

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

INTERIM APPLICATION NO. 3719 OF 2020

Mehta Builders	... Applicant
Vs	
Mohanchandra Nathalal Desai	... Respondent

**IN
REVIEW PETITION (ST) NO. 5823 OF 2020**

Mehta Builders	... Petitioner
Vs	
Mohanchandra Nathalal Desai	... Respondent

Adv. Abhishek Nandimath i/b. Mr. Umesh R. Mankapure for the
Applicant/Petitioner

CORAM : NITIN W. SAMBRE, J.

DATED : 11th JULY, 2022

P.C.:

1. Heard.
2. For the reasons disclosed in interim application and since the contentions therein are not controverted, the Interim Application stands allowed in terms of prayer clause (b).

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3. The contentions of counsel for the Petitioner is, the Petitioner's suit for eviction was decreed whereas Appeal preferred by non-applicant/tenant was allowed, as such WP/4352/2006 was

taken out.

4. This Court vide reasoned order dated 04.09.2019 disposed of the said Writ Petition as infructuous as the subject matter of the suit that is tenanted premises were already demolished and respondent has shifted to some other place.

5. It is claimed by counsel for the petitioner/applicant that the structure which was occupied by the non-applicant/tenant and land appurtenant thereto has to be considered as one component and that being so the Petition has to be decided on merits and cannot be disposed of as infructuous as has been done by order under review.

6. He has rightly drawn support from the judgment of Apex Court in the matter of *Shaha Ratansi Khimji and Sons vs. Kumbhar Sons Hotel Private Limited and Others* reported in (2014) 14 SCC

1. Para 27 of the said judgment reads thus:

27. It has been further opined in T. Lakshmipathi Case that once a tenancy is created in respect of a building standing on the land it is the building and the land which are both components of the subject-matter of demise and the destruction of the building alone does not determine the tenancy when the land which is the site of the building continues to exist. This interpretation, as we find, is in accord with Section 108 of the Act. It is reflectible that in Vannattankandy Ibrayi's case, the two-Judge Bench observed that the rights stand extinguished as on the distinction of the demise, for there is destruction of

the superstructure and in its non-existence there is no subject matter. Thus, the land has been kept out of the concept of subject-matter. In our considered opinion, the Court in the said case failed to appreciate that there are two categories of subject-matters, combined in a singular capsule, which is the essence of provision under the Transfer of Property Act and not restricted to a singular one, that is, the superstructure. In T. Lakshmipathi the Court took note of the fact that the land and superstructure standing on it as a singular component for the purpose of tenancy. It is in tune with the statutory provision. Therefore, we agree with the proposition stated therein to the affect that:

“24. ...in the event of the tenancy having been created in respect of a building standing on the land, it is the building and the land which are both components of the subject-matter of demise and the destruction of the building alone does not determine the tenancy when the land which was the site of the building continues to exist....”.

On the touchstone of this analysis, we respectfully opine that the decision rendered in Vannattankandy Ibrayi does not correctly lay down the law and it is, accordingly, overruled.

7. In view thereof, issue notice to Respondent for final disposal, returnable on 22nd August, 2022.
8. In addition to Court notice, Petitioner is at liberty to serve the Respondent by private notice through registered AD/Speed Post and file affidavit of service before the returnable date.