

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 33766 OF 2017

Mr. Devendra Chinya Raydu
Alias G. R. Devendra

...Petitioner

Versus

Mrs. Vranda G. Pai, and Ors.

...Respondents

....

Mr.R.M. Haridas i/b.Pratik B.Rahade a/w.Kalpesh Patil, Advocate for Petitioner.
Mr. R.S. Datar a/w. Ms. Anjali Neel Helekar, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 24th APRIL, 2018

P.C.

1. Heard Mr. R.M. Haridas, learned counsel for the petitioner and Mr.R.S. Datar, learned counsel for respondent No.1, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'obstructionist', has challenged the judgment and order dated 29.11.2017 passed by the learned Judge, Court Room No.32 of the Small Causes Court at Mumbai (Bandra Branch) below Exhibit-60 in Execution Application No.69/2011 arising from T.E.R. Suit No.54/64 of 2003. By that order, the learned trial Judge rejected the application Exhibit-60 taken out by the obstructionist for staying the execution proceedings till such time notice Exhibit-57 is decided.

3. The obstructionist took out application Exhibit-57 for issuing directions to the first respondent, hereinafter referred to as the 'decree holder' to take out Obstructionist Notice as contemplated under Order XXI Rule 97 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') thereby giving opportunity to him to prove his independent right in respect of land admeasuring 44 square yards out of C.T.S. No.422, situate at Bhandarwada, Malad (West), Mumbai – 400 064 (for short, 'suit premises').

4. The decree holder had instituted suit against respondents No.2 to 8 herein for recovery of possession of the suit premises. The suit was decreed on 2.12.2006. The learned trial Judge held that respondents No.2 to 8 were tenants of open land admeasuring 44 square yards of which the decree holder was the landlord and that the tenancy was validly terminated by notice of termination. The learned trial Judge further held that it had jurisdiction to pass a decree only in respect of the land, in respect of which respondents No.2 to 8 were tenants. The decree of ejectment was passed confined to an area of 44 square yards. The appeal preferred by respondents No.2 to 8 and the cross-objection by the decree holder were dismissed. Aggrieved by that decision, respondents No.2 to 8 instituted C.R.A. No.732/2011 in this Court.

5. By order dated 1.12.2011, C.R.A. was dismissed thereby confirming the orders passed by the Courts below. It appears that against this decision, the matter was carried to the Apex Court and SLP was dismissed. The decree holder took out execution proceedings. The execution of the decree was obstructed. The decree holder took out application Exhibit-45 for re-issuing possession warrant. The obstructionist obstructed the execution of the decree.

6. On 24.11.2017, application Exhibit-57 was taken out for issuing direction to the decree holder to take out Obstructionist Notice under Order XXI Rule 97 of C.P.C. so as to give him opportunity to establish his independent right. In that application, the obstructionist contended that he is in exclusive use, occupation and possession of the first floor premises as a lawful tenant of Ramchandra Hari Bhandari for last more than 30 years. He was inducted in the suit premises by Ramchandra Hari Bhandari on the basis of oral agreement of leave and licence at a monthly compensation of Rs.321. Ramchandra Hari Bhandari is the owner and landlord in respect of the entire premises and he is residing on the first floor as a tenant. On 29.11.2017, the obstructionist took out application Exhibit-60 for staying the execution of the decree till disposal of application Exhibit-57. By the impugned order, the learned trial Judge has rejected application Exhibit-60. It is

against this order, the obstructionist has instituted present proceedings.

7. In support of this Petition, Mr. Haridas submitted that the obstructionist took out application Exhibit-57 on 24.11.2017. On 29.11.2017, he took out application Exhibit-60. The obstructionist also filed application Exhibit-62 for treating application Exhibit-57 as one under Order XXI Rule 97 of C.P.C. He invited my attention to following documents :

- [i] Photo-copy of receipt No.1804 dated 18.6.1937 issued by the Executors of Late Mr. F.E. Dinshaw (for short, 'Trust') in favour of one Hari Govind.
- [ii] Photo-copy of receipt No.2359 dated 13.12.1937 issued by the Trust in favour of Hari Govind
- [iii] Village form No.6 recording the death of Hari Govind Kini on 13.3.1957 and further recording the name of Ramchandra Hari Kini son of the deceased as heir and legal representative of the deceased Hari Govind Kini.
- [iv] Census certificate issued by Controller of Slum, Bombay B.S.D. in favour of Arun Shankar Keni and Ramchandra Hari Bhandari certifying that the structure No. PX-1 1/1 A is censused in the name of Shri Arun Shankar Keni and Ramchandra Hari Bhandari and the area of the structure is 1400 sq. ft. and mezzanine floor admeasuring 1400 sq. ft., and
- [v] Rent receipts dated 4.7.1983, 9.10.1986, 3.2.1989 and 5.1.1991 issued in favour of G.R. Devendra.

8. Mr. Haridas submitted that while passing the impugned order, the learned trial Judge did not consider the merits of the case and simply followed the order dated 10.10.2017 passed by this Court in Writ Petition No.6395/2013. He submitted that once the obstructionist has obstructed the decree, the decree holder has to take out proceedings under Order XXI Rule 97 of C.P.C.. The Court has to hold enquiry for the purpose of finding out whether the obstructionist has any independent right, title or interest in the suit premises. Bye-passing that enquiry, the learned trial Judge has rejected the application Exhibit-60. By rejecting application Exhibit-60, application Exhibit-57 filed by the obstructionist is rendered infructuous. He heavily relied upon the decision of Apex Court in the case of **Brahmadeo Chaudhary v. Rishikesh Prasad Jaiswal and another**, (1997) 3 SCC 694 and the decision of this Court in **Gaurihar Baburao Batane and others vs. Ashok Banudas Gajare and another**, 2000(4) Mh.L.J. 667 and in particular paragraph-18. He submitted that once the decree is obstructed in the course of execution of the decree for obtaining possession, a *lis* arises and it has to be adjudicated upon as enjoined by Order XXI, Rule 97(2) of C.P.C. In the instant case, the learned trial Judge did not hold enquiry thereby giving opportunity to the obstructionist to prove his independent right in the suit premises by leading evidence. In fact by rejecting the prayer in

application Exhibit-60, application Exhibit-57 is rendered infructuous as the learned trial Judge has declined to grant stay to the execution of the decree pending disposal of Exhibit-57. That apart, even application Exhibit-62 made by the obstructionist for treating application Exhibit-57 is one under Order XXI Rule 97 of C.P.C. is rendered infructuous. For all these reasons, he submitted that the Petition requires consideration.

9. On the other hand, Mr. Datar supported the impugned order. He invited my attention to the order dated 1.12.2011 passed by this Court in C.R.A. No.732/2011. This Court confirmed the decree passed by the Courts below to the extent of 44 square yards in respect of which the decree holder is the landlord and the tenancy was validly terminated by notice of termination. Said order was confirmed by the Apex Court. He also invited my attention to the order dated 6.5.2013 passed by the learned trial Judge below Exhibit-37. By that order, the learned trial Judge allowed the application Exhibit-37 filed by the decree holder for issuing direction to the bailiff to take forcible possession of middle room on the ground floor and entire first floor of the pucca structure situate on the suit premises, namely, 44 sq. yards on C.T.S. No.422, situate at Bhandarwada, Malad (W), Mumbai – 400 064. By order dated 6.5.2013, the learned trial Judge allowed the application and issued warrant of possession against respondents No.2 to 8

(defendants), their family members or any third person/s in respect of ground-floor, middle room and entire first floor of the pucca structure situate on the suit premises, namely, 44 square yards on C.T.S. No.422, situate at Bhandarwada, Malad (W), Mumbai – 400 064. Shri S.K. Phadatare, Bailiff of the Court was appointed to execute warrant of possession. Senior Inspector of Police, Malad (West), Police Station was directed to provide police assistance to the bailiff at the time of execution of warrant of possession at the costs of the plaintiff.

10. Aggrieved by said order dated 6.5.2013, respondents No.2 to 8 instituted Revision Application before the Appellate Bench of the Small Causes Court. By order dated 15.6.2013, the Appellate Court allowed the Revision Application, set aside the trial Court's order dated 6.5.2013 and remanded the matter to the trial Court for fresh decision by giving opportunity of hearing to both the parties.

11. Mr. Datar submitted that aggrieved by that order, the decree holder instituted Writ Petition No.6395/2013 in this Court. By order dated 10.10.2017, this Court allowed the Writ Petition and set aside the order dated 15.6.2013 passed by the Appellate Bench of the Small Causes Court and restored the order dated 6.5.2013. This Court also expected from the Executing Court to ensure that the order passed by this Court is implemented within within a period of four weeks from the

date of the order, if necessary by taking help from the police authorities. Respondents No.2 to 8/judgment debtors were directed to pay costs of Rs.50,000/- to the decree holder within a period of four weeks from the date of the order.

12. Mr. Datar invited my attention to the order dated 20.11.2017 passed by the learned trial Judge below Exhibit-51 and in particular paragraphs-2 and 10, which records presence of the obstructionist and the contention of the obstructionist that first floor is divided into two rooms. Out of which, one is occupied by obstructionist and another room is occupied by Sandesh Gith. He submitted that by order dated 20.11.2017, the learned trial Judge rejected the application taken out by the applicants in Exhibit-51 seeking permission to participate in application Exhibit-49 and for staying the execution of order dated 6.5.2013. He submitted that the obstructionist herein has not challenged the said order. He submitted that while allowing Writ Petition No.6395/2013, this Court in fact expected from the executing Court to ensure implementation of the order dated 6.5.2013 within four weeks by taking police help if necessary. Despite that, till date, the decree is not executed. He, therefore, submitted that no case is made out for interfering with the impugned order.

13. I have considered the rival submissions advanced by learned

Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the decree holder had instituted suit for recovery of possession of larger portion. The Courts below partly decreed the suit in respect of open land admeasuring 44 square yards and said decree was confirmed right upto the Apex Court. The decree holder took out application Exhibit-37 for issuing direction to the bailiff to take forcible possession of middle room on the ground floor and entire first floor of the pucca structure situate on the suit premises, namely, 44 sq. yards on C.T.S. No.422, situate at Bhandarwada, Malad (W), Mumbai – 400 064. By order dated 6.5.2013, the learned trial Judge allowed the application and issued warrant of possession against the defendants (respondents No.2 to 8), their family members or any third person/s in respect of ground floor middle room and entire first floor of the pucca structure situate on the suit premises, namely, 44 square yards, C.T.S. No.422, situate at Bhandarwada, Malad (W), Mumbai – 400 064. Application Exhibit-51 was taken out by Sandesh Gith and the obstructionist herein for permission to participate in application Exhibit-49 and for staying the execution of the order dated 6.5.2013. As noted earlier, the Appellate Court set aside that order on 15.6.2013 and remitted the matter to the trial Court. That order was challenged by the decree holder by instituting Writ Petition in this Court

being W.P. No.6395/2013. By order dated 10.10.2017, this Court allowed the Writ Petition. Paragraph-34 of that order reads thus :

“34] This petition is therefore allowed. The impugned order dated 15th June 2013 made by the Division Bench of the Small Causes Court is set aside and the executing court's order dated 6th May 2013 is restored. The executing court to ensure that this order is implemented within a period of four weeks from today, if necessary, by taking help from the police authorities. In addition, the judgment debtors are directed to pay costs of Rs.50,000/- (Rupees Fifty Thousand) to the decree holder within a period of four weeks from today. The executing court to ensure that such costs are indeed paid by the judgment debtors to the decree holder within a period of four weeks from today.”

14. It appears that application Exhibit-51 was taken out by Sandesh Gith and the obstructionist herein for permitting them to participate in application Exhibit-49 and for staying execution of the order dated 6.5.2013. Said application was rejected by the learned trial Judge on 20.11.2017. In paragraph-11 of that order, the learned trial Judge recorded that on 18.11.2017, the obstructionist /applicant No.2 appeared through Advocate P.B. Remje contending that Advocate Shri S.G. Ghatge will argue the matter for him and sought adjournment till 22.11.2017. Said application Exhibit-50 was rejected on 18.11.2017. In paragraph-12, the learned trial Judge recorded that application Exhibit-49 was filed on 18.11.2017 for issuing possession warrant against the

applicants in Exhibit-51, namely, Sandesh Gith and the obstructionist herein and any other person. The learned trial Judge eventually rejected application Exhibit-51 on 20.11.2017.

15. In my opinion, application at Exhibit-51 for staying the operation and execution of order dated 6.5.2013 was wholly misconceived and not maintainable once this Court by order dated 10.10.2017 has restored the order dated 6.5.2013 and issued further directions for execution of the decree. That apart, I have also considered the documents relied upon by Mr. Haridas, referred hereinabove. A perusal of these documents does not even remotely indicate reference to the suit premises. That apart, by order dated 5.3.2018, I directed the obstructionist to produce title documents of Ramchandra Hari Bhandari, who the obstructionist claims to be owner and landlord in respect of the suit premises. No such document was produced by Mr. Haridas. The reliance placed on the documents, referred hereinabove, by Mr. Haridas do not indicate the ownership of Ramchandra Hari Bhandari and in turn his inducting the obstructionist. In fact as noted earlier, the obstructionist claims to be in possession of one room on the first floor on the basis of oral leave and licence allegedly executed by Ramchandra Hari Bhandari, as mentioned in paragraph-3 of the application Exhibit-57 dated 24.11.2017.

16. After considering the material on record, I am more than satisfied that present Petition is nothing but abuse of process of Court and abuse of process of law. Though the obstructionist has no semblance of any right, title or interest in the suit premises, he is obstructing the execution of the decree which was upheld till Apex Court. It is also material to note that while allowing Writ Petition No.6395/2013, this Court imposed costs of Rs.50,000/- on the judgment debtors. Despite that, the obstructionist is not deterred in setting up frivolous claim while obstructing execution of the decree.

17. Mr Haridas submitted that if the impugned order is upheld, applications Exhibit-57 and 62 will be rendered infructuous and that the obstructionist will be dispossessed without holding any enquiry under Order XXI Rule 97 of C.P.C. He also relied upon the decision of Apex Court in **Brahmdeo Chaudhary** (supra). In that case, respondent No.1 had instituted suit against respondent No.2 and his mother Bachani Devi. The decree was passed in favour of respondent No.1 against respondent No.2 in the year 1998. Respondent No.1 filed execution in 1990 against respondent No.2. On 25.4.1991, respondent No.1 obtained warrant for delivery of possession from the executing Court against respondent No.2. When the bailiff went on the spot to execute the warrant on 28.4.1991 he was resisted by the appellant and others.

Because of the resistance, the warrant for possession was not executed. On 6.5.1991, respondent No.1 took out application requesting that help of a Magistrate and armed force be made available at his cost for execution of the decree. The application was pending for quite some time and ultimately the Executing Court directed execution of warrant of possession by affording help of police force to the decree holder. It was at that stage, namely, on 22.1.1996, the appellant filed application for staying operation of the said warrant and deciding his objections. The Executing Court without adjudicating upon the objections of the appellant on merits and without deciding whether the obstruction or resistance offered by him was legally justified or not dismissed the applicant's application dated 22.1.1996 by order dated 15.2.1996. The Executing Court took the view that the remedy of the appellant was to move an application under Order XXI Rule 99 of C.P.C. only after he was dispossessed and as that stage was not still reached the request of the appellant to adjudicate his claim could not be entertained. That order was confirmed by the High Court of Judicature at Patna by order dated 17.5.1996. It is in that context, the Apex Court posed the following question:

“Whether the appellant who claims to be a stranger, occupying decretal premises in his own right and who has offered resistance to the execution of the decree

obtained by the decree-holder against the judgment-debtor qua such property can request the executing Court to adjudicate upon his resistance and obstruction without being insisted upon that first he must hand over possession and then only move an application under Order XXI Rule 99 of C.P.C.”

18. The Apex Court considered the Scheme of Order XXI Rules 97, 98, 99 and 100 of C.P.C. In the present case, as noted earlier, by order dated 6.5.2013 the learned trial Judge already issued directions to execute the decree against the judgment-debtors or family members **or any third person/s** in respect of ground-floor, middle room and entire first floor. In view thereof, as also having regard to the documents relied upon by the obstructionist which do not show his having any interest in the suit premises, in my opinion, the obstructionist was not justified in obstructing execution of the decree of possession.

[emphasis supplied]

19. 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)”

20. 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.

21. 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.”

22. 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.”

23. In my opinion, despite this Court imposing costs of Rs.50,000/- on the judgment-debtors, it has no deterrent effect on the obstructionist herein. In view thereof and also in view of the decisions 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 of Rs.1,00,000/- (Rupees One Lakh Only) on the petitioner herein.

24. In so far as the submission that the applications at Exhibits-57 and 62 will be rendered infructuous is concerned, in the case of **Surya Dev Rai v. Ram Chander Rai and others**, (2003) 6 SCC 675, the

Apex Court has exhaustively dealt with the scope of Article 227 of the Constitution of India.

25. In paragraph-22, the Apex Court observed that “It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved **or may even be exercised suo motu**. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction.”

(emphasis supplied)

26. In paragraph-24, the Apex Court observed that “The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate Courts and Tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the Court or Tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise

a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.”

27. In paragraph-25, the Apex Court observed that “In exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior Court or Tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised *suo motu* as well.”

28. In paragraph-26, the Apex Court observed that there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded. It was also held that where the judicial conscience of the High Court

dictates it to act lest a gross failure of justice or grave injustice should occasion.

29. In paragraph-38, the Apex Court summed up the conclusions.

Clauses 4, 5, 7 and 9 read thus :

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

XXXXX

XXXXX

- (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.
- (5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.
- (6) XXXX

- (7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.
- (8) xxxx
- (9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory

jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”

30. In the present case the maxim 'a stitch in time would save nine' is applicable. Applying the principles laid down by the Apex Court in the case of **Surya Dev Rai** (supra) to the facts of the present case, the applications at Exhibit-57 & 62 deserve to be dismissed otherwise this would result in prolonging of the lis. Applications at Exhibit-57 & 62 are accordingly dismissed.

31. In view thereof, the Petition fails and the same is dismissed with exemplary costs of Rs.1,00,000/- (Rupees One Lakh Only) to be paid by the obstructionist to the decree holder within eight weeks from today. In case, the obstructionist does not pay the costs within the stipulated time, the Collector, Mumbai Sub-urban District, Mumbai shall recover the same as arrears of land revenue. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)