

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.3 OF 2019

- 1 Shri Vassudev P. Naik,
72 age
- 2 Smt. Vassanti Naik,
65 age, Both major,
residents of H.No.16,
Tarcar Road, Bhatulem,
Panaji-Goa.
Through their POA Holder
Mr. Roopesh V. Naik,
Son of Vassudev P. Naik,
Major of age,
R/o. H.No.16, Bhatulem,
Panaji-Goa.

.... Applicants

Versus

Shri Krishna Vithoba X. Tilve
(since deceased) through legal
heirs

- 1(a) Mrs. Jyotsna U. Tople, age
61
- 1(b) Mr. Ulhas B. Tople, age 69
Both residents of Flat
No.G-4, Green Valley
Cooperative Housing
Society, Vollant, Porvorim,
Betim, Bardez-Goa.
- 1(c) Mrs. Sushma R. Narvekar,
age 56
- 1(d) Mr. Ravindra N. Narvekar,
age 63
Both residents of E-4,
Sanchayani Anant Vishva
Cooperative Housing
Society, Vidyanagar,
Margao, Goa-403601.

1(e) Mrs. Neema N. Narvekar,
age 54

1(f) Mr. Nandakishor G.
Kanekar, age 59
Both residents of F-7,
Rosadel Enclave, Old
Market, Margao-Goa
403601.

1(g) Mr. Vithal alias Satish K.
Tilve, age 59

1(h) Mrs. Manuja V. Shet Tilve,
age 53

1(i) Ms. Seema K. Shet Tilve,
age 59
All residents of H.No.19,
Bhatulem, Panaji-Goa.

2 Smt. Radhabai Krishna
Xete Tilve, age 84
Resident of Bhatulem,
Panaji-Goa.

.... Respondents

Shri G. Teles, Advocate for the Applicants.

Shri P.A. Kholkar, Advocate for the Respondents.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on :-14th February, 2019

Pronounced on :- 14th March, 2019

JUDGMENT :

The parties were put to notice that the petition would be finally disposed off at the admission stage itself. Rule. Rule made returnable forthwith. Learned Advocate for the respondents waives service.

2. The applicants have challenged in revision the order dated 31/07/2018 passed by the Senior Civil Judge, Panaji and that dated 30/10/2018 in the Regular Execution Proceedings No.8/2017 in the present revision application.

3. Briefly, it was the case of the respondents/plaintiffs that they had filed a suit against the applicants for recovery of possession, mesne profits and injunction on the premise that they had purchased a portion of the property known as 'Palmar Bhatulem' vide the Sale Deed dated 22/01/1996 admeasuring 1804.2 square metres surveyed under Chalta No.48 P.T. Sheet No.109 being the suit property for brevity's sake. The mother of the applicants had approached the respondents to provide her a job who was employed as their domestic servant and accommodated in an area admeasuring 27 square metres of the house existing in the suit property earlier utilised by the father of the respondent no.1 for running a bakery. Upon her death, the respondent no.1 requested the applicants to vacate the suit portion, who promised to vacate but failed to do so precipitating a legal notice to quit, vacate and handover the vacant possession of the suit portion to them and on failure to do so resulting in

the suit.

4. The applicants had contested the suit taking a plea that the petitioners were residing in the dwelling mundkarial house constructed in the suit property with the permission of the landlord. The purported Deed of Sale of 1996 did not defeat the applicants' right and the respondents had purchased the property inspite of the disclosure of the fact that the applicants had filed the proceedings claiming to be the mundkars of the suit house. They had specifically denied that they were the trespassers and on the contrary taken a plea that the respondents had no right, title or possession over the house or the portion of the acquired land. The Trial Court on the basis of the pleadings had framed issues casting the burden on the respondents to prove that the applicants were not the mundkars of the suit portion or that they were the trespassers in respect of the suit portion. The suit was decreed giving rise to an appeal at the instance of the applicants which came to be dismissed and so too the Second Appeal filed in this Court.

5. Execution proceedings were filed by the respondents in

which an application was filed under Section 47 read with Section 151 of the Civil Procedure Code by the applicants with a relief to decide the objections raised by them and to keep the execution proceedings in abeyance. The respondents contested the application and pressed for its dismissal. On hearing the parties, the Trial Court allowed the execution application and directed the applicants to handover the vacant and peaceful possession of the suit portion to the respondents and on failure directed the bailiff to take possession of the suit portion with Police assistance. The said order was challenged in Writ Petition before this Hon'ble Court which was pleased to quash and set aside the order and remand the matter to the Trial Court with a direction to hear and decide the application under Section 47 of the Civil Procedure Code and only then to proceed with the execution. The Trial Court again heard the parties on the application under Section 47 and rejected the same vide the order dated 31/07/2018. The applicants filed the review application seeking the review of the order dated 31/07/2018 which was opposed by the respondents. The Trial Court vide the order dated 30/10/2018 dismissed the application filed for review by the applicants giving rise to the revision at their instance.

6. Heard Shri Galileo Teles, learned Advocate for the applicants, who contended that the application under Section 47 was dismissed vide the order dated 31/07/2018 on remand vide the order dated 16/07/2018. The Trial Court did not consider the objections raised by the applicants under Section 21 of the Goa, Daman and Diu Buildings (Lease, Rent & Eviction) Control Act, 1968 and Rules, 1969, 'the Act' for short hereinafter while dealing with the application under Section 47 of the Civil Procedure Code and therefore the applicants were constrained to file the review application. He adverted to the pleadings in the review application and the reply filed by the respondents and submitted that the contentions raised in the application under Section 47 of the Civil Procedure Code were not at all considered by the Trial Court. He placed reliance in **Shantaram Babani Xete Curtorkar & Anr. V/.s. Vishnu Babani Xete Curtorkar & Anr. [1989 (2) GLT 167]** to substantiate his case.

7. Shri P.A. Kholkar, learned Advocate for the respondents contended that initially the respondents' suit was partly decreed and the eviction ordered of the applicants. They had preferred an appeal which came to be dismissed vide the

judgment dated 14/02/2017. The Second Appeal bearing no.61/2017 also came to be dismissed by the judgment dated 16/06/2017. Thereafter, the applicants moved an application under Section 47 of the Civil Procedure Code to which the respondents had filed their reply and the same came to be dismissed by the learned Executing Court. The applicants challenged the same before this Court in Writ Petition whereupon the matter was remanded to the Trial Court vide the order dated 16/04/2018 to consider the application under Section 47 of the Civil Procedure Code and only then to decide the execution proceedings as expeditiously as possible.

8. It was further the contention of Shri P.A. Kholkar, learned Advocate for the respondents that the learned Trial Judge vide its order dated 31/07/2018 dismissed the application under Section 47 read with Section 151 of the Civil Procedure Code moved by the applicants. He placed reliance in **Brakewel Automotive Components (India) Private Limited V/s. P.R. Selvam Alagappan [(2017) 5 CC 371]**, **Shivaji Balaram Haibatti V/s. Avinash Maruthi Pawar [(2018) 11 SCC 652]** and contended that the Trial Court had dismissed the application under Section 47 of the Civil

Procedure Code. There were directions to dispose off the execution proceedings by 31/12/2018 which order was flouted by the applicants. The revision was filed only in December, 2018 challenging the order in review dated 30/10/2018. The conduct of the applicants was relevant who had mentioned the matter only on 21/12/2018 and obtained the stay of the proceedings. Reply was filed in the execution proceedings after the adjournment only on 27/11/2018. Written submissions came to be filed on 07/12/2018 and the present revision application was filed on 14/12/2018 when the matter was fixed for orders by the Executing Court on 21/12/2018.

9. It was the contention of Shri P.A. Kholkar, learned Advocate for the respondents that the judgment in **Shantaram Curtorkar** (supra), contained a special provision which allowed for a stay of the proceedings and in view thereof the suit was stayed. There was no such corresponding provision in the Act. He next adverted to Section 21 of the Act read with the definition of a 'tenant' contained in Section 2(o) and submitted that there was no material before the Trial Court to show tenancy in the applicants' favour. He also adverted to the impugned order and otherwise relied in

Ramdulari w/o Matabadalsingh (since deceased through LR's) V/s. Meerabai wd/o Bharatsingh Baghel (since deceased through LR's) [2014 (3) Mah.L.J. 323] and **Executive Engineer, Lower Wena Project Division, Wardha & Ors. V/s. Vasant Nattuji Kosare & Anr. [2009 (5) Mah.L.J. 733]** in the matter of review and pressed for the dismissal of the application.

10. Shri G. Teles, learned Advocate for the applicants in reply contended that the issues were framed by the Trial Court casting the burden on the respondents to prove that the applicants were not the mundkars of the suit portion which was answered in their favour. The issue of tenancy was raised for the first time in the application under Section 47 of the Civil Procedure Code. He referred to the judgment in **Shivaji Haibatti** (supra), relied upon by Shri P.A. Kholkar, learned Advocate for the respondents, adverted to the reply filed on their behalf which did not at all meet the applicants' case under Section 21 of the Act. There was no discussion also by the Trial Court on the aspect of Section 21 of the Act. The application for review filed by the applicants exhibited due diligence on their part. He placed reliance in Board of Control

for **Cricket, India & Anr. V/s. Netaji Cricket Club & Ors. [2005 (4) SCC 741]** to substantiate his contention when review was available. He substantiated his reliance on the judgment in **Shantaram Curtokar** (supra) since there was no analogous judgment available under the Act. Besides, in terms of Section 56 of the Act, the Civil Courts jurisdiction was barred in respect of tenancy. The Trial Court had not at all addressed itself to Section 21 of the Act and thereby failed to exercise jurisdiction justifying interference in the impugned orders in revision.

11. The respondents had filed the suit for the relief of recovery of possession, mesne profits and injunction in which the applicants had denied the respondents' right to the suit property and raised the plea that they were the mundkars of late Arminio Rebeiro in respect of the dwelling house situated in the suit portion and resisted the suit. The Trial Court however, partly decreed the suit and directed the applicants to handover the vacant and peaceful possession of the suit portion to the respondents. This decree was challenged in appeal before the District Court and the learned Adhoc District Judge vide the judgment dated 14/02/2017 dismissed the

appeal confirming the judgment passed by the Trial Court. The applicants moved this Court in Second Appeal No.61/2017 and a learned Single Judge of this Court did not find favour with the case of the applicants and dismissed the Second Appeal vide the order dated 16/06/2017 thereafter giving rise to the execution proceedings at the instance of the respondents.

12. The applicants herein resisted the execution proceedings by their application under Section 47 read with Section 151 of the Civil Procedure Code taking a plea that the respondents had forced the owner of the property Arminio Rebeiro to surrender his property which was thereafter illegally purchased by them alongwith the house occupied by the applicants and that they started collecting the rents on behalf of the original landlord and subsequently stopped accepting the rent. The applicants also relied on the assessment form maintained by the Panaji Municipal Council to substantiate their case that they were occupying the suit structure and relied on the declaration made by the respondents that they were occupying the structure on payment of rent of ₹20/- per month. On that premise, the applicants sought for an inquiry

under Section 47 of the Civil Procedure Code.

13. The respondents opposed the application on the premise that the application was an attempt to harass the respondents and to delay the proceedings and pressed for its dismissal setting out the chequered history of the case upto the stage of dismissal of the Second Appeal by this Court and pressed for the dismissal of the application. The learned Trial Judge vide the order dated 20/03/2018 disposed off the execution proceedings filed by the respondents and ordered the applicants to handover the vacant possession of the suit portion to the respondents giving rise to a Writ Petition at the instance of the applicants. This Court vide its order dated 16/04/2008 observed that the learned executing Court had not at all addressed itself to the merits of the application under Section 47 of the Civil Procedure Code and as such quashed and set aside the order with a direction to the Trial Court to dispose off the objections under Section 47 of the Civil Procedure Code and only then to dispose off the execution proceedings latest by 31/12/2018.

14. Be that as it may, the learned Trial Court by its order

dated 31/07/2018 which is challenged in this revision dismissed the application under Section 47 of the Civil Procedure Code giving rise to the review application at the applicants' instance and ultimately culminating in the impugned order dated 30/10/2018. A cursory perusal of the order dated 31/07/2018 would reveal that although the learned Judge considered the application under Section 47 of the Civil Procedure Code, it did not at all consider Section 21 of the Act nor the plea of tenancy raised by the applicants and dismissed the application under Section 47 of the Civil Procedure Code. The applicants were therefore constrained to file the review application under Order XLVII Rule 1 of the Civil Procedure Code giving rise to the second impugned order dated 30/10/2018. In the review application the applicants had specifically carved a case that the decree could not be executed in view of the specific bar under Section 21 of the Act and in that context had relied on the judgment in **Shantaram Curtorkar** (supra). The respondents had vehemently opposed the review application on the premise that the plea taken by the applicants in the review application was not at all tenable and moreover the decree holders had distinguished the judgment in the oral arguments and as it

pertained to the plea of mundkarship unlike the plea of tenancy taken by the applicants in this case.

15. Shri G. Teles, learned Advocate for the applicants had invited attention to the impugned order to substantiate his case that the judgment in **Shantaram Curtorkar** (supra) though relied upon was never considered by the Trial Court while deciding the review application and further that there was a clear admission by the Trial Court that the exercise of making a reference to the judgment and then saying that the ratio was not applicable to the case before it was not undertaken by the Court. He also invited attention to his application under Section 47 wherein a ground was specifically taken that in terms of Section 21 of the Act a tenant could not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of the said Act and that there were documents to substantiate his case of tenancy.

16. In **Shantaram Curtorkar** (supra), the respondent Vishnu had filed the suit for eviction of the petitioners from a part of the house situated at Sattari, the petitioner no.1 being

the brother of said Vishnu. The Trial Court dismissed the suit by its decree dated 01/07/1985, however, in an appeal taken by the respondents before the District Court he succeeded and by the decree dated 05/02/1988 the petitioners' eviction was ordered. This decree was sought to be executed before the Trial Court which was resisted on the ground that the petitioners were mundkars by virtue of and under the provisions of the Goa, Daman and Diu Mundcar's Act (Protection from Eviction) Act, 1975. The applicants resisting the execution proceedings prayed for a stay of the proceedings and for making a reference of the issue relating to mundkarship to the Mamlatdar for its determination. This application was rejected giving rise to the revision application. Once the warrant of possession was issued, the petitioners instituted the proceedings before the Mamlatdar of Sattari for declaration that they were the mundkars of the premises from which they were sought to be evicted and at the same time, praying for further reliefs under Section 5 of the Mundkar Act, 1975. They also moved an application for interim relief to restrain the respondents from executing the decree and on refusal by the Mamlatdar, sought that relief before the Additional Collector with the result that the respondents were

unable to execute the decree.

17. In **Shantaram Curtorkar** (supra), it was contended on behalf of the petitioners that since the Civil Court had no power to decide and adjudicate upon whether a person claiming to be a mundkar is or is not so. There could be no escaping for the executing Court but to stay the execution proceedings and refer the issue raised by the petitioners for its determination in terms of Section 32 thereof. This was resisted on behalf of the respondents on the premise that the suit was instituted much prior to the extension of the Mundkar Act, 1975 and that nowhere the petitioners had raised a plea that they were the mundkars in respect of the suit premises until the decree was passed for the eviction of the petitioners by the District Court on 05/02/1988. The plea of mundkarship had been raised malafide only to stall the decree passed for their eviction. Moreover, the petitioners having had an opportunity to raise such issue once the Mundkar Act, 1975 was brought into force, it was not open to them to raise that issue in an execution proceedings. The learned Single Judge considered the judgment in **Pelicio Martins V/s. Cosme Matias Menezes and Anr. [1988, Rent Control**

Journal 400] where the question was whether in an execution proceedings it was open to the party who was not impleaded in a suit to raise the issue of mundkarship and get the reference of the issue to the Mamlatdar. A learned Single Judge considering the law on the point and Section 32 of the Mundkar Act held that the execution was stayed though the plea of mundkarship was taken for the first time in the execution.

18. Section 32 of the Mundkar Act reads thus:

32. Suits involving issues required to be decided under this Act –

(1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by the Mamlatdar or the Collector under this Act the Civil Court shall stay the suit and refer such issues to the Mamlatdar or the Collector, as the case may be, for determination.

(2) On receipt of such reference from the Civil Court, the Mamlatdar or the Collector shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate his decisions to the Civil Court and such Court shall thereupon decide the suit in accordance with the procedure applicable thereof.

However, there is no such corresponding provision in the Act, which is sought to be invoked on behalf of the applicant herein. Section 2(o) in terms of the Act defines a “tenant” and means any person by whom or on whose account or

behalf the rent of any building is, or but for special contract would be, payable and includes [in the event of his death the surviving spouse, or any son, or unmarried daughter or father or mother who had been living with him as a member of his family upto the date of his death and] a sub-tenant and also any person continuing in possession after the termination of his tenancy, but shall not include any person against whom any order, or decree for eviction has been made.

19. Section 21 contained in Chapter V contemplates a bar on the eviction of tenants and reads thus:

Notwithstanding anything to the contrary contained in any other law or contract, a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Chapter:

Provided that where the tenant denies the title of the landlord or claims a right of permanent tenancy, the Controller shall decide whether the denial or claim is bonafide and may pass a decree for eviction on any of the grounds mentioned in this Chapter even though it is found that such denial does not involve forfeiture of the lease or that the claim is unfounded.

Such a plea being raised on behalf of the applicants, it

was incumbent upon the Trial Court while deciding the review application to give its findings on the said plea which it totally failed to do.

20. In **Brakewel** (supra), the Hon'ble Apex Court held at paragraphs 21 and 23 as below:

"21. As it is, Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof.

23. Though this view has echoed time out of number in similar pronouncements of this Court, in *Dhurandhar Prasad Singh vs. Jai Prakash University and others*, AIR 2001 SC 2552, while dwelling on the scope of Section 47 of the Code, it was ruled that the powers of the court thereunder are quite different and much narrower than those in appeal/revision or review. It was reiterated that the exercise of power under Section 47 of the Code is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executability of the decree if it is found that the same is void ab initio and is a nullity, apart from the ground that it is not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree inexecutable after its passing. None of the above eventualities as recognised in law for

rendering a decree inexecutable, exists in the case in hand. For obvious reasons, we do not wish to burden this adjudication by multiplying the decisions favouring the same view.”

21. This judgment does not in any manner support his contention that an inquiry under Section 47 was not tenable in view of the plea of tenancy raised by the applicants in the execution proceedings. Rather, this judgment would substantiate the contention of Shri G. Teles, learned Advocate for the applicants that he was entitled to raise the plea in the execution proceedings and the Trial Court had to address itself to the said issue.

22. **Shivaji Haibatti** (supra), challenged in appeal the final judgment and order passed by the High Court of Karnataka in the Second Appeal whereby the High Court allowed the appeal filed by the respondent and set aside the judgments and decrees of the Trial Court and the First Appellate Court. The appellant plaintiff became the owner of the suit shop and the land over which the suit shop was built alongwith the adjoining land by a registered Sale Deed dated 20/09/1997 having purchased the same from one Vithal. The respondent defendant was in possession of the suit shop even prior to its purchase by the appellant plaintiff from the said Vithal. The

appellant filed the suit claiming possession from the respondent inter alia on the ground that the appellant was the owner having purchased the same and that the respondent was in possession of the suit shop without any right, title and interest of any nature whatsoever. The respondent filed the written statement denying the appellant's title and claimed that he had been in possession of the suit shop since time immemorial and much prior to the appellant purchasing the suit shop and besides he had perfected his title by virtue of adverse possession over the suit shop against the predecessor-in-title of the appellant and the appellant himself. The Trial Court framed the issues, the parties led evidence and by judgment and decree dated 03/11/2003, the Trial Court decreed the appellant's suit holding him to be the owner of the suit shop, that the respondent failed to prove his adverse possession over the suit shop and that he was entitled to claim eviction of the respondent apart from claiming mesne profits and costs.

23. In **Shivaji Haibatti** (supra), the respondent preferred an appeal before the First Additional District Judge, Belgaum which came to be dismissed by the First Appellate Court

affirming the judgment and decree of the Trial Court. The respondent felt aggrieved and filed the Second Appeal in the High Court of Karnataka which by the impugned judgment allowed the appeal, set aside the judgments and decrees of the two Courts below and dismissed the appellant's suit. The High Court held that the respondent was in possession of the suit shop as a tenant and therefore the remedy of the appellant lay in filing the suit under the Rent Laws and the Transfer of Property Act for claiming possession of the suit shop and the suit was not maintainable for passing a decree for possession against the respondent in respect of the suit shop, giving rise to the appeal by way of special leave at the instance of the original plaintiff.

24. In **Shivaji Haibatti** (supra), the Hon'ble Apex Court found that the High Court had admitted the Second Appeal by framing a substantial question of law namely whether the Courts below had committed an error in the manner of considering the pleadings as well as evidence available on record and as to whether the same was contrary to the recitals in the documents at Exhibit P.15 and framed no other to examine the legality and correctness of any specific

findings recorded by the Courts below. The Hon'ble Apex Court found that the finding of the High Court was wholly illegal and unsustainable in law besides being against the pleading and evidence for the reason that the respondent defendant had not raised the plea of tenancy in the suit. Secondly, the Trial Court therefore had no occasion to frame any issue on such plea for want of any factual foundation in the written statement. Thirdly, the Trial Court and the First Appellate Court had no occasion to record any finding on this plea either way and fourthly in the light of these three reasonings, the High Court ought to have seen that such plea really did not arise for consideration because in order that any question is involved in the case, the party concerned should lay its factual foundation in the pleading and invite findings on such a plea.

25. In **Shivaji Haibatti** (supra), the Hon'ble Apex Court found that the respondent had never claimed that he was in possession of the suit shop as a tenant of the appellant's predecessor-in-title and quite on the other hand, he had asserted his ownership right over the suit shop on the strength of his long adverse possession. It is these issues

which were gone into by the two Courts and concurrently decided against the respondent. These issues should have been examined by the High Court with a view to find out as to whether these findings contained any legal error so as to call for any interference in the Second Appeal. The High Court however did not undertake this exercise and rather affirmed these findings when it did not consider it proper to frame any substantial question of law. It is a settled principle of law that the parties to the suit cannot travel beyond the pleadings so also the Court cannot record any finding on the issues which are not part of the pleadings. In other words, the Court had to record the findings only on the issues which are a part of the pleadings on which the parties are contesting the case. Any finding recorded on an issue *de hors* the pleadings is without jurisdiction.

26. In **Shivaji Haibatti** (supra), the Hon'ble Apex Court further found that the respondent had not adduced any evidence to prove his possession of the suit shop as a tenant of the appellant's predecessor-in-title. Secondly, the Sale Deed of the suit shop nowhere recited that the respondent was in possession of the suit shop as a tenant only indicating

that he had been in possession of the suit shop. Such recitals in their opinion in no way conferred the status of a tenant on the respondent in the absence of any independent evidence adduced by him to prove the creation of tenancy. The Apex Court therefore held that the High Court was not right in holding that the respondent was in occupation of the suit shop as a tenant and that the remedy of the appellant was to file a Civil Suit to claim eviction under the Rent Laws. This judgment with respect is clearly distinguishable inasmuch as the appellant had taken a plea of tenancy, though belated and raised an issue about the jurisdiction of the Court. The Court had to address itself to that issue and more particularly the predicates of Section 21 of the Act which it failed to do.

27. In **Ramdulari** (supra), a learned Single Judge of this Court while examining the scope of review under Order XLVII Rule 1 CPC held that it has to be seen as to whether any mistake of fact apparent on the face of record has been committed by the Court earlier and whether or not it has resulted in a miscarriage of justice. To review a judgment, it is not merely a patent error apparent on the face of record which is sufficient, but it is also necessary that such error

must have caused miscarriage of justice to the party seeking review of an earlier decision.

28. In **Executive Engineer, Lower Wena, Project Division, Wardha** (supra), another learned Single Judge of this Court held that an erroneous decision cannot be corrected assuming that the Court failed to take into consideration the facts on record. An erroneous judgment cannot be set aside in review and on merit no review is permissible.

29. In **Board of Control for cricket India** (supra), the Hon'ble Apex Court held at paragraphs 89 and 90 as below:

"89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application

for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

Section 56 of the Act reads thus:

56. Jurisdiction of courts barred— Save as provided in this Act, no court shall have jurisdiction to settle, determine or deal with any question which is by or under this Act required to be settled, determined or dealt with by the Controller, the Rent Tribunal, the Appellate Board or the Government and no order passed by any such authorities under this Act shall be called in question in any court.

Section 21 of the Act deals with the power of eviction of tenants and reads thus:

21. Bar on eviction of tenants— Notwithstanding anything to the contrary contained in any other law or contract, a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Chapter: Provided that where the tenant denies the title of the landlord or claims a right of permanent tenancy, the Controller shall decide whether the denial or claim is bonafide and may pass a decree for eviction on any of the grounds mentioned in this Chapter even though it is found that such denial does not involve forfeiture of the lease or that the claim is unfounded.

30. In other words, on a reading of Section 21 and Section 56 of the Act, it is apparent that it is only the Court under the Act which shall have the powers to deal with the eviction of tenant, the jurisdiction of the Civil Court being expressly barred in terms of Section 56 thereof.

31. The learned Trial Court had dealt with the judgment in **Ramdulari** (supra) and that in **Executive Engineer** (supra), but had not at all considered Section 21 of the Act on which it had to address itself and give findings either accepting the plea raised by the applicants and/or rejecting the same. The learned Judge had also not dealt with that issue while dealing with the review application and thereby failed to exercise the jurisdiction vested in it under the law. Taking into consideration the discussion as before apart from the judgment relied upon, the learned Trial Judge fell in error in exercising the jurisdiction vested in it while dealing with the plea raised on behalf of the applicants qua the issue of tenancy, though it might have been belatedly raised at the applicants' instance.

32. In view thereof, the impugned orders cannot be allowed to stand which are therefore quashed and set aside. The Civil Revision Application stands disposed off. Rule is made absolute in the above terms. The parties are directed to appear before the Court of the Additional Senior Civil Judge, B Court, Panaji on 26/03/2019 at 14.30 hrs. The Trial Court is

directed to dispose off the proceedings as expeditiously as possible and latest by 30/04/2019.

NUTAN D. SARDESSAI, J.

NH