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

CIVIL REVISION APPLICATION NO.232 OF 2023

Nareshkumar Chhaganlal Rathod ...Applicant

Versus

Messrs Haribhai B. Desai and Ors. ...Respondents

Mr. Nareshkumar C. Rathod, Applicant in person.

Ms. Shoma Maitra a/w Ms. Naziya Khan i/b M/s. Wadia Ghandy & Co., for the Respondent Nos.1 to 3.

Mr. Sagar Pathak i/b. P & A Law Offices, for Respondent No.5.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 8th AUGUST 2023**

PC. :

1. It is a general belief that, in India, difficulty for the litigant starts after obtaining the decree. The Supreme Court, in the case of *Griesheim GmbH Vs. Goyal MG Gases Pvt. Ltd.*¹, has observed as follows:-

“2. It is an old saying that the difficulties of the litigant in India begin when he has obtained a decree. The evil was noticed as far back in 1872 by the Privy Council in relation

1. (2022) 11 SCC 549

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to the difficulties faced by the decree-holder in execution of the decree [*General Manager, Raj Durbhunga v. Coomar Ramaput Sing*, 1872 SCC OnLine PC 16 : (1871-72) 14 Moo IA 605: 20 ER 912], Moo IO p. 612. **After more than a century, there has been no improvement and still the decree-holder faces the same problem what was being faced in the past. A litigant coming to court seeking relief is not interested in receiving a paper decree when he succeeds in establishing his case. What he primarily wants from the court of justice is the relief and if it is a money decree, he wants that money what he is entitled for in terms of the decree, must be satisfied by the judgment debtor at the earliest possible without fail keeping in view the reasonable restrictions/rights which are available to the judgment debtor under the provisions of the statute or the code, as the case may be.”**

(Emphasis added)

The above observations of the Supreme Court are squarely applicable to the present case.

2. In the present case, the Applicant is the obstructionist. The Respondent Nos.1 to 3 who are the landlords/ owners i.e. Plaintiffs filed suit in the year 2001 against Tenants i.e. present Respondent Nos.4 and 5. The said suit was decreed in the year 2012. The Appeal filed

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challenging the same was dismissed in the year 2014. In the meanwhile, as conditional stay granted by the Appellate Court was vacated as conditions were not complied with, decree was sought to be executed and the same was obstructed, *inter alia*, by the present Applicant and therefore, the Respondent Nos.1 to 3 i.e. Decree holders took out Obstructionist Notice No.17 of 2013. The same was dismissed on 6th May 2022. Appeal filed challenging the same by the Applicant came to be rejected on 24th March 2023. Thus, although decree was passed in the year 2012 the same could not be executed for at least about 11 years.

3. Heard Mr. Nareshkumar C. Rathod, Applicant who appears in person, Ms. Shoma Maitra, learned counsel appearing for the Respondent Nos.1 to 3 and Mr. Sagar Pathak, learned counsel appearing for the Respondent No.5.

4. The Applicant who appears in person, failed to appear before this Court on the previous date inspite of Civil Revision Application appearing on the board and inspite of notice given by the Respondents to the effect that the matter would be listed for hearing before the Court. By a detailed order dated 4th August 2023, the matter has been placed today under the caption of "Dismissal". Pursuant to said order

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dated 4th August 2023 the Civil Revision Application has appeared on today's board under the caption of "Dismissal". However, today, the Applicant has appeared in person and has argued the matter.

5. The Applicant i.e. Obstructionist, by way of the present Civil Revision Application is *inter alia* challenging the legality and validity of the impugned judgment and decree dated 6th May 2022 passed in the Obstructionist Notice No.17 of 2013 in Execution Application No.10 of 2013 in T.E. and R. Suit No.94/106 of 2001 as well as the judgment and decree dated 24th March 2023 passed by learned Appellate Bench of Small Causes Court at Mumbai in E. Appeal No.89 of 2022.

6. Mr. Rathod, the Applicant who appears in person made following submissions:

- (I) He is the direct tenant of the Respondent Nos.1 to 3 as rent was deducted from his salary.
- (II) The decree of eviction obtained by the Respondent Nos.1 to 3 is obtained in collusion with the Respondent Nos.4 and 5.
- (III) The Respondent Nos.1 to 3 are not the owners of the suit building and therefore, they are not the landlords.

7. Ms. Shoma Maitra, learned counsel appearing for the Respondent Nos.1 to 3 pointed out various documents. She submitted

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that Respondent Nos.4 and 5 were the tenants and the suit flat was allotted to the Applicants by the Respondent No.5 in his capacity as their employee. She submitted that the Applicant has no independent right, title and interest. She submitted that there is no landlord-tenant relationship between the Applicant and the Respondent Nos.1 to 3. She submitted that the factual position on record clearly shows that the decree obtained was on merits and not in collusion. She submitted that the Respondent Nos.1 to 3 are the owners of the suit building and there is no substance in the contention raised that the Respondent Nos.1 to 3 are not the owners.

8. Before considering the rival contentions, it is necessary to set out the factual position:-

- i. The plaintiffs i.e. the present Respondent Nos.1 to 3 filed T.E. & R. Suit No.94/106 of 2001 against defendant Nos.1 and 2 i.e. present Respondent Nos.4 and 5. Respondent No.4 is M/s. Air India International, a body corporate incorporated under the Air Corporation Act, 1953. Respondent No.5 is M/s. Air India Limited which is a body corporate incorporated under the Air Corporation Act, 1953. In 1994, Respondent No.4 was dissolved.

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- ii. Plaintiffs i.e. Respondent Nos.1 to 3 entered into a lease agreement with Respondent No.4 on 19th August 1960 for a period of ten years. Under said lease agreement dated 19th August 1960, the entire building known as “Shanti Kunj” comprising of 12 flats situated at Plot No.514 of Scheme No.7, bearing CTS No.E/181, Khar (W), Mumbai – 400 052 (hereinafter referred to as “the said Building”) was leased to Respondent No.3. Thereafter, the said lease agreement was not renewed. However, Respondent Nos.4 and 5 continued with the possession of the said building.
- iii. The present Applicant – Nareshkumar C. Rathod entered into the employment of Respondent No.4 in or about 1992.
- iv. In the meanwhile, all the affairs and all the assets and liabilities of Respondent No.4 were taken over by Respondent No.5 in 1994.
- v. On 4th April 1997, Respondent No.5 allotted Flat No.3 in the said building by letter of even date to the Applicant and it has been mentioned in the said letter that an amount of Rs.205.35 be deducted per month towards the License Fee for use and occupation of the said flat. The contents of said letter are

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important and the same are reproduced herein-below for ready reference:

- “ With reference to your application for accommodation in Shantikunj which has been approved by Director of Engineering-Engine Overhaul, **we are pleased to inform you that Flat No.3 in Shantikunj Co-op. Housing Society, has been allotted to you, w.e.f. 04.04.1997.**
2. By means of a copy of this letter, we are requesting The Sr. Manager-Finance **to effect deduction of Rs.205.35, towards the Licence Fee per month** from your salary, w.e.f. 04.04.1997.”

(Emphasis added)

- vi. Thereafter, on 20th June 1997, there is another allotment letter issued pertaining to Flat No.10 in the said building. As per letter dated 20th June 1997, the original allottee of Flat No.3 – Mr. P. V. Venkatesh has shown his inability to shift to Flat No.10 and is retaining Flat No.3 and therefore, the said Flat No.10 was allotted to Mr. Rathod. It is specifically mentioned in letter dated 20th June 1997 that the other terms and conditions as contained in letter dated 4th April 1997 have remained unchanged. Thus, it is clear that even said Flat

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No.10 i.e. the flat in question was allotted to Mr. Rathod as licensee.

- vii. The Applicant entered into Leave and Licence Agreement dated 5th April 1997 with Air India and gave undertaking. The said leave and license agreement which has been signed by Applicant - Mr. Rathod, *inter-alia*, contains following terms and conditions:-

- “5. In the event of the said Leave & Licence being terminated or coming to an end as provided in the said terms and conditions of Leave & Licence, I hereby agree and undertake to remove myself and all other persons staying with me and my and/their belongings from the said flat.**
6. In the event of my failing to remove myself and other persons staying with me and my and their belongings from the said flat, the Company will be entitled to remove me and all other persons staying with me and my and their belongings from the said flat at my risk and cost without in any way rendering the Company liable for trespass, damages or otherwise and I agree that in case I fail to remove myself and other persons staying with me and my and their belongings from the flat after being required to do so, I shall be guilty of trespass and wrongful restraint.”

(Emphasis added)

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The said Leave and Licence agreement clearly shows that the allotment of suit premises has been done by Air India and the same has been given on leave and licence basis. It is specifically mentioned in the leave and licence agreement that the said terms and conditions are binding on every employee – licensee. The Applicant has specifically agreed that in the event of said Leave and Licence agreement being terminated or coming to an end he undertakes to remove himself and all other persons staying with him along with his belongings from the said flat. It is also significant to note clause No.8 of said Leave and Licence agreement, which reads as under:-

- “8. I hereby state that (a) neither I nor my wife/husband have or has any residential accommodation on ownership or tenancy or sub-tenancy basis in Greater Bombay, (b) I am not nor is my wife/husband a member of any Co-op. Hsg. Society which has taken a loan from the Company and (c) I have not nor has my wife/husband taken any loan from the Company for constructing a house in Greater Bombay or for acquiring residential accommodation on ownership basis in Greater Bombay. If the said preceding statement of mine or any part thereof is or turns out to be incorrect or if at any time hereinafter (a) either I or my wife/husband acquire or**

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acquires any residential accommodation or tenancy or sub-tenancy basis in Greater Bombay or (b) I or my wife/husband become or becomes a member of a Co-operative housing society which has taken a loan from the Company and thereupon I or my wife/husband become or becomes entitled for accommodation in such Society's building or (c) I or my wife/husband take or takes a loan from the Company for constructing a house in Greater Bombay or for acquiring residential accommodation on ownership basis in Greater Bombay and such house is constructed or such accommodation is acquired, then on the expiry of one month from the happening of any of the aforesaid events the Leave and Licence granted to me shall *ipso facto* be and stand determined and I will thereupon remove myself and all other persons staying with me and my and their belongings from the said flat."

(Emphasis added)

As per Clause No.8, the Applicant has given undertaking that neither he nor his wife have any residential accommodation on ownership or tenancy or sub-tenancy basis in Greater Bombay and that he is not a member of any Co-operative Housing Society which has taken loan from Air India.

viii. Thus, it is clear that the said flat No.10 i.e. premises in question has been allotted to Mr. Rathod, the Applicant purely

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on Leave and License basis in his capacity as an employee of Air India and because he was having no other accommodation in Greater Mumbai. The same also establishes that there is no landlord-tenant relationship between the Respondent Nos.1 to 3 and the Applicant.

- ix.** Respondent Nos.1 to 3 i.e. landlords terminated the said lease dated 19th August 1960 and thereafter, filed said eviction suit on 31st July 2001.
- x.** During the pendency of the said suit, Air India made an application seeking joinder of occupants of the said building as parties to the suit. By order dated 3rd July 2009, learned Judge, Small Causes Court, Mumbai rejected the said application by observing that the occupants of the said building are employees of Air India. Thus, it is clear that said application was rejected as the occupants have no independent right, title and interest.
- xi.** On 11th May 2012, learned Trial Court decreed the said suit.
- xii.** Air India filed Appeal No.14 of 2012 and on 1st December 2012, learned Appellate Court granted conditional stay to the execution of the said decree and directed Air India to deposit

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Rs.3,00,000/- (Rs.Three Lacs) as compensation during the pendency of the said Appeal. As Air India failed to deposit the said amount, the stay has lapsed.

xiii. Learned Appellate Bench of the Small Causes Court confirmed the said Judgment and Decree dated 11th May 2012 of the learned Trial Court by dismissing the said Appeal by Judgment and Decree dated 20th March 2014.

xiv. As set out hereinabove, as the stay granted in Appeal had lapsed as Air India failed to deposit Rs.3 Lacs p.m., Respondent Nos.1 to 3 filed Execution Application No.10 of 2013.

xv. About 8 occupants of the said building i.e. employees of the Air India obstructed execution of the decree and Obstructionist Notice No.17 of 2013 was filed by the Respondent Nos. 1 to 3. Applicant - N. C. Rathod is one of the said obstructionists.

xvi. In the meanwhile, the present Applicant filed R.A.D. Suit No.547 of 2013 seeking declaration of tenancy against Respondent Nos.1 to 3 and also against Air India and for further declaration that the aforesaid decrees dated 11th May

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2012 and 20th March 2014 respectively of the learned Trial Court and learned Appellate Court have been obtained fraudulently as a result of the collusion between the Respondent Nos. 1 to 3 and Respondent Nos. 4 and 5 and are not binding on him. The said R.A.D. Suit has been dismissed and Appeal filed by the Applicant is pending before the learned Appellate Court of the Small Causes Court.

xvii. By impugned order dated 6th May 2022 said Obstructionist Notice No.17 of 2013 was made absolute.

xviii. E-Appeal No.89 of 2022 filed by the Applicant challenging said order dated 6th May 2022 came to be rejected by order dated 24th March 2023. Both these orders are challenged in the present Civil Revision Application.

xix. It has come on record that except three (including the present Applicant), other obstructionists have vacated their respective flats and have handed over possession to the Respondent Nos.1 to 3.

xx. Admittedly, the Applicant has retired from the service of the Respondent No.5 on 30th June 2020.

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In the light of above factual position, it is necessary to consider the rival submissions.

9. It is the contention raised by the present Applicant - Mr. Rathod, that he is the direct tenant of the said premises of landlords-Respondent Nos. 1 to 3. However, the documentary evidence on record clearly shows that the Applicant entered into the service of Respondent Nos.4 and 5 in 1992. He had been initially allotted Flat No.3 on leave and licence basis and thereafter, was allotted Flat No.10 on the same leave and licence basis. Agreement of Leave and Licence executed by him with the Respondent No.5 clearly shows that he is the licensee of the Respondent No.5 and there is no relationship of Landlord - Tenant between the present Applicant and the Respondent Nos.1 to 3. Therefore, there is no substance in the said contention. Mr. Rathod states that House Rent Allowance was paid to him by his employer i.e. Air India and therefore, it can not be said that the said premises are allotted to him by the Respondent No.5 on the tenancy basis. He submitted that an amount of Rs.205.35 had been deducted regularly from his salary. However, it is significant to note that allotment letter of the Respondent Nos. 5 specifically states that the said amount is licence fee and accordingly, the Applicant has executed the Leave and Licence agreement with Air India. The various terms and conditions of the leave and licence agreement as set out

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and discussed hereinabove clearly shows that the Applicant was the licensee of the Respondent No.5. The said premises were allotted to him as he was in the service of the Respondent No.5. Therefore, it is clear that there is no substance in the said contention raised by Mr. Rathod that he is the direct tenant of Respondent Nos.1 to 3.

10. It is the contention of the Applicant that original Defendant Nos.1 and 2 i.e. Respondent Nos.4 and 5 - Air India are hand-in-glove with the plaintiff i.e. Respondent Nos.1 to 3 and that a collusive decree has been obtained. In this behalf, it is significant to note that the period of lease dated 19th August 1960 in favour of Respondent No.4 was only for a duration of 10 years commencing from 1st August 1960. The said Indenture was thereafter not renewed. However, there were extension letters. The suit was filed for eviction by the Respondent Nos. 1 to 3 on 31st July 2001. During the pendency of the suit, Air India filed an application in the said suit seeking joinder of occupants of the suit building as party to the said suit and the application was dismissed by the learned Trial Court by observing that the occupants of the said building are employees of the Air India. The Respondent Nos.4 and 5 filed written statement in the said suit and led the evidence. The said suit was decreed by the learned Trial Court on 11th May 2012. The said decree was challenged by Air India by filing Appeal No.14 of 2012 and the

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said Appeal was ultimately dismissed on 20th March 2014. Therefore, there is no substance in the contention that there is collusion between Respondent Nos.1 to 3 and Respondent No.5.

11. The Applicant further submitted that although it has been represented by the Respondent Nos.1 to 3 that they are the owners of the property however, order dated 26th August 1996 passed by this High Court in Petition No.726 of 1996 in Testamentary and Intestate Jurisdiction by which certificate of succession is issued does not show that the Respondent Nos.1 to 3 are the owners of the said building and therefore, landlords of the said Building. Therefore, it is his contention that Respondent Nos.1 to 3 do not possess any right, title and interest to execute the said decree. In this behalf, it is significant to note that Plaintiff No.1 is a Partnership Firm viz. M/s. Haribhai B. Desai, registered under the Indian Partnership Act, 1932 and the original Plaintiff Nos.2 to 4 were the Partners of the said Partnership Firm. The contention raised by Mr. Rathod – Applicant that the plaintiffs are not the owners of the suit property is on the basis of the order passed in Petition No.726 of 1996. However, it is significant to note that said Petition No.726 of 1996 was filed seeking succession certificate with respect to the properties of deceased Ramanlal Haribhai Desai. Therefore, the same has nothing to do with the Partnership Firm M/s. Haribhai B. Desai, i.e. the Plaintiff No.1 and

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therefore, there is no substance in the said contention.

12. It is significant to note that the Applicant who claims to be the direct Tenant of the Respondent Nos.1 to 3 with respect to the suit premises is challenging the title of the Respondent Nos.1 to 3 which is not permissible.

13. Thus, there is no substance in any of the submissions of the Applicant.

14. Apart from the above discussion, this is not a case where any interference in the impugned orders are required under the revisional jurisdiction of this Court under Section 115 of the C.P.C. The Supreme Court in the case of **Sher Singh vs. Joint Director of Consolidation & Ors.**² has explained the scope of revision under Section 115 of Code of Civil Procedure, 1908. It is held that Section 115 of the Code of Civil Procedure empowers High Court to satisfy itself on three matters:

(i) that the order of the subordinate court is within its jurisdiction;

(ii) that the case is one in which the court ought to have exercised its jurisdiction and failed to do so and

(iii) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provisions of law, or with material irregularity by committing some error of procedure in the course of the trial which is

² (1978) 3 SCC 172

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material in that it may have affected the ultimate decision.

The Supreme Court further held that if the High court is satisfied that there is no error in regard to any of the three above-mentioned matters, the High Court has no power to interfere merely because it differs from the conclusions of the subordinate Court on questions of law or fact. The impugned orders are perfectly legal and proper by applying above criteria as per the Supreme Court judgment.

15. Thus, the Civil Revision Application is dismissed with costs.

16. At this stage, Applicant – Mr. Rathod seeks stay of this order for few months. Accordingly, this order is stayed till 31st December 2023 subject to Applicant filing an undertaking in this Court within four weeks from today stating following:-

- i. He alongwith his family members are in possession of the said premises.
- ii. He should also disclose names of family members who are in occupation of the suit premises along with him.
- iii. He along with his family members undertakes to vacate the suit premises on or before 31st December 2023 and that;
- iv. The Applicant continues to deposit Rs.25,000/- p.m. as directed

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earlier towards compensation in the Trial Court till 31st December 2023.

- v. All adult members who are staying with the Applicant shall also file similar undertaking in above terms within a period of four weeks from today.

17. Subject to above, the Civil Revision Application is dismissed with costs.

[MADHAV J. JAMDAR, J.]