

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
REVIEW PETITION NO.8 OF 2017

IN

WRIT PETITION NO.2234 OF 2014

Ranjeet Ramanand Shetty and others ... Petitioners  
Vs.  
Usman Abbas Syed and others ... Respondents

WITH

CIVIL APPLICATION NO.2421 OF 2016  
IN  
WRIT PETITION NO.2234 OF 2014

Dayanand S. Shetty ... Applicant  
Vs.  
Usman Abbas Syed ... Respondent

AND

CIVIL APPLICATION NO.2422 OF 2016  
IN  
WRIT PETITION NO.2234 OF 2014

Usman Abbas Syed ... Applicant  
Vs.  
Hasham Abbas Sayed and others ... Respondents

AND

CIVIL APPLICATION NO.3042 OF 2016  
IN  
WRIT PETITION NO.2234 OF 2014

Ranjeet Ramanand Shetty and others ... Applicants  
Vs.  
Hasham Abbas Sayed and others ... Respondents

Mr. Vinit Jain for Petitioners in Review Petition No.8 of 2017 and for Applicants in C.A.No.3042 of 2016.  
Mr. Surel Shah i/b. Mr. Vinod Sangvikar a/w. Mr. Bharat Kothari and Mr. Yogesh P. Morbole for Applicant in C.A.W.No.2421 of 2016.  
Ms Eventa Gonsalves a/w. Mr. Reyden L. Gonsalves for Respondent No.1 in Review Petition and for Applicant in C.A.No.2422 of 2016.

**CORAM : R. G. KETKAR, J.**

**DATE : AUGUST 13, 2019**

**P.C. :**

Heard Mr. Jain, learned Counsel for the petitioner in Review Petition No.8 of 2017 and for Applicant in C.A.No.3042 of 2016, Mr. Shah, learned Counsel for the applicant in C.A.No.2421 of 2016 and Ms Gonsalves, learned Counsel for the respondent No.1 in Review Petition and for applicant in C.A.No.2422 of 2016 at length.

2. At the request and by consent of the parties, Review Petition along with Civil Applications is taken up for hearing.

3. Review Petition No.8 of 2017 seeks review of order dated 10.08.2016 passed by this Court in Writ Petition No.2234 of 2014. By that order, the order dated 04.10.2013 passed by the Appellate Bench of the Small Causes Court at Mumbai below exhibit-7 in Appeal No.55 of 2011 was modified. By order dated 04.10.2013, the Appellate Court stayed the execution of the judgment and decree dated 30.09.2011 passed by the learned trial Judge in R.A.D.Suit No.634 of 1998 till the disposal of the appeal. That appeal was preferred by respondent No.1/defendant No.1-Hasham Abbas Sayed. This Court partly allowed the application filed by the defendant No.1 at exhibit-7 and stayed clauses 2 and 3 of the operative part of the order dated 30.09.2011. By way of abundant caution, it was clarified that this stay will not operate qua clause 4 of the operative part of the trial Court's decree. Receiver, High Court, Bombay was appointed as a Court Receiver in respect of property known as Kavarna Terrace, Plot No.19, Dr. B. A. Road, Opp. Gloria Church, Byculla, Bombay 400 007 (for short 'suit premises') with all the powers under Order XL of the Code of Civil Procedure, 1908 (for short 'C.P.C.'). Defendants No.2 and 3, namely, Ramanand Shetty and Jayanti Shetty, were directed to handover possession of the suit premises to the

Court Receiver within two weeks from production of authenticated copy of the order. The Court Receiver was directed to handover possession of the suit premises to the plaintiffs as agent of the Court Receiver without payment of any royalty and security and subject to plaintiffs paying rent to the defendants No.2 and 3 and other statutory dues in respect of the suit premises.

4. Civil Application No.2421 of 2016 is taken out by Dayanand Shetty (for short 'Dayanand') inter alia praying for impleading him as party respondent in the Review Petition as also for recalling or modifying order dated 10.08.2016 passed by this Court in Writ Petition No.2234 of 2014. Dayanand has claimed to be a bonafide tenant of part of the suit premises on the basis of the registered tenancy agreement dated 21.08.2012. That tenancy agreement was executed by Ramanand (defendant No.2) and Jayanti (defendant No.3) in his favour whereunder Dayanand was inducted in the premises admeasuring 90 sq.ft. built up area as a tenant.

5. Civil Application No.2422 of 2016 is taken out by respondent No.1 / plaintiff - Usman Abbas Sayyed (for short 'Usman') inter alia praying for directing the Court Receiver to take forcible possession of the suit premises from occupant Dayanand or whomsoever is found in occupation of the suit premises and for giving police protection to the Court Receiver for execution of the order dated 10.08.2016. Direction is sought against the respondents No.2(a), 2(b) and 3, namely, Ranjit R. Shetty, Reshma S. Ballal and Jayanti R. Shetty to deposit the monthly compensation received by them for giving the suit premises on leave and licence basis for more than 4 years from the date of the decree.

6. Civil Application No.3042 of 2016 is taken out by Ranjeet Shetty, Reshma Ballal and Jayanti Shetty inter alia praying for recalling the

order dated 10.08.2016 passed in Writ Petition No.2234 of 2014 after condoning the delay of 28 days in filing the Civil Application.

7. In support of Review Petition, Mr. Jain has invited my attention to paragraph 2 of the order dated 10.08.2016. In paragraph 2, it was noted that by order dated 04.07.2014, notice was issued to the respondent, returnable on 01.08.2014. Office remark dated 08.08.2014 showed that as per the affidavit of service filed by the petitioner / plaintiff Usman on 06.08.2014, respondents No.1 to 3 (Hasham Abbas Sayed, Ramanand Shetty, Reshma Samith Ballal) were duly served. During the pendency of the Petition, respondent No.2 Ramanand Shetty expired. The petitioner Usman Abbas Sayyed took out Civil Application No.1803 of 2016 for bringing legal representatives of respondent No.2 on record. By order dated 15.07.2016, notice was issued to the legal representatives of respondent No.2, returnable on 05.08.2016 and parties were put to notice that subject to the time constraint and convenience of the Court, Petition would be disposed of finally on that date. By order dated 05.08.2016, Civil Application was allowed after recording that legal representatives of respondent No.2 are served and to that effect, affidavit of service dated 26.07.2016 was filed. In view of the order dated 15.07.2016, Petition was taken up for final hearing. It was noted that despite service, none appeared on behalf of the legal representatives of respondents No.2 and 3 and respondent No.1-Hasham Abbas Sayed appeared.

8. In paragraph 4, it was noted that respondent No.1-defendant No.1 Hasham Abbas Sayed had preferred Appeal No.55 of 2011. In paragraph 7, submission of Ms Gonsalves that defendant No.1 Hasham Abbas Sayed had surrendered the suit premises to the defendant No.2 - Ramanand and defendant No.3 - Jayanti was noted. In paragraph 7,

submission of Ms Gonsalves that though defendants No.2 and 3 were directed to handover possession of the suit premises to the plaintiff, they did not prefer appeal was noted. In other words, defendants No.2 and 3 / landlords had accepted the trial Court's judgment. It was further contended that as defendant No.1 had surrendered possession of the suit premises, he could not have prayed for stay in respect of handing over possession of the suit premises to the plaintiff. In paragraph 9, the operative part of the trial Court's decree, and in particular clauses 1 to 4 were reproduced. In paragraph 10, the finding recorded by the learned trial Judge that surrender of the suit premises by defendant No.1 in favour of defendants No.2 and 3 was illegal and unlawful was noted. The learned trial Judge declared that plaintiff is tenant in respect of the suit premises. Though defendants No.2 and 3 were ordered to hand over possession of the suit premises to the plaintiff, they did not prefer appeal. In other words, they accepted the correctness of the trial Court's order. In view thereof, the order passed by the Appellate Court staying the decree dated 30.09.2011 was modified, as indicated earlier.

9. Mr. Jain submitted that the finding recorded in paragraph 2 about the service on respondent No.2 - Ramanand Shetty on 06.08.2014 is concerned, he is unable to make a positive statement in that regard. In so far as service in pursuance of order dated 15.07.2016 passed in Civil Application No.1803 of 2016 is concerned, he submitted that legal representatives of respondent No.2 were not served. He has invited my attention to the notice dated 23.06.2016 addressed by Ms Gonsalves to Jayanti R. Shetty, Ranjit Ramanand Shetty and Reshma Samith Ballal as also the purported acknowledgment of Ranjit. He submitted that in the acknowledgement, address of Ranjit is shown as Mazgaon, Mumbai-10. Ranjit is residing at 1701, 17<sup>th</sup> floor, Oxford Tower No.5, Regency Heights, Bramanand Phase No.1, Kolshet Road, Azad Nagar, Thane

(West) 400607. In other words, notice was not sent at the correct address of Ranjit. He further submitted that the signature appearing on the A.D. is also not signature of Ranjit. He further submitted that Jayanti, mother of Ranjit is also residing with Ranjit at Thane. He has taken me through the assertions made in the Review Petition. He further submitted that there was collusion between plaintiff Usman and defendant No.1 Hasham. As the proceedings of Writ Petition as also Civil Application were not served on the legal representatives of Ramanand, the order passed on 10.08.2016 is in breach of principles of natural justice. He submitted that the said order may be recalled thereby restoring the Writ Petition to its original position by giving opportunity to the petitioners to put forth their case. Lastly, he submitted that Ramanand had executed registered tenancy agreement in favour of Dayanand on 21.08.2012. For all these reasons, he submitted that order under review deserves to be recalled.

10. In support of Civil Application No.2421 of 2016, Mr. Shah strenuously contended that Ramanand had executed registered tenancy agreement in favour of Dayanand on 21.08.2012 and since then, Dayanand is in possession of the suit premises. He has invited my attention to the Bailiff's report dated 25.08.2016 made by the Court Receiver, High Court, Bombay. He submitted that in the report, presence of Dayanand in the suit premises was recorded. Dayanand refused to handover possession on the ground that he is occupying the suit premises on the basis of leave and licence agreement for last 4 years and paying rent to the landlord. He submitted that thus, plaintiff Usman was aware of presence of Dayanand and still he was not impleaded in the main Petition.

11. Mr. Shah has also taken me through exhibit-A annexed to the

plaint showing possession of rooms No.35, 36 and 37. All these rooms are interconnected and entry to these rooms is through portion marked as 'A'. Thus, plaintiff Usman was fully aware of possession of Dayanand in the suit premises and still he was not impleaded in the main Petition. He submitted that Dayanand is a bonafide tenant in respect of the suit premises and as he was not made party and was not heard, order under review deserves to be recalled thereby restoring the Petition to its original position. In support of these submissions, he relied upon the following decisions:

- a. ***Three Cheers Entertainment (P) Ltd. Vs. CESC Ltd., (2008) 16 SCC 592***, and in particular paragraph 22;
- b. ***Thomson Press (India) Ltd. Vs. Nanak Builders & Investors (P) Ltd., (2013) 5 SCC 397***, and in particular paragraphs 26 to 29.

12. On the other hand, Ms Gonsalves submitted that no case is made out for reviewing the order dated 10.08.2016. She submitted that in the main Petition, respondent No.3 -Jayanti R. Shetty was duly served, and to that effect, plaintiff Usman had filed affidavit of service dated 05.08.2014. Despite service, Jayanti did not enter appearance and did not participate in the proceedings.

13. In so far as the contention raised in the Review Petition and in particular paragraphs 6, 12 and 14 are concerned, she invited my attention to Miscellaneous Notice No.9 of 2008, which was taken out on behalf of Ramanand Shetty and Jayanti R. Shetty through Constituted Attorney Ranjit Ramanand Shetty in R.A.E.Suit No.401/672 of 2005. That notice was taken out for restoration of R.A.E. Suit, which was dismissed on 23.02.2007. In paragraph 5 of that notice, it was asserted that Ranjit came to know about dismissal of R.A.E.Suit on 29.10.2007 at the time of hearing of R.A.D.Suit No.634 of 1998. In other words, Ms

Gonsalves submitted that Ranjit was fully aware of R.A.D.Suit No.634 of 1998 instituted by Usman. Thus, the averments made in paragraphs 6, 12 and 14 that - (i) the predecessors of petitioners (Ranjit, Resma and Jayanti) were kept in dark and by filing a collusive Suit, the plaintiff Usman and defendant No.1 Hasham have cheated the landlord Ramanand, since deceased and caused him loss to that effect and (ii) they were not aware about the present litigation (Writ Petition No.2234 of 2014) as well as the litigation before the lower Court and became aware only when Court Receiver had visited the suit premises for taking possession, are patently false.

14. Ms Gonsalves further submitted that in the entire Review Petition, petitioners have not even contended that notice issued in the main Petition on respondent No.2 Ramanand and respondent No.3 Jayanti was not served. The petitioners have also not contended that service of Civil Application No.1803 of 2016 for bringing legal representatives of Ramanand was also not served. In other words, she submitted that the findings recorded in paragraph 2 of the order dated 10.08.2016 as regards service of Writ Petition on respondents No.1 to 3 (Hasham Abbas Sayed, Ramanand Shetty and Jayanti Shetty) is not challenged. Equally, there is no challenge to the finding as regards service of notice in C.A.No.1803 of 2016 on the legal representatives of respondent No.2 Ramanand.

15. Ms Gonsalves has invited my attention to reply filed in the Review Petition and submitted that in Appeal No.55 of 2011 preferred by defendant No.1 Hasham, service was effected on Ranjit on 15.02.2016. On 08.03.2016, service of appeal was effected on Reshma S. Ballal. On 17.02.2016, respondent No.3-Jayanti was also served. In short, she submitted that in appeal preferred by defendant No.1 Hasham,

the legal representatives of Ramanand, namely, Ranjit, Reshma and Jayanti were duly served. She, therefore, submitted that the contention raised in paragraphs 12 and 14 of the Review Petition that petitioners were unaware of the proceedings in the lower Court is patently false. Ms Gonsalves submitted that in fact applicant Dayanand is employee of defendants No.2 and 3 and has been set up with a view to depriving fruits of the decree passed in favour of plaintiff Usman. She further submitted that by prayer clause (b) of the main Petition, plaintiff had prayed for appointment of Court Receiver, High Court as the appeal preferred by defendant No.1 Hasham is pending in the Appellate Court. She, therefore, submitted that Civil Application No.2422 of 2016 taken out by plaintiff Usman may be allowed in terms of prayer clauses (a) and (b).

16. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the Review Petition does not even remotely indicate that petitioners have contended that the findings recorded in paragraph 2 of the order dated 10.08.2016 are incorrect. Paragraph 2 of the order dated 10.08.2016 reads thus,

“2. By order dated 04.07.2014, notice was issued to the respondents, returnable on 01.08.2014. Office remark dated 08.08.2014 shows that as per the affidavit of service filed by the petitioner on 06.08.2014, respondents No.1 to 3 are duly served. During the pendency of the Petition, respondent No.2 expired. Petitioner took out Civil Application No.1803 of 2016 for bringing legal representatives of respondent No.2 on record. By order dated 15.07.2016, notice was issued to the legal representatives respondent No.2, returnable on 05.08.2016 and parties were put to the notice that subject to the time constraint and convenience of the Court, Petition will be disposed of finally on that date. By order dated 05.08.2016., C.A. was allowed after recording that legal representatives of respondent No.2 are served and to that effect, affidavit of service dated 26.07.2016 was filed. In view of the order dated 15.07.2016, I have heard the Petition for

final hearing.”

17. Thus, the petitioners have not attacked the findings recorded in paragraph 2 of the order dated 10.08.2016. Mr. Jain undoubtedly attempted to contend that the notice dated 23.06.2016 was sent at the Mazgaon address of Ranjit when he is residing at Thane and that the signature appearing on the acknowledgement due is not his signature. It is however not possible to accept this oral submission made for the first time during the course of hearing of this Review Petition. As mentioned earlier, the findings recorded in paragraph 2 of the order dated 10.08.2016 are not challenged at all. In view thereof, it is not possible to accept submission of Mr. Jain that proceedings of Writ Petition were not served on Ranjit and Reshma. As mentioned earlier, Jayanti was impleaded as respondent No.3 and she was duly served in 2014. Despite service, Jayanti did not participate at the time of hearing of the Petition. Even the legal representatives despite service did not participate at the time of hearing of the Petition.

18. This brings me to the contention raised by Mr. Shah in support of Civil Application No.2421 of 2016. Mr. Shah, relying upon the registered tenancy agreement, submitted that Dayanand is a bonafide tenant. He was not impleaded in the main Petition as also without hearing him, Court Receiver was appointed and the order was passed on 10.08.2016. A perusal of the Review Petition as also Civil Application No.3042 of 2016 taken out by the petitioners does not indicate that they have referred to executing tenancy agreement in favour of Dayanand. Be that as it may, even if it is accepted that they have executed registered tenancy agreement in favour of Dayanand, he is claiming through Ramanand. As mentioned earlier, Suit instituted by plaintiff Usman was decreed on 30.09.2011. Defendant No.1 Hasham filed Appeal No.55 of

2011. Defendant No.2 Ramanand and defendant No.3 Jayanti did not prefer appeal though trial Court directed them to handover possession of the suit premises to the plaintiff. On one hand, they did not prefer appeal against the order of 30.09.2011 directing them to handover possession of the suit premises to the plaintiff Usman and on the other, they executed tenancy agreement in favour of Dayanand on 21.08.2012. As Dayanand is claiming through Ramanand, he is also equally bound by the decree passed by the trial Court.

19. Mr. Shah relied upon the decisions in **Three Cheers Entertainment (P) Ltd.** (*supra*) and in particular paragraph 22 **Thomson Press (India) Ltd.** (*supra*), and in particular paragraphs 26 to 29. In so far as decision in **Three Cheers Entertainment (P) Ltd.** (*supra*) is concerned, in paragraph 22, the Apex Court observed no prayer was made for appointment of Receiver. No application was filed. The matter was placed before the learned Single Judge only for confirmation of the ad-interim order passed and not for deciding on prayer (c) concerned. In my opinion, this decision does not advance case of the applicant Dayanand for more than one reason. In the first place, defendants No.2 and 3 did not challenge the decree passed by the learned trial Judge in R.A.D.Suit No.634 of 1998 dated 30.09.2011. By that order, defendants No.2 and 3 were directed to handover possession of the suit premises to the plaintiff. Defendants No.2 and 3 accepted the correctness of that order. The applicant Dayanand is claiming through them. In the registered tenancy agreement dated 21.08.2012, no reference is made to passing of the decree by the trial Court on 30.09.2011. Secondly, by prayer clause (b) in the main Petition, plaintiff had specifically prayed for appointment of the Court Receiver. As the appeal preferred by the defendant No.1 Hasham is pending before the Appellate Court to protect the interest of the defendant No.1 and the plaintiff, Court Receiver was appointed. The said arrangement is

obviously during the pendency of the appeal.

20. In so far as the decision in the case of **Thomson Press (India) Ltd.** (*supra*) is concerned, in my opinion, the said decision is also not applicable in the present case. In that case, appellant had filed application under Order IX, Rule 10 of C.P.C. for its impleadment in a Suit filed by respondent No.1-plaintiff for a specific performance of contract. The learned Single Judge as also the Division Bench of the Delhi High Court dismissed the application on the ground that defendants Sawhneys had transferred the property in favour of the applicant in violation of the order dated 04.11.1991 passed as also in violation of the undertaking given by them. In the present case, the Suit filed by the plaintiff Usman was already decreed. Defendants No.2 and 3 did not challenge that order. Instead of complying that order, they inducted applicant in the suit premises by executing tenancy agreement on 21.08.2012.

21. In view thereof, no case is made out for reviewing order dated 10.08.2016. Hence, Petition fails and the same is dismissed. In so far as Civil Application No.2421 of 2016 filed by Dayanand is concerned, as he is claiming through Ramanand, no case is made out for recalling order dated 10.08.2016 passed in Writ Petition No.2234 of 2014. Civil Application fails and the same is dismissed.

22. In so far as Civil Application No.2422 of 2016 filed by plaintiff Usman is concerned, Civil Application is allowed in terms of prayer clause (a) with no order as to costs.

23. In so far as Civil Application No.3042 of 2016 preferred by Ranjit and others for recalling order dated 10.08.2016 passed in Writ Petition No.2234 of 2014 is concerned, no case is made out for granting any

reliefs. Hence, Civil Application fails and the same is dismissed.

24. At this stage, Mr. Jain and Mr. Shah orally apply for stay of this order for a period of 8 weeks from today. Mr. Shah assures that within 2 weeks from today, applicant - Dayanand and all adult family members residing in the suit premises will furnish undertaking with advance copy to the other side, incorporating therein that,

(a) they are in possession and nobody else is in possession of the suit premises;

(b) they have neither created third party interests nor parted with possession of the suit premises;

(c) they will hereafter neither create third party interests nor part with possession of the suit premises;

(d) they will pay rent @ Rs.250/- per month to the plaintiff Usman from 01.09.2019 until further orders;

(e) in case they are unable to obtain suitable orders from the higher Court within eight weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondents.

25. In view thereof, notwithstanding dismissal of the Petition as also Civil Applications No.2421 of 2016 and 3042 of 2016, subject to Dayanand and all adult family members residing in the suit premises filing the undertaking in the aforesaid terms within two weeks from today, this order is stayed for a period of eight weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within two weeks from today and/or in case Dayanand commits breach of any of the conditions of the undertaking, plaintiff will be at liberty to proceed with the matter in accordance with law. In case, Dayanand is unable to obtain suitable orders from higher Court within a

period of eight weeks and does not hand over possession of the suit premises to the plaintiffs, the ad-interim order shall stand vacated without further reference to the Court and the plaintiff will be at liberty to evict Dayanand. Order accordingly.

26. List the Petition for reporting compliance after three weeks.

**(R. G. KETKAR, J.)**

*Minal Parab*