

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.5198 OF 1999
WITH
CIVIL APPLICATION NO.1030 OF 2016**

Gangaram Govind Hedgey	]	Petitioner
Vs.		
Surendralal Paramanand Shah	]	
(since deceased) through Lrs.	]	
Shushilaben Surendralal Shah	]	
and others.	]	Respondents

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Mr. Amrut Joshi a/w Sujit Lahoti, Mr. Parth Shah i/b Ms. Veena Shinde, Advocate for the Petitioner.

Ms. Sheetal D. Mishra, Advocate for respondents No.1b(i) to 1b(iii).

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**CORAM : R.G. KETKAR, J.
RESERVED ON: 6TH AUGUST, 2019
PRONOUNCED ON: 16TH AUGUST, 2019.**

JUDGMENT:

Heard Mr. Joshi, learned Counsel for the petitioner and Ms. Mishra, learned Counsel for respondents No.1 (b) (i) to 1(b) (iii), at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff' has challenged the judgment and decree dated 19th March, 1986 passed by the learned trial Judge in R.A.D Suit No.6171 of 1972 as also the judgment and decree dated 30th June, 1999 passed by the Appellate Bench of the Court of Small Causes at Mumbai in

Appeal No.361 of 1985. By these orders, the Courts below dismissed the suit instituted by the plaintiff for;

- (i) declaration that he is lawful sub tenant of defendant No.3-M/s. Anglo Indian Drug & Chemical Company in respect of one room on the ground floor of Municipal House No.192-194 situate at Khetwadi, Main Road, Mumbai (for short 'suit premises');
- (ii) declaration that the plaintiff deemed to have become direct tenant of landlords/owners, defendants No.1 and 2; and
- (iii) perpetual injunction restraining defendants No.1 and 2 from executing the decree dated passed in R.A.E & R Suit No.171/1073 of 1970 as well as warrant of possession issued in the Obstructionist Notice No.220 of 1971.

The facts and circumstances, giving rise to filing of the present Petition, briefly stated, are as under.

3. The plaintiff came with the case that defendants No.1 and 2 had instituted eviction suit being R.A.E & R Suit No.171/1073 of 1970 against;

[1] defendant No.1, Anglo Indian Drugs & Chemical Co., (who is defendant No.3 in the present suit);

[2] defendant No.2, Jayendra Keshavlal Shah, (who is defendant No.4 in the present suit;

and one Prankuwerbai Keshavlal Shah in 1970's suit.

Defendants No. 1 and 2 obtained decree against defendants No.3 and 4 as also Prankuwarbai since deceased being another partner of defendant No.3. Defendants No.1 and 2 attempted to execute eviction decree when the plaintiff among others obstructed on the ground that he is a lawful sub tenant in respect of the suit premises and he is not bound by the decree passed against defendants No.3 and 4 and Prankuwarbai.

4. The plaintiff contended that he is in occupation and in exclusive possession of the suit premises since 1951. Till 1957, he was occupying the suit premises free of charge. On 16th August, 1957, defendant No.4 had executed a writing and sublet the suit premises to him on rent of Rs.5/- per month. The plaintiff is lawful sub tenant and is protected tenant by Ordinance of 1959.

5. As the plaintiff obstructed execution of the decree by defendants No.1 and 2 (plaintiffs in in R.A.E & R Suit No.171/1073 of 1970), they took out Obstructionist Notice No.220 of 1971. The said notice was made absolute on 4th December, 1972 after hearing the plaintiff. The plaintiff, therefore, is constrained to institute the suit for declaration of his tenancy rights, among other reliefs.

6. Defendants No.1 and 2 filed written statement resisting the suit. They denied that the plaintiff became lawful sub tenant in or about August, 1957 on payment of rent of Rs.5/- per month. They denied that defendant No.4 executed a writing creating sub tenancy in favour of plaintiff on 16th August, 1957

and that the plaintiff had paid rent to defendant No.3 at the rate of Rs.5/- per month. According to them, alleged writing dated 16th August, 1957 is a bogus and fabricated document which cannot be relied on. Defendants No.1 and 2 contended that the plaintiff produced documents on stamp papers issued to different parties from which it is evident that the stamp paper purchased specifically at the time of obstructionist notice for setting up a false and frivolous claim. Defendants No.1 and 2 contended that stamp paper was issued to one Kalyanchand and there is no material to show how the stamp paper passed on the plaintiff and others.

7. Defendants No.1 and 2 relied on affidavit in reply filed by the plaintiff in Obstructionist Notice No.220 of 1971. Defendants No.1 and 2 further contended that they had taken inspection of books of accounts of defendant No.3 lying with Official Assignee. After taking inspection, it transpired that there is no entry crediting rent paid by the plaintiff to defendant No.3. Defendant No.4 has put up the plaintiff with a view to defeating the claim of defendants No.1 and 2.

8. Defendants No.3 and 4 did not participate in the trial despite service. The suit proceeded ex-parte against them. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. The parties adduced evidence. After considering the material on record, the learned trial Judge dismissed the suit. Aggrieved by that decision, the plaintiff preferred appeal which is dismissed by the Appellate Court. It is

against these orders, the plaintiff has instituted the present Petition.

9. In support of this Petition, Mr. Joshi submitted that the Courts below committed several errors of law apparent on the face of the record. The findings recorded by the Courts below are contrary to the evidence on record. The findings are based upon no evidence. In other words, the findings recorded by the Courts below are perverse and as such are liable to be set aside.

10. Mr. Joshi submitted that the Courts below after appreciating the evidence on record have concurrently found that the plaintiff is occupying the suit premises and is in possession of the suit premises exclusively since 1957. However, the Courts below committed serious error in holding that the plaintiff has not established payment of consideration to defendant No.3. He has taken me through the pleadings of the parties, evidence adduced in the Obstructionist proceedings as also in the present proceedings and findings recorded by the Courts below.

11. Mr. Joshi further submitted that the Courts below have found that the plaintiff is in exclusive possession of the suit premises. Payment of consideration is not a *sine qua non* for creation of sub tenancy. In support of these propositions, he relied on the following decisions;

- [1] Board of Trustees of the Port of Mumbai Vs. Byramjee Jeejeebhoy Private Limited, (2011) 5 Supreme Court Cases 128;

- [2] Chadavarkar Sita Ratna Rao Vs. Ashalata S. Guram, (1986) 4 Supreme Court Cases, 147;
- [3] Nish Developers Private Limited Vs. Vijay Kumar Vital Rao Sarvade, 2016 SCC Online Bom. 6216;
- [4] Varisalli Mohammed Ilias Vs. Abdul Sattar Gulam Hussain (since deceased) by his Lrs Hafeezulla Abdul Sattar, 1991 Mh.L. J., 1523;
- [5] Anwarali Ashrafali Vs. Abdul Aayyum s/o Abdul Khaliqui Fitwalla, (1986) 1 Bom C.R 581;
- [6] Arvind Narhar Wagh Vs. Chintaman Ganesh Khire, (1984) 2 Bom. C.R. 582;
- [7] Birdichand Hiralal Bhandari Vs. Sadashiv Maruti Borhade, AIR 1972 Bom. 232;
- [8] Josephy Santa Vincent Vs. Ambico Industries, AIR 1969 Bom. 49;
- [9] Sugrabi w/o Tayabali Mohd. Singaporewala Vs. Cavas Navroji Patel by his heirs, (1984) 2 Bom. C.R. 227;
- [10] The Society of Servants of God Vs. Major Hanmantrao Narayanrao Jagtap, 67 Bom. L.R 210;
- [11] Ajitsingh Vs. Dhan Ji Shaw, 1973 Mh.L.J 901.
- [12] Rajbir Kaur Vs. S. Chokesini & Co., (1989) 1 SCC.

12. Mr. Joshi has invited my attention to;

- [1] paragraph 7 of the affidavit in reply dated 3rd March, 1971 made by defendant No.1 Surendralal Parmanand Shah in Misc. Notice --- of 1971 in

R.A.E & R Suit No.171/1073 of 1970. In paragraph 7 of that affidavit, it is stated that defendants therein (defendant No.3 herein) had not paid any rent despite filing of the suit. Not only that, defendant No.3 has not even paid accruing compensation during pendency of the suit. Defendant No.1 further stated that he understood that the defendants (defendant No.3 herein) had given the premises to others and has been charging large amount from them;

- [2] Affidavit dated 27th April, 1971 made by defendant No.2 Ramniklal Shah in Obstructionist Notice No.220 of 1971 arising from R.A.E & R Suit No.171/1073 of 1970 and in particular paragraph 3 thereof. In paragraph 3 of that affidavit, defendant No.2 Ramniklal Shah contended that defendants (defendants No.3 herein) have not paid rent amounting to Rs.45,000/- and the monthly rent is Rs.1222.50 paise. The defendants are getting compensation or licence fees from the obstructionists much more than rent of the premises and they are interesting in delaying the execution.

Mr. Joshi submitted that a perusal of cause title of the affidavit filed in Obstructionist Notice No.220 of 1971 arising out of R.A.E & R Suit No.171/1073 of 1970 would indicate that 10 persons including present plaintiff had obstructed execution of the decree.

[3] Copy of the plaint dated 28th February, 1970 of R.A.E & R Suit No.171/1073 of 1970 and in particular paragraph 5 thereof. In paragraph 5 of the plaint, defendants No.1 and 2 herein who were the plaintiffs in that suit contended that the defendants have unlawfully sublet, assigned or transferred their interest in the suit premises in breach of the terms of tenancy and provisions of the Rent Act after notice to quit was issued.

13. Relying on the above assertions in the pleadings of defendants No.1 and 2, Mr. Joshi submitted that the Courts below ought to have passed decree on admission. He submitted that it was for defendants No.1 and 2 to explain the admissions given by them in the evidence adduced by them in the present proceeding. The Courts below committed serious error in holding that the plaintiff ought to have confronted witness examined by defendants No.1 and 2 on these documents. In support of his submission that the Courts below ought to have decreed the suit on admission, he relied on the decision in **Basant Singh Vs. Janki Singh, AIR 1967 Supreme Court 341**. He submitted that the impugned orders may be set aside and the suit may be decreed.

14. On the other hand, Ms. Mishra supported the impugned orders. She reiterated the submissions that were advanced before the Courts below. She submitted that the plaintiff is not in possession of the suit premises but in possession of open space. She further submitted that after appreciating the evidence on record, the Courts

below have dismissed the suit. It cannot be said that the findings recorded by the Courts below are perverse. In support of her submission, she relied on the decision in **Veetrag Investments & Finance Co. Vs. Premier Brass and Metal Works Pvt. Ltd., 2002 (3) Mh. L.J 455**. She, therefore, submitted that the Petition deserves to be dismissed.

15. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record as also original record. It is not in dispute and is rather a matter of record that defendants No.1 and 2 herein had instituted R.A.E & R Suit No.171/1073 of 1970 against defendant No.3 and defendant No.4 in the Small Causes Court at Mumbai. The said suit was decreed. Defendants No.1 and 2 attempted to execute the decree on 21st April, 1971. That time, the plaintiff and others obstructed. Defendants No.1 and 2, therefore, took out Obstructionist Notice No.220 of 1971. In the Obstructionist Notice, the plaintiff herein raised identical contentions that were raised in the present proceeding. The plaintiff contended that he is a lawful sub tenant of defendant No.3 since 1957 as recorded in the writing dated 16th August, 1957. By virtue of the provisions of the Bombay Rent Control Ordinance, 1959, he is a lawful sub tenant as he is in exclusive possession of the suit premises and is paying rent to defendant No.3. After tenancy of defendant No.3 is terminated, he has become direct tenant of defendants No.1 and 2. The said issue was gone into in the Obstructionist proceedings. The Obstructionist Notice taken out by defendants No.1 and 2 was made absolute on 4th December, 1972. It is not in dispute and is rather a matter of record that the plaintiff did not challenge that order and

accepted validity of the order. In pursuance thereof, the learned trial Judge issued warrant of possession against the plaintiff.

16. Mr. Joshi submitted that prior to amendment of Civil Procedure Code on 1st February, 1977, Order-XXI, Rule-103 provided for filing substantive suit to establish the right. The plaintiff, therefore, did not file appeal against the order dated 4th February, 1972 making the Obstructionist Notice absolute. He submitted that such course was permissible. In support of this proposition, he relied on the following decisions;

- [1] Nityanand Kapuria Vs. Pa (sic) Nath Dutta,
58CWN 407.
- [2] Khetramohan Manimohan Vs. Parbaty Nath
Dutta, AIR 1955 Calcutta, 1295.
- [3] Kishan Ranchhoddas Vs. Lalji Dharamdas
Kapadia, 1982 Mh. L.J, 2121
- [4] Rameshkumar Swarupchand Sancheti Vs.
Vallabhram Bhatwal, AIR 1983 Bombay, 378.

17. In view of the provisions of Order-XXI, Rule-103 as it stood prior to amendment of C.P.C on 1st February, 1977, no fault can be found with the plaintiff in filing the present suit instead of filing the appeal against the order making the Obstructionist Notice absolute.

18. I have perused the order dated 4th December, 1972 passed by the learned trial Judge in Obstructionist Notice No.220 of 1971. The plaintiff was obstructionist No.4 therein. The learned trial Judge has considered the case of obstructionists No.4 to 6 from paragraphs 6

to 8. The learned trial Judge considered the affidavit in reply dated 12th June, 1971 made by the plaintiff herein which was marked at Exhibit 2 in the present case. The plaintiff filed affidavit in reply on behalf of himself and obstructionist No.6. The plaintiff relied on writing dated 16th August, 1957 creating sub tenancy in favour of obstructionists No.4 and 6. After considering the evidence on record, the learned trial Judge observed that the plaintiff and obstructionists No.5 and 6 have no other evidence in their favour than the writing of defendant No.2 on which they relied. The learned trial Judge also considered the case that the rent was deducted from their salary and the said entries are reflected in the accounts of defendant No.3 herein. The learned trial Judge noted that defendants No.1 and 2 herein, (the plaintiffs therein) had taken inspection of those accounts and have not found any entry regarding payment of rent by any of the obstructionists. The learned trial Judge did not accept the case of the plaintiff that rent was deducted from his salary. Thus, even defence set up by the plaintiff herein in the obstructionist notice was considered by the learned trial Judge and the defence was negated.

19. A perusal of the case made out by the plaintiff in the present suit shows that once again the plaintiff came with the case that he is in exclusive possession of the suit premises since August, 1957 and he had been paying Rs.5/- per month to defendant No.3. In support of his contention, the plaintiff examined himself as P.W.1, Jagannath Shankar Deo, P.W.2, Vasant Damodar Bhide, P.W.3. Defendant No.1 examined himself. The learned trial Judge has considered writing dated 16th August, 1957 produced on record at Exhibit K in paragraph 8. In paragraph 10, the learned trial Judge

observed writing does not mention room number and particulars to establish identity of the rooms mentioned therein. The writing does not mention whether tenancy is monthly or yearly. The writing is vague in material particulars. The learned trial Judge held that the plaintiff failed to prove his sub tenancy as alleged. He has not proved payment of rent except his words. No document is on record to show that rent was paid by him or deducted from his salary. The books of account of defendant No.3 did not show deduction of the rent from the monthly salary of the plaintiff. Thus, the plaintiff was occupying the suit premises free of charge. Though, the plaintiff claimed to be residing since 1951 in the suit premises, he was not paying any rent and that he was occupying the suit premises without paying any rent from 1951 to 1957. The plaintiff has not paid any rent to defendant No.3. Defendant No.3 did not deduct any rent from monthly salary as alleged by the plaintiff. As tenancy of defendants No.3 and 4 and Prankuwarbai stood terminated because of the decree passed in R.A.E & R Suit No.171/1073 of 1970 and the said decree stood executed against them, the plaintiff failed to establish any right, title or interest.

20. In paragraphs 11 to 19, the learned trial Judge dealt with writing dated 16th August, 1957 at Exhibit K. The learned trial Judge disbelieved the said writing. Consistent with these findings, the learned trial Judge dismissed the suit.

21. In so far as the Appellate Court is concerned, in paragraph 14, the Appellate Court considered the question of exclusive possession of the plaintiff. After considering the material on record,

the Appellate Court accepted the case of the plaintiff that he was in exclusive possession of the suit premises and was having control of the suit premises. In so far as the question of payment of consideration is concerned, the Appellate Court has considered this aspect from paragraph 15 onwards. In paragraph 15, the Appellate Court considered the case of the plaintiff that rent of the suit premises was Rs.5/- per month and that it was deducted from his salary till defendant No.3 was declared insolvent and closed its business in the year 1969. The Appellate Court observed that except bare words of the plaintiff, nothing is on record which will support contention of the plaintiff. If the rent is deducted from the salary of the plaintiff, salary register of defendant No.3 will definitely prove this fact. Salary register was in the custody of Official Assignee as defendant No.3 was declared insolvent. The said register was called for by defendants No.1 and 2 during their examination and the same was shown to the Court. Defendant No.2 who led evidence stated that salary register does not reflect any such entry about deducting rent from the salary of the plaintiff. The Court had noted that the document was returned to the representative of Official Assignee as soon as evidence of defendant No.2 was completed and was not retained on record nor any extract of that register was kept on record. The Appellate Court further observed that cross-examination of defendant No.2 does not disclose that the plaintiff was able to rebut the statement made by defendant No.2. The Appellate Court, therefore, found it difficult to accept the plaintiff's contention that amount of Rs.5/- per month towards rent was deducted from the plaintiff's salary.

22. In paragraph 16, the Appellate Court dealt with contention raised by the plaintiff on the basis of statements made by defendant No.2 in his affidavit in reply. In paragraph 3 of the affidavit made by defendant No.2 in Obstructionist Notice No.220 of 1971, defendant No.2 contended that defendant No.3 had not paid rent amounting to Rs.45,000/- and monthly rent of Rs.1222.50. Defendant No.3 were getting compensation or licence fee from the obstructionists much more than the rent of the premises. The Appellate Court observed that the said statement was not shown to defendant No.2 and no opportunity was given to him to explain the said fact and the said statement was made by third person (defendant No.2) about fact which was not within his personal knowledge but within the personal knowledge of the plaintiff and defendant No.3. The plaintiff ought to have put this case during the cross-examination of defendant No.2. The Appellate Court, therefore, held that the said statement cannot be used for coming to the conclusion that consideration was paid by the plaintiff to defendant No.3. Entire burden was on the plaintiff to prove the fact of consideration. The Appellate Court also observed that statement which was referred in the form of pleading in Obstructionist Notice was dealt with while deciding obstructionist notice and the said notice was made absolute. The Appellate Court also observed that neither entire proceeding was exhibited in the suit nor that affidavit was brought on record separately.

23. In paragraph 17, the Appellate Court dealt with finding recorded by the learned trial Judge about payment of rent and/or deduction of rent from his salary and affirmed the finding recorded by the learned trial Judge. In paragraph 18, the Appellate

Court observed that unless the plaintiff proves that he was paying rent from August, 1957, it will not be possible to rely on the bare words of the plaintiff. The Appellate Court concluded that the plaintiff failed to establish his rights in the suit premises as sub tenant of defendant No.3. From paragraphs 20 to 27, the Appellate Court dealt with writing dated 16th August, 1957 at Exhibit K and held that the said document does not help in proving sub tenancy of the plaintiff.

24. Thus, the Courts below after appreciating the evidence on record concurrently held that the plaintiff has established his exclusive possession. At the same time, the plaintiff failed to establish payment of rent to defendant No.3. In the case of **Joginder Singh Sodhi Vs. Amar Kaur, (2005) 1 Supreme Court Cases 31**, the Apex Court has held that to prove the ground of subletting, landlord has to prove by leading evidence that;

- [1] third party was found to be in exclusive possession of the rented property;
- [2] parting of possession thereof was for monetary consideration;

In paragraph 13, 14 and 17, the Apex Court observed thus;

“13. Regarding sub-letting, in our opinion, the law is well settled. It is observed in the leading case of *Associated Hotels of India Ltd. Vs. S.B. Sardar Ranjit Singh, AIR (1968) SC 933* that in a suit by the landlord for eviction of tenant on the ground of sub-letting, the landlord has to prove by leading evidence that (i) a third party was found to be in exclusive possession of the rented property and (ii) parting of possession thereof was for monetary consideration.

14. The above principle was reiterated by this Court from time to time. In *Shama Prashant Raje V. Ganpatrao*, [2000] 7 SCC 522, the Court stated that on sub-letting, there is no dispute with the proposition that the two ingredients, namely, parting with possession and monetary consideration therefor have to be established.

17. We are unable to appreciate the contention. As observed by this Court in *Bharat Sales Ltd Vs. LIC of India*, [1998] 3 SCC 1, sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession of that person, instead of the tenant, which ultimately reveals to the landlord that tenant to whom the property was let out has put some other person in possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. **Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically.** Since payment of rent or monetary consideration may

have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let”.

[emphasis supplied]

Thus, the payment of rent is an essential element of lease or sub-lease. It may have been paid lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically.

25. In the present case, the Courts below after appreciating the evidence on record have concurrently held that the plaintiff has not established payment of rent to defendant No.3 and/or that deduction of Rs.5/- per month from his salary. I have also perused the original record and in particular evidence of defendant No.1, Surendranath Shah (D.W.1) in the present suit. In the examination-in-chief, he deposed that all the account books of defendant No.3 are in the custody of the Official Assignee, High Court, Bombay. He has taken inspection of account books for the year 1965-1968. Column 15 in this register is in respect of house rent. In this whole book, the plaintiff's house rent was not deducted or collected. So also, in this register neither the house rent is deducted nor collected by any of the employees.

26. After re-examination, there is endorsement made by the learned trial Judge that Book No.22- Salary Book is returned to the Witness- Nilkant Manubhai Desai, the Superintendent, Official Assignee, Bombay.

27. Thus, the Courts below after appreciating the evidence on record have concurrently held that the plaintiff has not established payment of rent to defendant No.3. The Salary Register produced during the course of evidence of D.W.1 does not indicate that any amount was deducted from the salary of the plaintiff towards rent of the suit premises.

28. In view thereof, I do not find any merit in the submission of Mr. Joshi that payment of consideration is not *sine qua non* for creation of lawful sub tenancy. Reliance placed by Mr. Joshi on the decisions referred earlier, therefore, does not advance the case of the plaintiff.

29. Mr. Joshi submitted that in any case, in view of the admissions given by defendants No.1 and 2 in the various pleadings referred earlier, the Courts below ought to have passed decree on admission and the Appellate Court committed serious error in holding that the plaintiff ought to have confronted witness examined by defendants No.1 and 2 with these documents. I do not find any merit in this submission for more than one reason. In the first place, the Appellate Court has considered this aspect in paragraphs 16 to 18. Secondly, provisions of Order-XII, Rule-6 have to be exercised very carefully and sparingly and only in exceptional circumstances. Relief under Order-XII, Rule-6 is discretionary one and has to be exercised judicially on the facts and circumstances of each case. The Court is not bound to pass a decree. The word “may” and “make such order” shows that the power under the rule is discretionary and cannot be claimed as a matter of right. I, therefore, do not find any merit in the

submission of Mr. Joshi that the Courts below ought to have passed decree on admissions.

30. In view thereof, it cannot be said that the findings recorded by the Courts below while dismissing the suit are contrary to the material on record. The plaintiff is not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of material on record, no reasonable or prudent person would have come to the conclusion arrived at by the Courts below. The plaintiff is not in a position to show that the findings are contrary to the evidence on record. In the result, no case is made out for invocation of powers under Article 227 of the Constitution of India. The Petition fails and the same is dismissed. Rule is discharged. In the circumstances of the case, there shall be no order as to costs.

31. In view of disposal of the main Petition, Civil Application No.1030 of 2016 does not survive and as such is disposed of.

32. At this stage, Ms. Shinde orally applies for continuation of interim relief in terms of prayer clause (b) of the Petition for a period of 12 weeks from today. She assures that the plaintiff and all the adult family members residing in the suit premises will file usual undertaking in this Court within four weeks from today, after giving 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 interest nor parted with possession of the suit premises;
- [c] they will hereafter neither create third party interest nor part with possession of the suit premises;
- [d] within four weeks from today, the petitioner will deposit the entire arrears of rent/compensation in this Court, under intimation in writing to the learned Counsel for the respondents.
- [e] in case they are unable to obtain suitable orders from the higher Court within 12 weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondents;

33. In view thereof, notwithstanding dismissal of the Writ Petition, subject to the plaintiff filing undertaking in the aforesaid terms within four weeks from today, interim relief in terms of prayer clause (b) which reads thus;

“pending the hearing and final disposal of this Writ Petition, Respondents No.1 and 2 and their servants, agents and representatives be restrained by an order of injunction from executing the decree passed in the said R.A.E & R Suit No.171/1073 of 1970 as well as the warrant of possession in the Obstructionist Notice No.220 of 1971”.

is continued for a period of 12 weeks. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms

within four weeks from today and/or in case the petitioner commits breach of any of the conditions of the undertaking, the respondents will be at liberty to execute the decree passed in R.A.E & R Suit No.171/1073 of 1970 in accordance with law. Order accordingly.

34. List the Petition for reporting compliance on **20th September, 2019.**

[R.G. KETKAR, J.]