

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 457 OF 1999**

Bhagatsingh s/o Sadhusingh Jina
(Since deceased, through His LRs.)

- 1 Mrs. Deepa Bhagatsingh Jina,
 Age 53 years, Occu. Housewife,
- 2 Mr. Lalitmohansingh Bhagatsingh Jina,
 Age 31 years, Occu. Service,
- 3 Ms. Anita Bhagatsingh Jina,
 Age 22 years, Occu. Housewife,

 R/o. Room No.8, 1st Floor,
 Mahalaxmi Niwas, 54, Hindu Colony,
 1st Lane, Dadar,
 Mumbai-400014.
- 4 Ms. Santoshi Bisht,
 Age 35 years, Occu. Housewife,
 R/o. Room No. 2756, Dugri,
 Ludhiana, Punjab-0161

....Petitioners.

Vs.

Bhojraj Kanji Joshi alias Bandu Joshi,
Age : Not Known, Occu. Business,
R/o. Room No.8, 1st Floor,

Mahalaxmi Niwas, 54, Hindu Colony,
1st Lane, Dadar, Mumbai-400014.

....Respondent.

Mr. R.V. Desai, Senior Advocate a/w Mr. R.B. Pardeshi i/by KRP Legal
for the Petitioners.

Mr. Shishir Joshi with Mr. Manish Upadhye for the Respondent.

CORAM : A. S. GADKARI, J.
RESERVED ON : 10th DECEMBER, 2019
PRONOUNCED ON : 2nd JUNE 2020.

JUDGMENT:-

The present Petition under Article 227 of the Constitution of India takes exception to the Judgment and Order dated 21st November, 1998 passed in Appeal No. 450 of 1995 by the Appellate Bench of the Court of Small Causes at Mumbai, dismissing the Appeal and confirming the Judgment and Order dated 23rd August, 1995 passed in L.E. & C. Suit No. 378/434 of 1988 by the learned Judge of the Court of Small Causes at Mumbai thereby, allowing the said Suit filed by the Respondent for eviction of the Petitioners from the Suit premises i.e. Room No.9 in Block No.10 in Joshi Boarding House (also known as *Joshi Lodging House*) situated on the 3rd Floor of Mahalaxmi Niwas, 54, Hindu Colony, Dadar, Mumbai-400014.

2 Heard Mr. Desai, learned senior counsel for the Petitioners and Mr. Joshi, learned counsel for the Respondent. Perused the entire

record produced before this Court.

3 The facts giving rise for filing of the present Petition, as per the record, can briefly be stated as under:-

(i) The Respondent's late mother Smt. Savitribai K. Joshi was the proprietress of Joshi Boarding House (Also known as *Joshi Lodging House*) until her demise on 17th February, 1982. The said Joshi Boarding House was started in the year 1934 and the 3rd floor's Lodging Rooms were added in the year 1956 to the said Joshi Boarding House. After the demise of said Smt. Savitribai K. Joshi, the Respondent started looking after the affairs of the said Joshi Boarding House. As the Respondent had been helping his mother in conducting the business of the said Lodging House since somewhere from the year 1956 onwards, the Respondent knew everything about the said business.

(ii) The record indicates that, the Original Petitioner and his brother Gopalsingh came to occupy two beds in the said Joshi Boarding House on 1st October, 1971 for temporary period. The said two brothers thereafter used to leave the Lodging House and come to reside there off and on as lodgers. The Original Petitioner and his brother were allowed to use and occupy Room No. 9, Block No. 10, 3rd

Floor of Joshi's Boarding House, until the license of the Boarding House (Lodging House) was cancelled from January 1987. That, the Police License was also cancelled from 1st April, 1987. The Respondent therefore, by his letter dated 18th February, 1987 informed all the lodgers accordingly. At that time, the Original Petitioner and his brother Gopalsingh and other two lodgers requested the Respondent to give them some more time to vacate and by an Agreement dated 13th April, 1987 undertook to vacate the said Lodging Rooms by the end of December, 1987. The Original Petitioner was paying lodging charges of Rs.240/- per month for three persons i.e. for himself, his brother Gopalsingh and son Lalit till June, 1983. That, from July, 1983 upto October, 1988 the Original Petitioner was in arrears of the Lodging charges amounting to Rs.10,611/-.

(iii) Despite undertaking given by the Original Petitioner by an Agreement dated 13th April, 1987, the Original Petitioner did not vacate the Suit premises either at the end of December, 1987 or thereafter inspite of several requests made by the Respondent to him.

The Petitioner instead, filed R.A.D. Suit No.2106 of 1988 in the Court of Small Causes at Mumbai on 26th May, 1988 for declaration that, he is lawful and protected sub-tenant of the

Respondent in respect of the Suit premises and for other consequential reliefs. It is the case of the Original Petitioner that, he had been residing in the Suit premises for more than 20 years since 1968, on the date of filing of the said Suit i.e. on 26th May, 1988. That, the Defendant No.2 therein i.e. Mr. N.V. Surve was the landlord of the building Mahalaxmi Niwas, in which the Suit premises is situated and the Respondent herein was the tenant of the said landlord (i.e. the Original Defendant No.2 in the said Suit) in respect of the Suit premises. The Respondent inducted the Petitioner into the Suit premises in or about 1968 on the monthly rent of Rs.45/-. That, thereafter, from time to time, the said monthly rent was increased by the Respondent and on the date of filing of the said Suit, the Petitioner was paying monthly rent of Rs.250/-. That, the Respondent never issued receipts for the payment of monthly rent, on the pretext that, the Original landlord i.e. Defendant No.2 therein, might take objection for accepting rent from the Petitioner. That, prior to 1968, the Respondent was running the Lodging and Boarding House under the name and style of *Joshi Boarding House* on the 2nd and 3rd floor of the Mahalaxmi Building. At that time, one Mr. Malhotra was residing in the Suit premises and after he left the Suit premises in the year 1968,

in his place, the Respondent inducted the Petitioner as a monthly tenant. That, the Petitioner had been residing in the Suit premises with his family members since the year 1968. It was contended that, the Respondent in collusion with the Original landlord Mr. Surve, was trying to dispose off his entire premises i.e. 2nd and 3rd floor of the said Mahalaxmi Niwas for valuable consideration. That, a week prior to the filing of the said Suit, the Respondent approached the Petitioner and asked him to vacate the Suit premises immediately. When the Petitioner refused to vacate the Suit premises, the Respondent gave threats of forcible dispossession of the Petitioner from the Suit premises. That, from 23rd May, 1988, the Respondent cut off water and electricity supply of the Suit premises to make the life of Petitioner miserable and with a view to force him to leave the Suit premises. It was further contended by the Petitioner that, he was the lawful and protected sub-tenant of the Respondent in respect of the Suit premises. The Petitioner, therefore, filed the afore-stated R.A.D. Suit No. 2106 of 1988 on 26th May, 1988, for declaration that, the Petitioner was the lawful and protected sub-tenant of the Respondent in respect of the Suit premises.

(iv) It is the case of the Respondent that, the permission

granted to the Original Petitioner to occupy the Suit premises in the said Lodging House stood terminated from 31st December, 1987 and as per the undertaking given by the Petitioner dated 13th April, 1987, the Petitioner failed to vacate the Suit premises, the Petitioner was liable to be evicted and the Respondent was entitled for a decree of possession of the Suit premises. The Respondent therefore, filed L.E. & C. Suit No.378/434 of 1988 on 1st November, 1988 for eviction & for handing over the vacant and peaceful possession of the Suit premises and for inquiry of mense profit for arrears of lodging charges & monthly compensation and for other consequential reliefs.

(v) In the aforesaid two Suits, the respective Defendants filed their written statements.

The Suit bearing R.A.D. Suit No. 2106 of 1988 filed by the Petitioner was prior in point of time. The record indicates that, the Trial Court tried both the Suits together. Common evidence was lead and recorded from both the Suits in R.A.D. Suit No. 2106 of 1988. Both the parties to the said Suits adopted evidence recorded in R.A.D. Suit No. 2106 of 1988 in L.E. & C. Suit No.378/434 of 1988.

The Trial Court, after hearing both the parties to the said Suits was pleased to dismiss R.A.D. Suit No. 2106 of 1988 filed by the

Petitioner by its Judgment and Order dated 19th August, 1995 and decreed L.E. & C.Suit No.378/434 of 1988 in favour of the Respondent by its Judgment and Order dated 19th August, 1995 and 23rd August, 1995 and directed the Petitioner to hand over, vacant and peaceful possession of the Suit premises and further directed to initiate inquiry into mesne profits as prayed for by the Respondent in his prayer clause (b) in his Suit, against the Petitioner.

(vi) The Original Petitioner preferred an Appeal bearing No.107 of 1996 in R.A.D. Suit No. 2106 of 1988 and Appeal No. 450 of 1995 in L.E. & C. Suit No.378/434 of 1988 before the Appellate Bench of the Court of Small Causes at Mumbai. The Appellate Bench of the Court of Small Causes, by its Judgment and Order dated 21st November, 1998 has dismissed both the Appeals i.e. Appeal No. 107 of 1996 in R.A.D. Suit No. 2106 of 1988 and Appeal No. 450 of 1995 in L.E. & C. Suit No.378/434 of 1988.

(vii) As noted earlier, the Petitioner has preferred the present Petition impugning the Judgment and Order dated 21st November, 1998 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Appeal No. 450 of 1995 and the Judgment and Decree passed by the Trial Court dated 19th August, 1995 and 23rd August,

1995 in L.E. & C. Suit No.378/434 of 1988. The present Petition is filed on 27th January, 1999.

It is to be noted here that, the Appellant has not impugned the Judgment and Order passed by the Appellate Bench of the Small Cause Court in Appeal No.107 of 1996 in R.A.D. Suit No. 2106 of 1988.

(viii) The record further indicates that, this Court, by its Order dated 30th January, 1999 granted Rule and interim relief in favour of the Petitioners. That, by an Order dated 21st July, 2017, the present Petition was dismissed for default and the Rule was discharged. The Respondent, thereafter executed the decree passed by the Trial Court in L.E. & C. Suit No.378/434 of 1988 on 4th March, 2019. The Petitioners thereafter filed Civil Application No.410 of 2019 for restoration of the present Petition. The said Application was allowed by an Order dated 29th March, 2019 and the present Petition has been restored to its original position. The fact of execution of decree by the Respondent is recorded in the said Order dated 29th March, 2019 and also in Orders dated 10th June, 2019 and 4th October, 2019.

4 Mr. Desai, learned senior counsel appearing for the Petitioners submitted that, both the Courts below have erred in

holding the Petitioner as '*licensee*'. He submitted that, it is only when a license is created as of right that it can be covered under the provisions of Section 52 of the Indian Easements Act. When a permission is afforded not as of right but as of grace or where permission is afforded, it is incidental or ancillary to say a family arrangement, an arrangement of employment or the like, the same would not amount to a license under Section 52 of the said Act. That, the transaction has to partake the nature of a commercial transaction for valuable consideration before it can partake the nature of a right envisaged by Section 52 of the Indian Easements Act. He submitted that, it is the specific case of the Petitioner that, he was not a licensee and in fact, was a lodger in the Suit premises and therefore, the present Suit filed by the Respondent under Section 41 of the Presidency of Small Cause Courts Act, 1882 (for short, '*the PSCC Act*') is not maintainable. He submitted that, Section 5(4A) of the Bombay Rent Act, which defines the term '*licensee*' excludes 'lodger' and therefore, also the provisions of Section 41 of the PSCC Act are not applicable to the Suit instituted by the Respondent. He submitted that, as the Petitioner was admitted in the Suit premises as a 'lodger' for his eviction from the Suit premises, the procedure as contemplated

under Section 39 of the Bombay Rent Act ought to have been followed by the Respondent. That in the absence of following of the said procedure under Section 39 of the Bombay Rent Act, the Suit filed by the Respondent under Section 41 of the PSCC Act is also not maintainable. He submitted that, therefore, the Trial Court had no jurisdiction to entertain the Suit filed by the Respondent. In support of his contention, he relied on two decisions in the cases of (i) *Vishwanath Sawant Vs. Gandabhai Kikabhai*, reported in 1990 Mh.L.J. 1145; (ii) *Union of India Vs. Ibrahim Uddin & Anr.*, reported in (2012) 8 S.C.R. 35.

Mr. Desai further submitted that, the occupation of the Petitioner after December, 1987, at the most can be treated or termed as a '*trespasser*' and therefore, the remedy which was available with the Respondent was to file a Suit before the Civil Court under Section 106 of the Transfer of Property Act. That, a lodger does not become a '*licensee*' automatically, because the lodge is closed down in the year 1986. He submitted that, there is no material available on record to indicate that, the Petitioner was a licensee. At the cost of repetition, he submitted that, the Petitioner was only a lodger. He submitted that, in view thereof also, the Trial Court was not having jurisdiction

to entertain the Suit filed by the Respondent under Section 41 of the PSCC Act. He submitted that, the decree passed by the Trial Court under Section 41 of the PSCC Act is without jurisdiction. He submitted that, the Judgments and Orders passed by both the Courts below, are perverse and contrary to the provisions of law and therefore, this Court under Article 227 of the Constitution of India is competent to set aside the impugned Judgment and Orders. In support of his contention, he relied on 3 decisions of the Hon'ble the Supreme Court viz. (i) *Waryam Singh & Anr. Vs. Amarnath & Anr.*, reported in 1954 SCR 565 : AIR 1954 SC 215; ii) *Nagendra Nath Bora & Anr. Vs. The Commissioner of Hills Division & Appeals, Assam & Ors.*, reported in 1958 SCR 1240 : AIR 1958 SC 398; and iii) *Dahya Lala & Ors. Vs. Rasul Mahomed Abdul Rahim & Ors.*, reported in (1963) 3 SCR 1 : AIR 1964 SC 1320.

During the course of arguments, Mr. Desai, learned senior counsel for the Petitioner with usual fairness at his command, admitted the fact that, the Petitioner has not challenged the Judgment and Order dated 21st November, 1998 passed in Appeal No. 107 of 1996 in R.A.D. Suit No. 2106 of 1988 filed by the Petitioner and has accepted the same. Mr. Desai, therefore, prayed that, the impugned

Judgment and Orders passed by both the Courts below may be set aside by allowing the present Petition.

5 Mr. Joshi, learned counsel for the Respondent, by referring to the notes of evidence and other related material on record, submitted that, after termination of status of the Petitioner as 'lodger' by his letter/Notice dated 18th February, 1987, the Respondent permitted the Petitioner to reside in the Suit premises at the request of the Petitioner and the Petitioner had executed an Agreement dated 13th April, 1987, thereby undertaking to vacate the lodging room by the end of December, 1987. The possession of the Petitioner of Suit premises was therefore permissive possession. He submitted that, the Petitioner did not pay any consideration for his occupation in the Suit premises from December, 1987 and therefore, the Petitioner was a gratuitous licensee of the Respondent in the Suit premises. He submitted that, in view thereof, the Suit for eviction of the Petitioner under Section 41 of the PSCC Act is very much maintainable. In support of his contention, he relied on a decision of the Supreme Court in the case of *Prabhudas Damodar Kotecha & Ors. Vs. Manhabala Jeram Damodar & Anr.* reported in 2013 DGLS (SC) 639 : 2013 AIR (SC) 2959 : 2013 (15) SCC 358 : 2013 (11) JT 208.

Mr. Joshi further submitted that, as the relation between the Respondent as Owner of Lodging House and the Petitioner as a lodger was severed by the Respondent by addressing a letter/notice dated 18th February, 1987, there is no question of adopting procedure as contemplated under Section 39 of the Bombay Rent Control Act by the Respondent and the submission of the learned counsel for the Petitioner in that behalf is fallacious. He submitted that, both the Courts below have rightly appreciated all the facts in the present case and have also evaluated the legal position correctly.

He submitted that, the present Petition is unmeritorious and therefore prayed that, the Petition may be accordingly dismissed.

6 At the outset, it is to be noted here that, the Supreme Court in the case of *Prabhudas Damodar Kotecha & Ors. (Supra)* has in great detail, analysed the provisions of Section 5(4A) of the Bombay Rent Act, Section 52 of the Indian Easements Act and Section 41 of the PSCC Act. Paragraph Nos. 47, 50 and 52 of the said Judgment reads as under:-

“47. We have already indicated the expression “licence” as reflected in the definition of licensee under sub-section (4A) of Section 5 of the Rent Act and Section 52 of the Indian Easement Act are not pari materia. Under sub-

section (4A) of Section 5, there cannot be a licence unsupported by the material consideration whereas under Section 52 of the Indian Easement Act payment of licence fee is not an essential requirement for subsistence of licence. We may indicate that the legislature in its wisdom has not defined the word "licensee" in the PSCC Act. The purpose is evidently to make it more wide so as to cover gratuitous licensee as well with an object to avoid multiplicity of proceedings in different courts causing unnecessary delay, waste of money and time etc. The object is to see that all suits and proceedings between a landlord and a tenant or a licensor and a licensee for recovery of possession of premises or for recovery of rent or licence fee irrespective of the value of the subject matter should go to and be disposed of by Small Cause Court. The object behind bringing the licensor and the licensee within the purview of Section 41(1) by the 1976 Amendment was to curb any mischief of unscrupulous elements using dilatory tactics in prolonging the cases for recovery of possession instituted by the landlord/licensor and to defeat their right of approaching the Court for quick relief and to avoid multiplicity of litigation with an issue of jurisdiction thereby lingering the disputes for years and years.

50. We are of the considered view that the High Court has correctly noticed that the clubbing of the expression "licensor and licensee" with "landlord and

tenant” in Section 41(1) of the PSCC Act and clubbing of causes relating to recovery of licence fee is only with a view to bring all suits between the “landlord and tenant” and the “licensor and licensee” under one umbrella to avoid unnecessary delay, expenses and hardship. The act of the legislature was to bring all suits between “landlord and tenant” and “licensor and licensee” whether under the Rent Act or under the PSCC Act under one roof. We find it difficult to accept the proposition that the legislature after having conferred exclusive jurisdiction in one Court in all the suits between licensee and licensor should have carved out any exception to keep gratuitous licensee alone outside its jurisdiction. The various amendments made to Rent Act as well the Objects and Reasons of the Maharashtra Act XIX of 1976 would clearly indicate that the intention of the legislature was to avoid unnecessary delay, expense and hardship to the suitor or else they have to move from the one court to the other not only on the question of jurisdiction but also getting reliefs.

52. We have elaborately discussed the various legal principles and indicated that the expression ‘licensee’ in Section 41(1) of the PSCC Act would take a gratuitous licensee as well. The reason for such an interpretation has been elaborately discussed in the earlier part of the judgment. Looking from all angles in our view the expression ‘licensee’ used in the PSCC Act does not derive its meaning from the expression ‘licensee’ as used in Sub-

section (4A) of Section 5 of the Rent Act and that the expression “licensee” used in Section 41(1) is a term of wider import intended to bring in a gratuitous licensee as well.”

It is thus abundantly clear from the above that, a Suit for eviction of a ‘licensee’ so also, a ‘*gratuitous licensee*’ is maintainable under Section 41(1) of the PSCC Act before the Small Cause Court. In view thereof, the contention of the learned counsel for the Petitioner in that behalf does not have any substance in it and cannot be accepted.

7 It is an admitted fact on record that, the License issued for running the said Lodging House by the concerned Authority was cancelled from January, 1987 and the Police License was also cancelled from 1st April, 1987. The Respondent by his letter dated 18th February, 1987 informed the said fact to all the lodgers and requested them to vacate the Lodging House from 31st March, 1987. The Petitioner thereafter, had requested the Respondent to give him some more time and by an Agreement dated 13th April, 1987, had undertaken to vacate the said lodging room by the end of December, 1987. It is thus clear that, after the cancellation of license to run Lodging House by the Competent Authority and termination of the Agreement by the Respondent being ‘Owner of the Lodging House’

with the Petitioner as a 'lodger', by his letter dated 18th February, 1987, the relation between the Petitioner as a 'lodger' and Respondent as the 'owner of lodging house' had come to an end. In view thereof, there was no need for the Respondent to follow the procedure before the Controller under Section 39 of the Bombay Rent Act. The Petitioner thereafter, was in permissive possession of the Suit premises. The Petitioner, therefore became a '*Licensee*' of the Respondent and according to this Court, he was a mere '*gratuitous licensee*' only, as he was not paying any consideration to the Respondent after December, 1987. As a matter of fact and as per the pleadings of the Respondent in his plaint, the Petitioner was in arrears of lodging charges from July 1983 upto end of October, 1988.

8 It is also an admitted fact on record that, R.A.D. Suit No. 2106 of 1988 filed by the Petitioner for his declaration as lawful and protected sub-tenant of the Respondent in respect of the Suit premises, has been dismissed by the Trial Court by its Judgment and Order dated 19th August, 1995 and the said dismissal has been upheld by the Appellate Court by its Judgment and Order dated 21st November, 1998. Thus, the plea of the Petitioner that, he was lawful and protected sub-tenant of the Respondent in respect of the Suit

premises has not been accepted by the Court of competent jurisdiction. In other words, the Petitioner has clearly failed to prove his status as sub-tenant of the Respondent in the Suit premises. That, after termination of his status as lodger, vide letter/notice dated 18th February, 1987 the status of the Petitioner in the Suit premises becomes as a 'licensee' or rather a '*gratuitous licensee*' as he was not paying any consideration to the Respondent for his occupation of the Suit premises. The record is absolutely silent about the fact that, the Respondent at any point of time treated the Original Petitioner as a trespasser. It is to be noted here that, the Petitioner entered in the Suit premises lawfully i.e. initially he entered in the premises as a lodger and therefore, there is no question of his committing civil trespass in the Suit property. In view thereof, the submission of the learned counsel for the Petitioner with respect to filing of a Suit before the Civil Court under Section 106 of the Transfer of Property Act cannot be accepted and is accordingly rejected.

9 As noted earlier, there is a concurrent finding recorded by both the Courts below.

The Constitution Bench of the Supreme Court in the case of *Syed Yakoob Vs. K.S. Radhakrishnan & Ors.*, reported in AIR 1964

SC 477, while enumerating the nature and limits of the jurisdiction of the High Court in issuing a writ of certiorari has held that, the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that the findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. That, an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.

In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the

Tribunal was insufficient or inadequate to sustain the impugned finding.

10 The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken

by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

11 After perusing entire record and in view of the above, this Court is of the view that, the present Petition is de hors of merits and is accordingly dismissed.

Sanjiv S.
Mashalkar
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(A.S. GADKARI, J.)