

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.12158 OF 2017
IN WRIT PETITION NO. 3668 OF 2010
WITH
CIVIL APPLICATION NO.12157 OF 2017
IN WRIT PETITION NO. 3668 OF 2010
WITH
CIVIL APPLICATION NO.12979 OF 2017
IN CIVIL APPLICATION NO.12157 OF 2017
WITH
CIVIL APPLICATION NO.14291 OF 2018
IN WRIT PETITION NO. 3668 OF 2010
WITH
CIVIL APPLICATION NO.716 OF 2011
IN DISPOSED OFF WRIT PETITION NO. 3668 OF 2010

M/S LABHSHETWAR AND SAKKARWAR CONSTRUCTIONS
VERSUS
SHIRISH G SANGLE

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Advocate for Applicants : Shri Bhandari Anand P.
Advocate for Respondent / Court Receiver : In Person
Advocate for Respondent 2 in CA 14291/2018 : Shri Tawshikar S.D.
AGP for Respondent 2 in CA 716/2011 : Shri Munde S.W.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 05, 2019

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PER COURT :-

1. I have heard the learned Advocates appearing on behalf of the respective parties and the Court Receiver Shri Sangle, in-person, extensively, on various dates.

2. In disposed off Writ Petition No.3668 of 2010, the original plaintiff, the original defendant and the Court Receiver have filed

these Civil Applications. In Civil Application NO.12157 of 2017, filed by the Court Receiver, he prays for settlement of his accounts and his discharge as a Court Receiver. In Civil Application No.12158 of 2017, the original defendant prays for discharging the Court Receiver and for handing over the property to the defendant, who is the licensor. In Civil Application No.12979 of 2017, the Court Receiver prays for an action against the plaintiff for the reason that he had lodged two police complaints against the Court Receiver, without seeking leave of the Court. In Civil Application No.12491 of 2017, filed by the original plaintiff, it is prayed that the property, which is now in the custody of the Court Receiver from 18.9.2017, be released and be handed over to the plaintiff.

3. The plaintiff contends that the similar Civil Applications seeking similar reliefs by the defendant were disposed off while rejecting the Second Appeal No.299 of 2017, filed by the plaintiff. This would render these Civil Applications untenable in law. I do not find any reason to entertain this contention, in view of the fact, that, notwithstanding the disposal of those Civil Applications as the Second Appeal was dismissed, unless the Court Receiver and/or the defendant files such an application, no orders could be passed to discharge the Court Receiver and consequentially handover the property to the licensor. As such, these applications are being

entertained.

4. For the sake of brevity, I am referring to the parties as they were before the trial Court in RCS No.1001 of 2009. As such, the applicant in Civil Application No.12158 of 2017 is the original defendant. The applicant in Civil Application No.14291 of 2018 is the original plaintiff.

5. Civil Application No.716 of 2011, filed by the original defendant, is said to be infructuous as per the statement made and the said application is, therefore, disposed off.

6. On 25.9.2017, this Court (Coram : Nitin W. Sambre, J.) had passed the following order:-

" *The Court Receiver appointed by this Court, pursuant to the orders passed on 3rd May, 2010, has taken possession of the suit property.*

2. *The parties to the civil proceedings are before this Court in a disposed of writ petition, in which the Court Receiver was appointed. The issue of handing over of possession and discharge of Court Receiver is agitated in this application.*

3. *The fact that the Court Receiver was appointed pursuant to the orders of this Court and that too upon certain consent*

extended by the respondent is reflected in the order dated 3rd May, 2010.

4. *The Court Receiver then has brought to the notice of this Court by an affidavit that respondent no.2 to the petition has approached the police authorities against him, instead of approaching this Court for redressal of his grievance, in which I am informed that the concerned police has summoned the Court Receiver.*

5. *In view thereof, considering aforesaid conduct of respondent no.2, particularly approaching the police authorities against the Court Receiver, challenging his authority, in the matter of order passed by this Court, can be viewed as the conduct challenging the authority of the Court, are the submissions of Court Receiver.*

6. *In view thereof, issue notice as to why contempt proceedings be not initiated against respondent no.2 Ravindra Vitthalrao Songire who is personally present before this Court and identified by learned Counsel Mr Kulkarni. Respondent no.2 waives notice in person.*

7. *Mr Kulkarni, learned Counsel appearing on behalf of respondent no.2 seeks time to file reply to Civil Application No.12157 of 2017, or to make a statement, as to whether reply to Civil Application No.12158 of 2017 can be read as reply to Civil Application No.12157 of 2017.*

8. *At the request of Mr Kulkarni, stand over to 5th October, 2017, so as to enable him to file reply to the application and*

also to respondent no.2 to file his affidavit in response to the aforesaid notice issued and served on him."

7. When this Court (Coram : Nitin W. Sambre, J.) once again heard the parties on 11.10.2017, the following order was passed:-

" Perused the affidavit tendered by respondent no.2 Ravindra Vitthalrao Songire, pursuant to the order of this Court, wherein Court was proposing to issue contempt notice to him, as reflected in the order dated 25 th September, 2017.

2. According to respondent no.2, copies of the application moved by the Court Receiver and on behalf of respondent were never served on him and he suo motu appeared in the proceedings. Before the aforesaid event, with an bona fide intention to protect his possession, respondent No.2 has approached the police authorities against the Court Receiver. He would then urge that the same was based on legal advice rendered by the lawyer, borne out of interpretation of the earlier orders passed in the proceedings. He tenders unconditional apology for the same.

3. In view thereof, this Court accepts the explanation tendered by respondent No.2 – deponent. As such, action proposed against him under the provisions of the Contempt of Courts Act, is hereby dropped.

4. The following factual matrix is not in dispute.

5. *Respondent No.2 before this Court filed suit for perpetual injunction, which was dismissed on 20 th February, 2013, which proceedings are now sub-judice in Special Leave Petition at the behest of the same party, before the Apex Court.*

6. *All the Courts have held against the said respondent.*

7. *The present applications are moved by the defendant to the said suit i.e. applicant before this Court seeking possession of the property from the receiver as the said plaintiff came to have committed default in payment of amount as ordered by this Court towards alleged licence fees.*

8. *Be that as it may, in my opinion, it will be appropriate to adjourn this matter till 20th November, 2017, upon an assurance given by the respondent that he shall pursue before the Apex Court for getting his special leave petition listed at the earliest. Stand over to 20 th November, 2017 "*

8. On 8.12.2017, I had passed the following order in Civil Application No.12157 of 2017:-

"1. *Learned Advocates for the respective sides submit that they have no objection if this Court considers this proceeding.*

2. *Before commencement of the submissions of the learned Advocates for the respective sides, Mr.Bhandari, learned Advocate for*

the applicant/ Construction Company in the second civil application submits that the proceedings originating from SA No.299/2017 in which this Court has delivered a judgment on 11/07/2017, are sub-judice before the Hon'ble Apex Court since the said judgment is under challenge before the Apex Court. He further submits that he would have no difficulty in proceeding with this matter, but for the fact that the whole case would turn upon the fate/the decision, of the proceeding pending before the Hon'ble Apex Court.

3. Mr.Kulkarni, learned Advocate appearing on behalf of respondent No.2, added in both the civil applications, submits that the present civil applications before this Court have nothing to do with the pending proceeding before the Hon'ble Apex Court and both the proceedings are unconnected with each other.

4. Considering the above and the request for time made on behalf of the applicant in the first civil application, stand over to 04/01/2018.

5. Parties may note that no further request for adjournment would be entertained."

9. On 25.10.2018, I had passed the following order:-

"1. I have heard the learned Advocates for the respective sides for some time.

2. There is no dispute that the Spl.Leave Petition No.22297/2018 filed by Mr.Ravindra Songire has been

dismissed by the order dated 24/08/2018. It is equally undisputed that the suit filed by him RCS No.1001/2009 has been dismissed. He is a licensee of the suit property. His RCA No.66/2013 was also dismissed. His Second Appeal No.299/2017 has also been dismissed and the SLP has now been dismissed.

3. It appears that M/s Labhshetwar and Sakkarwar Constructions are the owner of the suit properties. The licensee, who entered into a Leave and License Agreement with the said entity admitting that the said entity is the owner of the suit property, is now disputing the title of the entity.

4. During the pendency of the proceedings originating from the civil suit upto the second appeal stage in this Court, it is informed that there have been two orders to the licensee to deposit license fees in each month. An amount of Rs.1,50,000/ per month was the initial direction. The said quantum was enhanced under the orders of the District Court dated 26/03/2015 delivered in RCS No.66/2013 by which the license fees to be paid per month by the licensee was enhanced to Rs.4,00,000/ per month w.e.f. 01/04/2015.

5. There is no dispute that the licensee was in possession of the suit property till 17/09/2017 and hence is expected to comply with the directions given by the respective Courts which are directions to be implemented on month to month basis.

6. Learned Advocate for the licensee submits that a substantial amount and according to his instructions, the due amounts in deference to the orders passed by the

respective Courts, have been deposited in the First Appeal Court.

7. *By consent of the parties, this matter is posted to 29/11/2018 with the following directions:-*

[a] Mr.Bhandari would tender in the Court a ready reference chart as regards the license fees to be deposited by the licensee, the amounts deposited and deficit, if any.

[b] Mr.Kulkarni, learned Advocate for the licensee shall submit a similar chart indicating the amounts deposited.

[c] Mr.Sangle, the Court receiver shall submit a similar chart with regard to his fees having been paid by the licensee, amounts unpaid, if any and arrears of taxes / statutory dues.

[d] The above charts shall be updated versions till 31/10/2018.

8. *List these civil applications on 29/11/2018 for further consideration and orders in the “Urgent Orders Category”.*

10. In so far as the grievance of the Court Receiver is concerned, my Brother Justice Sambre had recorded the apology tendered by the original plaintiff for having dragged the Court Receiver in two complaints before the Vedant Nagar Police Station. After recording his unconditional apology, the action proposed against the plaintiff under the provisions of the Contempt of Courts Act, was dropped.

11. During the course of the arguments on 28.2.2019, learned Advocate for the plaintiff submitted, on instructions gathered from him in the Court that the said two police complaints, shall be withdrawn by the plaintiff. Today also, the plaintiff present in the Court submits that the said complaints would be withdrawn. However, he contends that he would move an appropriate application before the Court and if permission is granted, he would file a fresh complaint against the Court Receiver. As such, the police complaint dated 17.9.2017 and 18.9.2017, filed with the Vedant Nagar Police Station, shall stand disposed off as withdrawn. Consequentially, the Civil Application No. 12979 of 2017, filed by the Court Receiver is rendered infructuous and stands disposed off.

12. It is informed that the Special Leave Petition No.22297 of 2018, filed by the plaintiff has been dismissed by the Honourable Apex Court by order dated 24.8.2018. It is also undisputed that RCS No.1001 of 2009, filed by the plaintiff, his appeal and second appeal have been dismissed.

13. Since all substantive proceedings in this Court have been decided against the plaintiff, I am not required to advert to all those proceedings. Suffice it to say that the plaintiff was a licensee in the

suit property. He had entered into a leave and license agreement with the defendant, who posed to be the owner of the property. RCS No.1001 of 2009 was filed by the plaintiff seeking injunctory orders against the defendant. Same was dismissed by judgment and order dated 20.2.2013. By order dated 14.11.2016, RCA No.66 of 2013 filed by the plaintiff was also dismissed. His Second Appeal No.299 of 2017 was dismissed by this Court (Coram : Nitin W. Sambre, J.) on 11.7.2017. Subsequently, the SLP was also dismissed by the Honourable Apex Court.

14. It is, therefore, obvious that the plaintiff was held to be not a tenant in the suit premises and was purely a licensee. In the Second Appeal decided by this Court, the issue as to whether the agreement between the defendant and the plaintiff, by which the plaintiff was put in possession of the property, could be termed as a 'tenancy agreement' or a 'leave and license agreement', was specifically framed in view of the submission of the appellant / plaintiff. After considering the entire evidence on record, this Court considered the rival contentions and concluded that the plaintiff was put in possession of the suit property only as a result of the leave and license agreement. It was ruled that there was no material on record to infer that the plaintiff was put in possession of the suit property being a tenant.

15. The plaintiff had then raised the issue of ownership before this Court in the said Second Appeal. After considering the contentions, the Second Appellate Court ruled that the issue of ownership of the defendant over the suit property was neither raised by the plaintiff nor had the lower Courts any occasion to go into the said issue. It was, therefore, concluded, in paragraph No.11 of the judgment dated 11.7.2017 that the said issue is no more required to be looked into or gone into by this Court at this stage of the proceedings. It was then observed in paragraph No.14 that it would be open to the plaintiff to initiate such proceedings as advisable and permissible in law. The learned counsel for the plaintiff submits, on instructions, that as an SLP was filed and as the Civil Applications are pending in this Court, the plaintiff has not yet initiated any such proceedings against the defendant.

16. In the light of the above, the position that is crystallized in law, considering the decade long litigation between the parties, right upto the Honourable Apex Court, is that the plaintiff was given the possession of the suit property only on account of the leave and license agreement. It requires no debate that the licensor, who enters into such an agreement and puts the licensee in possession of the property, is presumed to be a person holding a right and title to such

property, unless the otherwise is proved in any legal proceedings.

17. Civil Application No.12158 of 2017 filed by the defendant is with regard to discharging the Court Receiver. Civil Application No.12157 of 2017 is filed by the Court Receiver, by which, he prays for settling his fees and for discharging him. The Civil Application No. 14291 of 2017 filed by the plaintiff is with regard to the prayer to remove the seal / lock of the suit premises, since the plaintiff claims to have been dispossessed by the Court Receiver, without authorization from the Court, on 18.9.2017.

18. Considering the above, it needs to be recorded as to what were the circumstances, in which, the Court Receiver was appointed. On 3.5.2010, this Court, while considering Writ Petition No.3668 of 2010 has considered the contentions putforth by the parties and had disposed off the petition, by consent, in the following terms:-

"(a) The suit property to be taken in possession by the Court Receiver. Thereafter, the Court Receiver will appoint the respondent i.e. original plaintiff as his agent to continue to run the business of the hotel until disposal of the suit. By consent, Mr. S.G. Sangle, advocate, is appointed as Court Receiver. Mr. Sangle is present and has accepted the assignment.

(b) The plaintiff/respondent will tentatively deposit an amount of Rs. 1,50,000/- (rupees one lac fifty thousand) per

month in the trial Court at end of each month. The nature of such payment is only ad-hoc and whether it is a licence fee, amount of rent or amount towards compensation will be decided at the time of final decision of the suit. If the plaintiff/respondent will fail to deposit such amount consecutively for period of three months, then the Court Receiver may immediately take possession of the suit property and may seek further orders from the Court regarding the giving of the property on rental basis or live and licence basis to any third party, after holding auction.

(c) The disputed questions of facts and law are kept open and the above arrangement of appointment of the Court Receiver will be treated as ad-hoc arrangement.

(d) The respondent/plaintiff shall also pay additional amount of Rs. 5000/- (rupees five thousand) per month towards fees of the Court Receiver and shall allow the Court Receiver to take inventory of the articles in the premises and also to furnish an undertaking to the trial Court that he shall not cause any damage to the suit property and shall not create third party interest during pendency of the suit.

(e) The Court Receiver will be authorized to take over the possession from the plaintiff/agent if finally, the suit is decided against him and if the plaintiff will be found as not entitled to continue as a licensee/tenant and that the plaintiff shall hand over such possession within period of four weeks after such decision, if rendered against him, subject to any further appellate order.

(f) *The issue of arrears is being considered separately by way of another suit and the petitioner would be at liberty to apply for interim relief, if any in that suit. The amounts deposited by the plaintiff/respondent is allowed to be withdrawn by the petitioner.*

(g) *The respondent/plaintiff shall pay all the taxes and accruals.*

(h) *The Court Receiver to examine whether the respondent/plaintiff is in arrears of the licence fee/rent and may submit a report after consideration of the relevant position and thereafter, further orders regarding direction to deposit such arrears, if any, will be rendered for period commencing from the date of the suit filed by the respondent.*

(i) *The suit shall be expeditiously decided by the trial Court, and as far as possible, within period of six (6) months. The parties shall cooperate with the trial Court during the hearing of the suit. The petition is accordingly disposed of. "*

(Emphasis supplied)

19. It is, therefore, obvious that the plaintiff agreed to deposit Rs.1,50,000/- per month in the trial Court. The said payment was ad-hoc and whether it was a license fee or amount of rent, was to be decided finally in the suit. This Court, in the Second Appeal as noted above, has concluded that the plaintiff was not a tenant and was only a licensee. In this backdrop, I find it appropriate to record that the payment ordered by this Court on 3.5.2010, will have to be construed

to mean a license fee. The said amount is subsequently enhanced to Rs.4,00,000/- per month by the District Court vide order dated 26.3.2015, passed in Regular Civil Appeal. The said order of the District Court has not been quashed and set aside by any superior Court till this date.

20. It cannot be over looked that this Court (Coram : S.S.Shinde, J.), had delivered an order on 17.7.2013 in Appeal from Order No.26 of 2013, filed by the defendant against the plaintiff, directing that the plaintiff shall continue to pay Rs.1,50,000/- per month to the licensor and liberty was granted to the defendant / licensor to seek enhancement in the amount to be paid by the licensee. It is in the backdrop of this liberty that the defendant filed application Exhibit 63, before the first appellate Court and by the order dated 26.3.2015, the said fee was enhanced to Rs.4,00,000/- per month.

21. Learned Advocate for the plaintiff submits on instructions, that Writ Petition No.9242 of 2015 was filed for challenging the order dated 26.3.2015, delivered by the first appellate court enhancing the license fee, as per the ready reckoner, to Rs.4,00,000/- per month. By order dated 14.9.2015, this Court (Coram : Sunil P. Deshmukh, J.) has disposed off the Writ Petition by directing the plaintiff to deposit Rs.5,00,000/- before the appellate court, unconnected with

the monthly payment of Rs.1,50,000/-. In view of this direction, the defendant conceded to the position of not seeking immediate possession of the suit property as the review filed by the plaintiff against the order of the first appellate Court dated 26.3.2015, was pending. Learned counsel for the defendant submits on instructions, that the Review Application was disposed off by the first appellate court on 15.10.2016.

22. Learned counsel for the plaintiff submits on instructions from the plaintiff present in the Court, that he has been a defaulter from November, 2016 and the Court Receiver, according to the plaintiff, has forcibly taken the possession of the suit property on 18.9.2017. It is also conceded that under the orders of this Court (Coram : Sunil P. Deshmukh, J.), dated 27.4.2017, that the plaintiff was directed to deposit an amount of Rs.40,00,000/- in this Court, in Second Appeal No.299 of 2017 with Civil Application No.5008 of 2017. There is no dispute that the plaintiff has not deposited the said amount of Rs.40,00,000/- in this Court.

23. The issue, therefore, is as to whether the Court Receiver needs to be continued for rendering assistance to this Court with regard to this litigation or as to whether the litigation has been brought to an end and this Court need not continue the Court Receiver.

24. I find from the order dated 3.5.2010 that the Court Receiver was appointed and the original plaintiff was ordered to be the agent of the Court Receiver, who would continue the business of the hotel until the disposal of the suit. When this order was passed, the plaintiff did not pray for a direction that he should be continued as an agent or as a licensee in the suit property, notwithstanding the result of the suit. The order of this Court dated 3.5.2010, has, therefore, settled the terms by which, the Court Receiver was appointed. The original plaintiff, as an agent of the Receiver, was put in possession to conduct business in the said hotel only till the suit was decided. Naturally, if the result in the suit would have been in favour of the plaintiff or if in further litigation, any result was in favour of the plaintiff, the said judgment would have binding effect. As the suit was dismissed, which was followed with the dismissal of the Regular Civil Appeal, Second Appeal and the SLP, that the plaintiff lost his right to continue in possession of the suit property. As a natural consequence, the purpose for which the Court Receiver was appointed, subject to his furnishing a report, as was directed, was also achieved.

25. The Court Receiver points out the report, dated 19.9.2017, that he has filed in this Court after taking over the possession of the

suit property on 18.9.2017. He submits that as the plaintiff was a defaulter, he has taken over the possession of the said property only after the plaintiff refused to handover the possession.

26. In view of the above, I find that the Court Receiver need not be continued as there is no purpose for which his services could be availed of in relation to the suit property. Consequentially, the Civil Application No.12157 of 2017 is allowed. The Court Receiver would stand discharged, subject to the certain directions, which I would be issuing.

27. At this juncture, the learned counsel for the plaintiff as well as the defendant, request that the Court Receiver should conduct a panchanama along with Videography on a given date. The plaintiff prays that the possession of the suit property be handed over to him. The defendant prays that the said property belongs to the defendant and there is no reason to hand it over to the plaintiff. I have noted hereinabove, the directions issued by this Court, vide order dated 3.5.2018 and the conclusions drawn by this Court (Coram : Nitin W. Sambre, J.), vide order dated 11.7.2017. As the plaintiff was held to be a licensee and the defendant was a licensor, coupled with the fact that the plaintiff was put in possession as an agent of the Court Receiver, there is no reason for this Court to over look the directions

passed in the earlier orders. Consequentially, the suit property shall be handed over to the licensor.

28. The plaintiff makes a further request that, as the defendant had deposited Rs.7,00,000/- in the trial Court in MARJI No.133 of 2009 towards the security deposit of the plaintiff held by the defendant and since the said amount is still lying in the said Court and must have accrued interest, he be permitted to withdraw the entire amount. Learned counsel for the defendant, on instructions, opposes the application. However, he submits that as the entire security deposit received from the plaintiff was deposited in the District Court and though the defendant has large amounts of recovery against the plaintiff, the said amount may be withdrawn by the plaintiff at his own risk keeping open all grounds available in law to the defendant.

29. In view of the above request made by the plaintiff, the same is allowed and the plaintiff is at liberty to withdraw the amount of Rs.7,00,000/- along with accrued interest, subject to further litigation between the parties and for which all grounds available in law are kept open.

30. In so far as the fees / charges of Court Receiver are concerned,

learned counsel for the defendant submits, on instructions, that such fees from December 2015 to March, 2016 shall be paid by the defendant, which amount is at the rate of Rs.5,000/- per month, reserving his right to recover the said amount from the plaintiff.

31. In view of the above, Civil Application No.12158 of 2017 is partly allowed with the following directions:-

(A) The Court Receiver shall conduct a panchanama as is expected in law on 9.3.2019 at 11.00 am at the suit property.

(B) He shall also arrange for conducting a Videography of the entire process of handing over possession of the suit property to the defendant.

(C) The charges for Videography would be borne by the defendant.

(D) The Court Receiver shall then prepare three DVDs of the said Videography and deposit the same in this Court, preferably on/or before 22.3.2019.

(E) The Court Receiver shall also prepare an inventory / list of articles / fixtures, which would be annexed to the panchanama. Needless to state, even the panchanama and this list shall be deposited in this Court in three sets, so as to enable the plaintiff and the defendant to withdraw one set each.

(F) The plaintiff and the defendant are at liberty to apply for receiving one DVD each and the third DVD would be preserved by the Registry of this Court along with the panchanama.

(G) In so far as equipments / fixtures / items, if are claimed by the plaintiff, he would be at liberty to initiate an appropriate litigation for the said purpose and the competent court shall decide the same, on the basis of the record and evidence adduced by the parties, as this is a contentious issue.

32. Another issue that is raised by the plaintiff as well as the defendant before this Court is as regards their claims towards amounts to be recovered from each other. Both the sides have a long list of contentions as well as claims / amounts to be recovered from each other. Accounts are also not yet settled. This Court, in my view, has no reason to entertain such disputed factors and disputed issues. The parties would, therefore, be at liberty to initiate appropriate litigation, if may be and as may be permissible in law, in order to seek redressal of their grievances. All contentions of these parties are left open.

33. Consequent to the above, Civil Application No.14291 of 2018 stands rejected.

34. Civil Application No.3455 of 2018 filed by the Court Commissioner is with regard to seeking directions that the plaintiff should deposit arrears towards license fee, electricity charges, property tax, water tax / cess, for the period 20.4.2016 till this date or to adjust the same from the amount of Rs.7,00,000/- deposited by the defendant in MARJI No. 133 of 2009. This Civil Application stands disposed off, in view of the conditional liberty granted to the plaintiff to withdraw the amount and the defendant being permitted to initiate appropriate proceedings for recovery of amounts and settlement of accounts.

(RAVINDRA V. GHUGE, J.)

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