

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 8410 OF 2025**

|                                              |   |                 |
|----------------------------------------------|---|-----------------|
| Abid Shiraz Merchant                         | } |                 |
| Age-50 years, Adult, Occu: Business,         | } |                 |
| residing at A-601, Spring Time,              | } |                 |
| 3 <sup>rd</sup> Road, TPS-3, Santacruz East, | } |                 |
| Mumbai-400 055.                              | } | .....Petitioner |

V/s.

|                                      |   |              |
|--------------------------------------|---|--------------|
| 1.State of Maharashtra               | } |              |
| Through GP, High Court, Bombay.      | } |              |
|                                      |   |              |
| 2. Ramprakash Ramdas Chowdhry        | } |              |
| 76 years, Indian Inhabitant of       | } |              |
| Mumbai, Occu: Retired, residing at   | } |              |
| Room No. 5,6,7, Bachubhai Chawl,     | } |              |
| (Bachu Sheth Chawl) Kurla Andheri    | } |              |
| Road, Opp. Sakinaka Telephone        | } |              |
| Exchange, Sakinaka, Mumbai-72        | } |              |
|                                      |   |              |
| Also At-                             | } |              |
| Room No. 101, CTS No. 590/6,         | } |              |
| Village Eksar, I.C. Colony, Borivali | } |              |
| (West), Mumbai-400 068.              | } | Respondents. |
|                                      | } |              |

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Mr. Surel Shah, Senior Advocate with Devesh Juvekar with Kavita Chavan and Mithilesh Chalke i/by Rajani Associates, for the Petitioner.

Ms. Vaishali Nimbalkar, AGP, for the State.

Mr. Sunil Mishra, for the Respondent no. 2.

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**CORAM : N.J. JAMADAR, J.**  
**RESERVED ON : 27<sup>th</sup> JULY 2025.**

**PRONOUNCED ON : 18TH SEPTEMBER 2025.**

**JUDGMENT:**

1. Rule. Rule made returnable forthwith and, with the consent of the counsel for the parties, heard finally.

2. The challenge in this petition is to a judgment and order dated 5<sup>th</sup> April 2025, passed by the Appellate Bench of the Court of Small Causes in Miscellaneous Appeal No. 86 of 2024, whereby the Appellate Bench allowed the appeal preferred by the Respondent no. 2/Plaintiff by setting aside the order passed by the Trial Court rejecting an application for temporary injunction (Exhibit-9) in RAD Suit No. 683 of 2023, and restraining the Petitioner/Plaintiff from forcefully dispossessing or otherwise disturbing the peaceful use, occupation and possession of the Plaintiff of the suit premises and transferring, disposing of or otherwise creating any third party rights in the suit premises, till the disposal of the suit.

3. Shorn of unnecessary details, the background facts can be stated as under:

3.1 The Plaintiff claimed to be in lawful possession of Room No. 5, Room No. 6 and Room No. 7 situated at Bachubhai Chawl (Bachuseth Chawl), CTS No. 689, Kurla

Andheri Road, Opp. Sakinaka Telephone Exchange, Sakinaka, Kurla (W), (the suit premises) as a tenant thereof. The Defendant is the representative of the landlady and has been handling the day-to-day affairs of the said chawl. The rent receipt in respect of Room No. 5 is in the name of Ramdas Chowdhry, the late father of the Plaintiff, and the rent receipts in respect of Room Nos. 6 and 7 are in the name of the Plaintiff.

3.2 A scheme to widen Andheri-Kurla Road came to be implemented by the Brihanmumbai Municipal Corporation (BMC). To unjustly avail the benefits of the said road widening project to the extent it affects the suit premises, the Defendant threatened to dispossess the Plaintiff and his family members. Thus, the Plaintiff instituted a RAD Suit seeking a declaration that the Plaintiff is a tenant in respect of the suit premises and the consequential relief of prohibitory injunction.

3.3 In the said suit, the Plaintiff took out an application for grant of temporary injunction (Exhibit-9). The said application was resisted by the Defendant / the Petitioner herein, contending inter alia that the Plaintiff is not the tenant in respect of the suit premises, nor the Plaintiff has been in

possession thereof. The Plaintiff has suppressed material facts and vital documents. In fact, the Plaintiff had surrendered the tenancy in respect of the suit premises in consideration of the no objection given by the Defendant for the allotment of the alternate premises in respect of Room Nos. 3 and 4, which were acquired for the said road widening project. Thereafter, a leave and licence agreement was executed between the Defendant and Mr. Naresh Ramprakash Chowdhry, the son and the Power of Attorney of the Plaintiff. The said Naresh Chowdhry had paid the agreed licence fee for the occupation of the suit premises. The Defendant had also instituted proceedings before the Competent Authority for eviction of the said Naresh Chowdhry from the suit premises, and an order of eviction was passed by the Competent Authority. Therefore, the Plaintiff was not entitled to any discretionary relief on account of gross suppression of facts.

3.4 The learned Judge, Court of Small Causes, was persuaded to reject the application for temporary injunction primarily on the ground that the Plaintiff had suppressed the material facts and did not approach the Court with clean hands.

Neither a suit for cancellation of the documents which were allegedly fraudulently obtained from the Plaintiff and his family members was instituted nor any complaint was filed in respect of the said allegedly forged and fabricated documents. On the contrary, there was material to indicate that, Naresh Chowdhry, the son of the Plaintiff, had paid licence fee in accordance with the terms of the registered leave and licence agreement. Thus, the Plaintiff was not entitled to the interim relief.

3.5 The Plaintiff carried the matter in appeal before the Appellate Bench of the Court of Small Causes.

3.6 By the impugned order, the Appellate Bench was persuaded to interfere with the order passed by the Trial Judge principally for the reason that there were suspicious circumstances surrounding the execution of the documents propounded by the Defendant. The fact that all the documents, including the deed of surrender and the registered leave and licence agreement were executed on one and the same day i.e. 12<sup>th</sup> September 2022, weighed with the Appellate Bench in doubting the genuineness and reliability of those documents.

3.7 Consistent with these findings, the Appellate Bench

held that, the question whether the Plaintiff or his son Naresh Chowdhry was in occupation of the subject premises and/or for that matter, whether the possession of Naresh, the son of the Plaintiff is referable to the tenancy rights or the leave and licence agreement warranted adjudication at the trial. Therefore, the Plaintiff could not be dispossessed till the said issues were decided after the trial. Therefore, the Appellate Court considered it necessary to grant interim injunction in the terms indicated above.

4. Being aggrieved, the Defendant has invoked the writ jurisdiction.

5. I have heard Mr. Surel Shah, the learned Senior Advocate for the Petitioner, and Mr. Sunil Mishra, the learned counsel for the Respondent no. 2, at some length. The learned counsel took the Court through the pleadings, documents and material on record.

6. Mr. Surel Shah, the learned Senior Advocate for the Petitioner, submitted that, the Appellate Bench committed a manifest error in law in transgressing the jurisdictional limits in the matter of interference with a discretionary order passed by the Trial Court. The Appellate Bench completely lost sight of the fact that its jurisdiction to

interfere in the discretionary order was circumscribed by limitations. The Appellate Bench, however, approached the matter as if it was entitled to re-appreciate and re-evaluate the material and take a different view of the matter.

7. Mr. Shah would urge that, the order passed by the Trial Court does not suffer from such perversity or unreasonableness as to warrant interference by the Appellate Bench. In the process, according to Mr. Shah, the Appellate Bench misdirected itself in completely ignoring the material suppression of facts by the Plaintiff. The Plaintiff had not approached the Court with a case that the Plaintiff and his family members were coerced, or otherwise defrauded, to execute the documents. The execution of documents, including the deed of surrender of tenancy and registered leave and licence agreement, was such a notorious fact that, the Plaintiff could not have missed to state in the plaint, yet, the Plaintiff approached the Court with a bald assertion that the Defendant threatened to dispossess him. In the meanwhile, the Plaintiff obtained the advantage on the strength of the no objection certificate given by the Defendant in obtaining the alternate accommodation on account of the demolition of the shop Nos. 3 and 4 in the said road widening project. Having obtained the

benefits under the bargain and deliberately suppressed the vital facts and documents, the Plaintiff could not have been granted the discretionary relief, submitted Mr. Shah.

8. It was further urged that Naresh Chowdhry, the son of the Plaintiff, himself claimed to be a tenant in respect of the suit premises in the eviction proceedings filed before the Competent Authority under Section 24 of the Rent Act, 1999. The Competent Authority passed an order of eviction. The Revisional Authority dismissed the Revision Application. What exacerbates the situation, according to Mr. Shah, is the fact that, when the order was sought to be executed, it transpired that the suit premises has been converted into three commercial units and thus the order of eviction passed by the Competent Authority could not be executed as the licenced premises could not be identified at site. A copy of the panchnama in Execution Application No. 191 of 2022 before the Competent Authority was placed on the record of this Court. All these factors were lightly brushed aside by the Appellate Bench, submitted Mr. Shah.

9. Lastly, Mr. Shah urged, with a degree of vehemence that, under no circumstances, the Appellate Bench could have restrained the Defendant from transferring or otherwise creating any third party

interest in the suit premises. The Plaintiff does not claim any proprietary interest in the suit premises. In a suit for mere declaration of the tenancy, the Defendant could not have been restrained from transferring alienating, or otherwise creating any third party interest in the suit premises, was the thrust of the submission of Mr. Shah.

10. Per contra, Mr. Sunil Mishra, the learned counsel for the Respondent no. 2- Plaintiff would urge that, the Appellate Bench was fully justified in interfering with the order passed by the Trial court. The execution of the deed of surrender of tenancy and the leave and licence agreement on one and the same day is fraught with such infirmities that suspicion about the genuineness and veracity of those documents is writ large.

11. Mr. Mishra would urge that, there was no justifiable reason for the tenant to surrender the tenancy without any apparent benefit. Mr. Mishra submitted that, it defines comprehension that, after the surrender of tenancy, the landlord would again execute a leave and licence agreement in favour of the son of the Plaintiff on the very day. Cumulatively, the explanation offered by the Plaintiff regarding the said documents having been fraudulently obtained by the Defendant on the pretext of assisting the Plaintiff in obtaining alternate

accommodation is worthy of acceptance. The Appellate Bench was therefore, within its right in holding that a very strong prima facie case was made out by the Plaintiff. Mr. Mishra would urge that, the alleged change in user of the premises sought to be established by pressing into service, a copy of the panchnama in Execution Application No. 194 of 2024 cannot be delved into by this Court as the said document was not tendered before the Appellate Bench. The change of user of the premises has been effected in the year 2000 itself.

12. From the perusal of the material on record, prima facie, the following factual position emerges.

a) Room No. 3,4,5,6 and 7 in the Bachubhai Chawl were in the occupation of the Plaintiff and his family members. Ramdas Chowdhry, the father of the Plaintiff was original tenant in respect of Room Nos. 3, 4 and 5. The Plaintiff was the tenant in respect of Room Nos. 6 and 7. The said chawl abutted Andheri-Kurla Road. As the road widening project was implemented by the MCGM, the portions of the said chawl were demolished. It appears, the dispute has its genesis in the said demolition of the portions of the chawl and allotment of

alternate accommodation in lieu of the affected portion.

b). It is the case of the Defendant that, in the wake of the said road widening project, the Plaintiff and his family members executed a deed of surrender of the suit premises on 12<sup>th</sup> September 2022. On the same day, the Defendant had executed the affidavit cum-declaration-cum-indemnity thereby giving no objection for the allotment of a rehab accommodation to the Plaintiff and his brother Prem Prakash Choudhry in lieu of Room No. 3 and Room No. 4. Simultaneously, on the very day the Defendant executed a registered leave and licence agreement in favour of Naresh kumar Chowdhry granting licence to Naresh kumar Chowdhry, son of the Plaintiff, to use and occupy the suit premises i.e. Room nos. 5, 6 and 7 for a term of eleven months on the condition of payment of licence fee @ Rs. 3,000/- per month.

c). It further appears that, upon the expiry of the term of the said licence, the Petitioner/Defendant instituted proceedings before the Competent Authority

for eviction of Naresh Chowdhry from the suit premises. The Competent Authority passed an order on 17<sup>th</sup> October 2024, directing the eviction of Naresh Chowdhry. A Revision thereagainst was dismissed by the Additional Divisional Commissioner, Konkan Division by judgment and order dated 13<sup>th</sup> June 2025.

13. The situation which thus emerges is that, on the one hand, the Plaintiff claims that, he continues to be a tenant in respect of the suit premises i.e. Room Nos. 5, 6 and 7 and, on the other hand, the Defendant contends that, the Plaintiff and his family members had surrendered their tenancy rights in consideration of no objection given by the landlord for the allotment of the alternate accommodation in lieu of Room Nos. 3 and 4.

14. The learned Judge, Court of Small Causes, was of the view that all the aforesaid developments and documents were conspicuous by their absence in the plaint. Therefore, the Plaintiff, having not approached the Court with clean hands was not entitled to injunction. In contrast, the Appellate Bench held that the learned Trial Judge was unduly influenced by the aforesaid

documents without scrutinising their genuineness and reliability, especially the execution of all those documents on one and the same day, which alone was sufficient to raise significant doubts. Holding thus, the Appellate Bench interfered with the discretion exercised by the learned Trial Judge. Whether the aforesaid approach of Appellate Bench is justifiable?

15. That brings to the fore contours of jurisdiction of the Appellate Court in an appeal against the discretionary order. The legal position is well recognised. Ordinarily, the Appellate Court is not expected to interfere with the exercise of discretion in the matter of grant or refusal of injunction by the Trial Court and substitute its own discretion for the same, except in those cases, where it could be demonstrated that, the discretion was exercised by the Trial Court arbitrarily or perversely or the order impugned before the Appellate Court was contrary to the settled principles of law.

16. Arbitrariness in the exercise of discretion or perversity in the order passed by the Trial Court can arise, where the injunction has been granted sans material or the Trial Court has declined to grant temporary injunction, despite existence of

justifiable material.

17. An appeal against discretionary order is an appeal on principle. It is not open for the Appellate Court to reassess and reweigh the material so as to arrive at a different conclusion than the one reached by the Court below, if that conclusion was reasonably possible in the facts of the given case.

18. A profitable reference, in this context, can be made to an often referred three Judge Bench decision of the Supreme Court in the case of *Wander Ltd and Anr. Vs. Antox India P. Ltd.*<sup>1</sup>, wherein the legal position was illuminatingly postulated as under:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have

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1 1990 (Supp) SCC 727

come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles “Gajendragadkar, J. in Printers (Mysore) Pvt. Ltd. V/s. Pothan Joseph”.<sup>2</sup> :

*“... These principles are well established, but as has been observed by Viscount Simon in Charles Oseption & Co. v. Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.*

*The appellate judgment does not seem to defer to this principle.”*

(emphasis supplied)

19. In the case of ***‘Seema Arshad Zaheer and Ors Vs. Municipal Corporation of Greater Mumbai and Ors.’***<sup>3</sup>, the Supreme Court expounded the principles which govern the interference by the Appellate Court in the discretionary order passed by the Trial Court. The observations in Para No. 32 are instructive and, hence, extracted below:

“32. Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of discretion by granting a temporary injunction when there is 'no material', or

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<sup>2</sup> (1960) 3 SCR 713

<sup>3</sup> (2006) 5 SCC 282

refusing to grant a temporary injunction by ignoring the relevant documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we refer to acting on 'no material' (similar to 'no evidence'), we refer not only to cases where there are total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of supporting the exercise of discretion. In this case, there was 'no material' to make out a prima facie case and therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the temporary injunction granted by the trial court.”

(emphasis supplied)

20. Another three Judge Bench of the Supreme Court in the case of *‘Skyline Education Institute (India) Vs. S.L. Vaswani and Anr.’*<sup>4</sup>, culled out the principles in the following words.

“22. The ratio of the abovenoted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity”.

(emphasis supplied)

21. In a recent pronouncement in the case of *‘Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and Ors.’*<sup>5</sup>, the Supreme

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4 (2010) 2 SCC 142

5 (2024) SCC online SC 3538

Court, after a survey of the authoritative pronouncements, enunciated that, the principles of law expounded by the Supreme Court in the case of “**Wander**” (supra) have been reiterated in a number of subsequent decisions. However, over a period of time the test laid down by the Supreme Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit. In conclusion, the Supreme Court said, as under:

“32. The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well settled principles governing the scope of jurisdiction of appellate court under [Order 43 of the CPC](#) which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours [laid down in](#) the [Wander](#) (supra) case”.

22. Reverting to the facts of the case, it has to be seen whether the Appellate Bench kept in view the limits of jurisdiction in assessing legality, propriety and correctness of the order passed by the Trial Court. First and foremost, it is imperative to note that, the entire body of documents i.e. the affidavit-cum-declaration-cum-indemnity, the deed of surrender of tenancy, the registered leave and licence

agreement and the affidavits of declaration giving no objection by the Defendant / landlord for allotment of alternate premises to the tenant, was not at all adverted to by the Plaintiff in the plaint. Instead, the Plaintiff approached the Court as if these documents did not exist at all. The plain case of the Plaintiff was that the Defendant was threatening to dispossess the Plaintiff to obtain undue advantage of the benefits that would be admissible to the occupants of the premises affected by the said road widening project. This omission was of critical salience.

23. The learned Judge, Court of Small Causes was justified in drawing an inference against the Plaintiff for not adverted to those documents in the plaint. It is true, after the documents were placed on record, an endeavour was made on behalf of the Plaintiff to urge that, those documents were obtained by the Defendant from the Plaintiff and his family members on the pretext of assisting the Plaintiff in getting the alternate accommodation. This stand implied that, the execution, as such, of the aforesaid documents was not, prima facie, put in contest.

24. It is true that there is an essential distinction between a challenge to the character of the document and content of the

document. A party is entitled in law to assert that the document which is propounded by the adversary was not the document which the party intended to execute, and the real transaction between the parties was different from apparent tenor of the document. However, for that purpose, such party must approach the Court with a positive case that, he was made to execute the document under a mistaken belief about the real character of the document and, wherever warranted, seek a declaration in regard to such document. In the absence thereof, the explanation sought to be offered by the Plaintiff after the documents were propounded by the Defendant ought to have been accepted with a pinch of salt by the Appellate Bench.

25. The Appellate Bench did not consider the consequences the suppression of material facts entailed, especially in the matter of grant of equitable relief. The principle that a litigant who suppresses material facts cannot seeks relief from the Court applies with a greater force in the matter of grant of equitable relief. The law has developed to the point that the litigant who approach the Court with unclean hands are not even entitled to be heard on the merits of their case. When a party seeks equitable relief, the conduct of such party is required to be decided on the touchstone of principle of *uberrima fide* .

26. A profitable reference in this context can be made to the judgment of the Supreme court in the case of *Amar Singh Vs Union of India and Ors.*<sup>6</sup>, where this principle was expounded in the matter of grant of equitable relief of injunction.

27. The observations of the Supreme Court in Para No. 53 to 59 read as under:

"53. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with "unclean hands" and are not entitled to be heard on the merits of their case.

54. In *Dalglish v. Jarvie* {2 Mac. & G. 231,238}, the Court, speaking through Lord Langdale and Rolfe B., laid down:

"It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward."

55. In *Castelli v. Cook* {1849 (7) Hare, 89,94}, Vice Chancellor Wigram, formulated the same principles as follows:

"A plaintiff applying ex parte comes under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as has broken faith with the Court, the

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6 (2011) 7 SCC 69

injunction must go."

56. In the case of Republic of Peru v. Dreyfus Brothers & Company {55 L.T. 802,803}, Justice Kay reminded us of the same position by holding:

"...If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith with the Court when ex parte applications are made."

57. In one of the most celebrated cases upholding this principle, in the Court of Appeal in R. v. Kensington Income Tax Commissioner {1917 (1) K.B. 486} Lord Justice Scrutton formulated as under:

"and it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- facts, now law. He must not misstate the law if he can help it - the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

58. It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings and especially when it contains a prayer for injunction. A prayer for injunction, which is an equitable remedy, must be governed by principles of 'uberrima fide'.

59. The aforesaid requirement of coming to Court with clean hands has been repeatedly reiterated by this Court in a large number of cases. Some of which may be noted, they are: Hari Narain v. Badri Das - AIR 1963 SC 1558, Welcome Hotel and others v.State of A.P. and others - (1983) 4 SCC 575, G. Narayanaswamy Reddy (Dead) by LRs. and another v.Government of Karnatka and another - JT 1991(3) SC 12: (1991) 3 SCC 261, S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. and others - JT 1993 (6) SC 331: (1994) 1 SCC 1, A.V. Papayya Sastry and others v. Government of A.P. and others - JT 2007 (4) SC 186: (2007) 4 SCC 221, Prestige Lights Limited v. SBI - JT 2007(10) SC 218: (2007) 8 SCC 449, Sunil Poddar and others v. Union Bank of India - JT 2008(1) SC 308: (2008) 2 SCC 326, K.D.Sharma v. SAIL and others - JT 2008 (8) SC 57: (2008) 12 SCC 481, G. Jayashree and others v. Bhagwandas S. Patel and others - JT 2009(2) SC 71 : (2009) 3 SCC 141, Dalip Singh v. State of U.P. and others”.

28. In the case of ***Rekha Sharad Ushir Vs. Saptashrungi Mahila Nagari Sahkari Patsansta Ltd.***<sup>7</sup>, the following the pronouncement of the Supreme Court in the case of ***S.P. Chengalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LRs and Ors.***<sup>8</sup>, the Supreme Court enunciated that, it is settled law that a litigant who, while filing proceedings in the court, suppresses material facts or makes a false statement, cannot seek justice from the court. The facts suppressed must be material and relevant to the controversy, which may have a bearing on the decision making. Cases of those litigants who have no regard for the truth and those who indulge in suppressing material facts need to be thrown out

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<sup>7</sup> (2025) SCC online SC 641

<sup>8</sup> (1994) 1 SCC 1

of the court.

29. The factor which primarily weighed with the Appellate Bench was execution of the document on one and the same day i.e. 12<sup>th</sup> September 2022. Why Naresh Chowdhry was shown as a tenant in deed of surrender? why on the very day a leave and licence agreement was executed in favour of Naresh Chowdhry, when the tenancy was surrendered and vacant possession of the suit premises was delivered to the Defendant under the deed of surrender? These questions persuaded the Appellate Bench to doubt the genuineness and veracity of those documents.

30. From the perusal of those documents, it becomes evident that, not only Naresh Chowdhry but other family members of the Plaintiff were the executants to the affidavits-cum-declaration-cum-indemnity. All the family members authorised the Plaintiff and his son Naresh Chowdhry to execute the deed of surrender in favour of the landlord. Prima facie, the mere fact that all the documents were executed on the same day, by itself, does not create such suspicion as to throw the Defendant's case overboard. Such a situation is not inconceivable. It is quite possible and not uncommon that the jural relationship between the parties is altered by executing simultaneous

documents.

31. Mr. Surel Shah was justified in canvassing a submission that the Appellate Bench in exercise of limited Appellate jurisdiction was not justified in casting aside the documents on the ground that, there were suspicious circumstances, in the absence of a positive case of the Plaintiff.

32. The fact that the leave and licence agreement was acted upon by the parties, especially Naresh, the son and the Power of Attorney of the Plaintiff, prima facie becomes evident from the fact that after the execution of the leave and licence agreement, Naresh Chowdhry paid the license fee of Rs. 3,000/- every month, till the month of May 2023. This conduct, prima facie, dents the case of the Plaintiff that, the Plaintiff continued to be in the occupation of the suit premises as a tenant thereof. It would be contextually relevant to note that, in the proceedings before the Competent Authority, Naresh claimed that, he was the tenant in the suit premises and had paid rent of Rs.3,000/- p.m. to the landlord. Prima facie the payment is referable to the leave and licence agreement.

33. In addition, there are documents which evidence the allotment of the alternate accommodation as well as payment of

compensation by the Municipal Corporation to the Plaintiff and his family member in respect of the said road widening project. The letters of allotment of alternate accommodation to the plaintiff and Premkumar Naresh Chowdhry are placed on record at Exhibit-K (Page 191 to 196 of the petition). Documents evidencing the allotment of monetary compensation are also placed on record at Exhibit-L (page 203 to 204).

34. The moot question that crops up for consideration is, whether, in the face of the aforesaid material, the Appellate bench was justified in interfering with the order passed by the Trial Court. In my considered view, the Appellate Bench transgressed the jurisdictional limits and unjustifiably interfered with discretionary order which was sustainable in the light of the material on record. The Appellate Bench reappreciated the evidence and arrived at a different conclusion. The observations of the Appellate Bench that, tenant had no reason to surrender the tenancy appeared to be against the weight of material on record as, prima facie, it appeared that the Plaintiff had altered his position in lieu of the benefits which were extended by the Municipal Corporation in respect of the affected structures, on the basis of the no objection given by the landlord.

35. At any rate the Appellate Bench was clearly in error in restraining the defendant / landlord from alienating or creating third party interest in the suit premises. At best, the plaintiff had the tenancy rights in the suit premises. A complete restraint on alienation or creation of any third party interest in the suit premises which ordinarily would not impinge on the tenancy right of the tenant, was wholly unsustainable. In the absence of the assertion of any propriety rights over the suit premise, plaintiff/ owner of the suit premises could not have been restrained from exercising the incident of ownership over the suit premises.

36. The conspectus of aforesaid consideration is that the impugned order suffers from manifest infirmities and, therefore, warrants interference in exercise of the supervisory jurisdiction. Resultantly, the petition deserves to be allowed.

37. Hence, the following order:

#### **ORDER**

- i) The petition stands allowed
- ii) The impugned order stands quashed and set aside.
- iii) The order passed by the Trial Court stands restored.
- iv) The application (Exhibit-9) stands rejected.
- v) Rule made absolute to the aforesaid extent.

No costs.

**(N.J. JAMADAR, J)**