

these orders, the Courts below made the Obstructionist Notice taken out by Ms. Immaculate Crasto absolute and directed the plaintiff/decreed holder to proceed for executing the decree dated 5th April, 1999 passed in R.A.E Suit No.1154/4139 of 1982.

3. In support of this application, Mr. Joshi strenuously contended that Nandu Jumanani was the tenant in respect of Flat No.5 in the building known as “Imaculate” in St. Sebastian Society, Near Hill Road Bus Stop, Bandra (West), Mumbai 400 050 (for short 'suit premises'). He submitted that on 16th October, 1980, he had paid rent of Rs.1200/- for the month of August, 1980 by cheque. The landlady acknowledged receipt of this payment from Nandu Jumanani. He also relied on electricity bills for the years 1981 to 2002, telephone bills in respect of telephone No. 6431210 and 6430457 for the years 1992 to 2002, ration card (old), ration card (new), Prasan Gas connection, Election Cards, Bank Passbook, report card of the School and copy of the letter dated 3rd August, 1987 in support of his contention that the obstructionists are occupying the suit premises as a tenant.

4. Mr. Joshi submitted that in fact by taking out Misc. Notice No.478 of 2004 before the trial Court, request was made for producing rent receipt. The learned trial Judge dismissed notice on 24th December, 2004. Aggrieved by that order, the obstructionists preferred Revision Application No.43 of 2005 before the Appellate Bench of the Court of Small Causes which was dismissed on 13th December, 2005. Even during pendency of the appeal, an attempt was made by filing application under

Order-XLI, Rule-27 of the C.P.C for production of the rent receipt in the name of Nandu Jumani. Request was made for remanding the matter to the trial Court for recording evidence of Vijay Jumani on behalf of the obstructionists as well as applicant No.1 to prove the contents of the rent receipt. While rejecting the Revision Application on 13th December, 2005, the Appellate Court observed that the application can be considered under Order-XLI, Rule-27 of the C.P.C. He submitted that the obstructionists did not have any opportunity to prove the contents of the rent receipt by adducing oral evidence. He, therefore, submitted that the impugned orders may be set aside and matter may be remitted to the trial Court permitting the obstructionists to prove contents of the rent receipt by examining witnesses.

5. Mr. Joshi further submitted that undoubtedly Nandu Jumani was working as a Manager with M/s. Globe International Packers (for short 'M/s. Globe'). Ms. Immaculate had instituted R.A.E Suit No.1154/4139 of 1982 against M/s. Globe on the ground of reasonable and bona fide requirement. Ms. Immaculate was fully aware of the fact that Nandu Jumani and his family members (applicants herein) were exclusively in possession of the suit premises. They were paying/depositing rent regularly. However, Ms. Immaculate did not implead Nandu Jumani as defendant in that suit.

6. M/s. Globe filed written statement dated 28th April, 1983 opposing the suit. M/s. Globe had also instituted R.A.D Suit No.4408 of 1982. However, M/s. Globe did not prosecute the suit

as Ms. Immaculate had accepted tenancy of M/s. Globe. On 30th August, 1991, R.A.D Suit was dismissed in default. As the relations between Nandu Jumani and M/s. Globe were strained, he left the services with M/s. Globe. In the year 1993, Nandu Jumani expired. Papers and proceedings of R.A.E Suit No.1154/4139 of 1982 were missing for some time and were reconstructed as per the order dated 18th August, 1998. Though Nandu Jumani was no longer in service with M/s. Globe, he continued to deposit rent in the Small Causes Court at Mumbai and the Small Causes Court continued to accept the rent during this period and even thereafter. He submitted that on 10th November, 1998, the fact of reconstruction of the proceedings was intimated only to M/s. Globe and not to Nandu Jumani. As M/s. Globe was aware that tenancy was between Ms. Immaculate and Nandu Jumani, they were not interested in prosecuting the suit. On 5th April, 1999, the suit was decreed ex-parte. After the death of Nandu Jumani, the obstructionists in their capacity as heirs and legal representatives are in occupation of the suit premises and are depositing rent in the Court regularly.

7. Mr. Joshi submitted that Ms. Immaculate obtained possession warrant on 25th October, 1999 for executing ex-parte decree dated 5th April, 1999 which was obstructed by the obstructionists. Ms. Immaculate preferred Obstructionist Notice on 16th November, 1999. Affidavit in reply was filed on behalf of the obstructionists. The parties adduced evidence and by the impugned orders, the Courts below have made the Obstructionist Notice absolute. He, therefore, submitted that the impugned

orders may be set aside thereby, remanding the matter to the trial Court to prove the contents of the rent receipt.

8. On the other hand, Mr. Patel supported the impugned orders. He had invited my attention to the order dated 29th August, 2018 passed by the Appellate Bench of the Court of Small Causes below application Exhibit 105 in Appeal No.53 of 2007 and in particular paragraphs 8 onwards. He submitted that the Appellate Court has deprecated the conduct of the obstructionists as also their Advocate.

9. Mr. Patel further submitted that in R.A.E Suit No.1154/4139 of 1982, Nandu Jumani did not file application for impleadment on the ground that he is tenant in his individual capacity. Though M/s. Globe had filed suit for declaration of tenancy rights, Nandu Jumani did not file suit for declaration of his tenancy rights. In fact, in the R.A.N application for fixation of standard rent taken out in R.A.D Suit by M/s. Globe, Nandu Jumani filed affidavit at Exhibit B affirming that he was working as Marketing Manager with M/s. Globe and that M/s. Globe had taken the suit premises on tenancy basis for residential purpose and has given to him for residence and he is residing in the suit premises since 1st June, 1980. He has invited my attention to the findings recorded by the Courts below and submitted that no case is made out for interfering with the impugned orders.

10. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material

on record. As mentioned earlier, Ms. Immaculate has instituted eviction suit in the year 1982 against M/s. Globe. Mr. Joshi fairly stated that the said suit was attended by Nandu Jumani. In other words, Nandu Jumani was fully aware of filing of the suit by Ms. Immaculate against M/s. Globe. He, however, did not file application for his impleadment on the ground that the tenancy is created in his favour in individual capacity and not in favour of M/s. Globe. That apart, M/s. Globe had instituted R.A.D Suit for declaration of tenancy rights. Nandu Jumani did not file similar suit for declaration of his tenancy rights in the suit premises. Not only that even in R.A.D suit filed by M/s. Globe, R.A.N Application was taken out for fixation of standard rent. In that R.A.N Application, Nandu Jumani filed affidavit affirming that he was working as Marketing Manager with M/s. Globe and that M/s. Globe had taken the suit premises on tenancy basis for residential purpose and has given to him for residence.

11. Mr. Joshi relied on the rent receipt dated 16th October, 1980 showing payment of Rs.1200/- for the month of August, 1980 to contend that tenancy was created in favour of Nandu Jumani. It is not possible to accept this submission. A perusal of this rent receipt shows that landlady Ms. Immaculate acknowledged the receipt of Rs.1200/- from Mr. Nandu Jumani. In other words, this does not indicate that it is a rent receipt. The payment of Rs.1200/- was made by way of cheque. No cheque was produced to substantiate that it was issued from the individual account of Nandu Jumani. That apart, even in the trial Court, an attempt was made for production of this rent receipt by

filing Misc. Notice No.478 of 2004 which was rejected. Aggrieved by that order, the applicants preferred Revision Application No.43 of 2005 before the Appellate Bench of the Court of Small Causes which was also dismissed on 13th December, 2005.

12. In view thereof, rent receipt dated 16th October, 1980 does not establish tenancy rights of Nandu Jumani. Documents such as electricity bills, telephone bills, ration cards, Prasan Gas connection, Bank Passbook, Election Cards, report card of the School and copy of the letter dated 3rd August, 1987 etc at the highest will indicate occupation of the obstructionists in the suit premises and not their tenancy rights.

13. In view thereof, no case is made out for invocation of powers under section 115 of the C.P.C. At this stage, Mr. Joshi submits the obstructionists will not press this application if time up to and inclusive of 31st May, 2020 is given to them for vacating and handing over possession of the suit premises to respondents No.2 and 5. He makes the statement on the instructions given by applicant No.2 Suraj Jumani, who is present in the Court. He has tendered photo copy of his "Driving Licence", which is taken on record and marked 'X' for identification. He assures that within two weeks from today, the applicants and all the adult family members residing in the suit premises will file usual 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 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) they will go on regularly paying compensation @ Rs.6,000/- per month till handing over possession of the suit premises to respondents No.2 and 5;
- (e) they will hand over possession of the suit premises on or before 31st May, 2020 to respondents No.2 and 5;
- (f) they will not seek further extension of time for handing over possession of the suit premises;

14. In view thereof, time up to and inclusive of 31st May, 2020 is given to the obstructionists to vacate and hand over possession of the suit premises to respondents No.2 and 5.

15. The obstructionists accept correctness of the impugned orders. The obstructionists also accept that they have no right, title and interest in the suit premises. They shall file undertaking in the aforesaid terms within two weeks from today. Upon furnishing undertaking, eviction decree shall not be executed till 31st May, 2020.

16. In light of the aforesaid discussion, C.R.A is disposed of as not pressed. 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 the obstructionists commit breach of any of the conditions of the undertaking, respondents No.2 and 5 will be at liberty to execute the decree. Order accordingly.

17. **List the Application for reporting compliance on 13th August, 2019.**

[R.G. KETKAR, J.]