducing oral and documentary evidence. In paragraph 20, the learned trial Judge observed that the plaintiffs have mentioned when cause of action arose for filing the suit and for defendants No.2 to 4 were made party to the suit. The learned trial Judge, therefore, held that there was no substance in the application and rejected the application with costs.

21. In view of the decision of this Court in the case of **Chandumal s/o Jamnumal Kukreja & Ors** (supra), I do not find any merit in the submissions of Mr. Govilkar that as there is no relationship of landlord and tenant between the plaintiff and defendants No.2 and 3 or relationship of licensor and licensee between plaintiff and defendants No.2 and 3, the Small Causes Court will have no jurisdiction to entertain and try the suit. In fact, in my opinion, the application was filed by defendants No.2 and 3 solely with a view to delaying the proceedings in the trial though position of law is well settled long back right from decision of the Apex Court from the year 1953. Application is made in the year 2017 raising identical issues which are concluded by several decisions. In my opinion, the present Petition is nothing but an abuse of process of Court as also abuse of process of law.

22. As the application made by defendants No.2 and 3 is not bona fide and is made solely with a view to delaying the trial, this is fit case for imposing exemplary costs on defendants No.2 and 3. 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)”

23. 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.

24. 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.”

25. 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.”

26. 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.

27. 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.

28. 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.

29. Applying the tests laid down in the aforesaid cases, in my opinion, the application at Exhibit 81 filed by defendants No.2 and 3 and the present Petition is nothing but abuse of process of Court as also abuse of process of law. Defendants No.2 and 3 have wasted precious time of the trial Court in prosecuting application Exhibit 81 as also of this Court in prosecuting the present Petition. The Petition is, therefore, liable to be dismissed with costs quantifying @ Rs. 25,000/- to be paid by defendants No.2 and 3 to the plaintiffs within four weeks, failing which the same shall be recovered as arrears of land revenue.

30. At this stage, Mr. Govilkar orally applies for continuation of interim order by which suit was stayed. As I have dismissed the Petition by imposing costs as also I recorded a finding that application is nothing but abuse of process of Court as also abuse of process of law, oral application is rejected.

[R.G. KETKAR, J.]