

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 572 OF 2018**

**IN**

**CIVIL REVISION APPLICATION NO. 680 OF 2012**

Kunverji Premji & Ors.

...Applicants

*Versus*

M/s Commercial Chicken Supply & Ors.

...Respondents

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Ms. Sheeja John i/b M/s M. P. Savla & Co. - Advocate for the applicant.

Gaurav Srivastav I/b S. K. Srivastav & Co. - Advocate for the respondent 1 to 3 & 5 to 8.

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**CORAM : DAMA SESHADRI NAIDU, J.**

**DATE : 29<sup>th</sup> AUGUST 2019.**

**P.C. :**

The applicants are the landlords. They have filed Civil Revision Application No. 680 of 2012 against 36 respondents. But they have their grievance only against the respondents R-1 to R-8. It seems these respondents have succeeded in their appeal against the obstruction notice, though the other respondents, who were shown as proforma respondents, have failed. The 4<sup>th</sup> respondent is said to be no more.

2. This Court, on 15.06.2018, directed the applicants to serve the notice on all the respondents in 4 weeks. To that direction a condition was attached: if the applicants could not

serve the notice on the respondents, the Civil Revision Application would stand dismissed. The condition operated itself as the applicants could not serve the notice on time. In fact, there are other Civil Revision Applications taken out by other applicants, with which we are presently not concerned.

3. The applicants have now filed Civil Application No. 572 of 2018 for having the CRA restored. The learned counsel submits that earlier the Court has accepted that the other respondents than respondent Nos.1 to 8 are only formal parties and that they need not to be served any notice. Despite that, the Court issued a conditional order on 15.06.2018. The applicants plead that by oversight they could not notice the conditional order. Therefore, the applicants' counsel urges this Court to allow the Civil Application and restore the Civil Revision Application.

4. With the death of the 4<sup>th</sup> respondent, the respondents 1 to 3 and 5 to 8 seem to be the contesting respondents. Now, they have a counsel on record, representing them. He has contended that the applicants ought to serve notice on the 9<sup>th</sup> respondent as well, because against that respondent they secured an *ex parte* decree.

5. I reckon that the applicants as the landlords filed Civil Suit No. 115 of 1985 against the 9<sup>th</sup> and the 10<sup>th</sup> respondents. They had an *ex parte* decree on 15.7.1993. Neither of those two respondents, as the defendants, challenged the decree. It has become final. When the applicants took out execution proceedings, all the respondents obstructed. Eventually on

11.09.2007, the obstruction notice was made absolute.

6. Aggrieved, the respondents filed individual appeals. As both the counsel agree, only the respondent Nos. 1 to 8 succeeded. Therefore, the applicant has filed this Civil Revision Application against those respondents, besides showing the other un-successful respondents as proforma parties. I wonder whether they are necessary even proforma!

7. Under these circumstances, I reckon that there is force in the applicants' contention that it would suffice if the applicants take out notice to the contesting respondents, that is the respondent Nos. R-1 to R-3 and R-5 to R-8. About the objection raised by the respondent's counsel concerning the notice to the 9<sup>th</sup> respondent, I reckon it does not sustain the scrutiny of law. The 9<sup>th</sup> respondent suffered the decree and did not challenge it. Nor do these respondents, now contesting, trace their possession to the 9<sup>th</sup> respondent. Therefore, the 9<sup>th</sup> respondent is a formal party, if ever.

Under these circumstances, I set aside this Court's conditional order dated 15.06.2018 and restore this Civil Revision Application. Accordingly, Civil Application No. 572 of 2018 is allowed. Since the contesting respondents have already been represented by a counsel on record, let the matter be posted in usual course for hearing.

**[DAMA SESHADRI NAIDU, J.]**