

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

**CIVIL REVISION APPLICATION NO. 74 OF 2025**

SANTOSH  
SUBHASH  
KULKARNI

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SANTOSH SUBHASH  
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Date: 2025.06.17  
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1. M/s. Gada Enterprises, a registered  
Partnership firm having its office at  
Deepawali Bungalow, Main Kasturba  
Road No.5 Borivali (West),  
Mumai – 499 966

2. Surendra Damji Shah, having his  
address at c/o. M/s. Gada Enterprises

...Applicants

**Versus**

1. Harilal Talakshi Shah

2. Kantilal Ramji Devji

3. Ratanbai Ramji Devji

4. Kalpana Ramji Devji alias Kalpana Sunil  
Koladia

5. Hindumati Vasant Cheda

6. Smt. Meena Itesh Savla

7. Mumbai Municipal Corporation

...Respondents

Mr. Simil Purohit, Senior Advocate, a/w Rohan Sawant i/b  
Raju Jain, for the Applicants.

Ms. Prachi Khandge, i/b Nitesh Bhutekar, for the Respondents.

**CORAM: N. J. JAMADAR, J.**

**RESERVED ON: 6<sup>th</sup> MAY, 2025**

**PRONOUNCED ON: 17<sup>th</sup> JUNE, 2025**

**ORDER:-**

1. This revision is directed against an order dated 30<sup>th</sup>  
January, 2025 in Notice of Motion No.2347 of 2024 in SC Suit  
No.5170 of 2024 passed by learned Judge, City Civil Court,

Mumbai, whereby the Notice of Motion taken out by applicant Nos.1 and 2 for the rejection of the plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (“the Code”), came to be rejected.

**2.** Shorn of unnecessary details, the background facts leading to this application can be stated as under:

**2.1** Hansraj Kapadia and Veermati Hansraj Kapadia were the owners of the property bearing Survey No.164 and Survey No.3 Hissa No.1, City Survey No.55, 55/1 and 55/18, admeasuring 3267 sq. yards equivalent to 2752.62 sq. mtrs. situated at village Magthane, Taluka Borivali (“the suit land”). Under an Indenture of Lease dated 14<sup>th</sup> September, 1962, the Kapadias leased out the suit land for a term of 99 years to Jayantilal Mehta. The latter had erected three buildings and one incomplete building, on the suit land (“the suit property”).

**2.2** Mr. Jayatilal Mehta had mortgaged the suit properties in favour of Ramji Devji and others. In order to repay the mortgage money, under an Indenture of Assignment dated 20<sup>th</sup> April, 1971, Jayantilal Mehta assigned the leasehold rights in the suit property in favour of the father of the plaintiff and the predecessor-in-title of defendant Nos.3 to 7.

**2.3** On 22<sup>nd</sup> November, 2002, an unregistered Agreement of Assignment came to be executed between the plaintiff and the other leasehold right holders, on the one part, and defendant Nos.1 and 2, for assignment of the leasehold rights of the plaintiff and co-lessees, for a consideration of Rs.26,00,000/-. Under the said agreement, defendant No.1 was allowed to enter into the suit property, put up boards, negotiate with the tenants, demolish existing structures and construct buildings on the suit land. A Power of Attorney was executed in favour of defendant No.1.

**2.4** The plaintiff claims, defendant Nos.1 and 2 committed default in the performance of their part of the contract as only a sum of Rs.13,00,000/- was paid towards part consideration. Thus, the plaintiff and the co-lessees terminated the said agreement dated 22<sup>nd</sup> November, 2002 vide notice dated 5<sup>th</sup> February, 2005.

**2.5** The plaintiff claims that, despite the said termination, the defendants continued to assure the plaintiff and his family members that the defendants were negotiating with the tenants and upon redevelopment, with the consent of the tenants, the balance consideration amount would be paid.

**2.6** In the month of January, 2015, according to the plaintiff, it transpired that the defendants had completed the negotiations with the tenants and were about to redevelop the suit property. The plaintiff made enquiries with the Brihanmumbai Municipal Corporation ("BMC"-D8). Thereupon, it transpired that the permission to develop the suit land was granted by defendant No.8 on the basis of a conveyance dated 26<sup>th</sup> December, 2006 executed by the Kapadias, in favour of defendant No.2.

**2.7** Asserting that, the Kapaidas had no right to convey the suit land with the subsisting leasehold rights of the plaintiff and the other co-lessees and that, on the strength of the development permission unlawfully obtained, defendant Nos.1 and 2 were carrying out illegal demolition and erection of new structures, the plaintiffs instituted the suit for a declaration that the plaintiff and his family members were not bound by the registered conveyance dated 26<sup>th</sup> December, 2006 allegedly executed by the purported legal heirs of Mr. Hansraj Kapadia, and, in the alternative, a declaration that the plaintiff and his family members have subsisting leasehold rights and the alleged instrument dated 26<sup>th</sup> December, 2006 was subject to the leasehold rights of the plaintiff, and an order for delivery of clear

and vacant possession of the suit property and the consequential injunctive reliefs.

**2.8** It would be contextually relevant to note that subsequently the plaint came to be further amended so as to implead defendant Nos.9 to 12, in whose favour defendant Nos.1 and 2 have executed a registered development agreement dated 31<sup>st</sup> March, 2021, thereby granting development rights over the suit property. The plaintiff has, thus, sought further reliefs.

**2.9** Defendant Nos.1 and 2 took out the Notice of Motion seeking the rejection of the plaint under the provisions of Order VII Rule 11 of the Code contending, *inter alia*, that there was no cause of action for the suit as at the highest the plaintiff and the co-lessees were holding leasehold rights in the suit property and they can not question the conveyance of the reversionary rights by the original owner in favour of defendant No.2. Secondly, the suit was clearly barred by law of limitation as the conveyance in question was executed on 26<sup>th</sup> December, 2006 by a registered instrument which constitutes notice to the world at large.

**2.10** It was further contended that, at any rate, since the plaintiff was claiming declaration of being lessee of the suit land, the City Civil Court had no jurisdiction to entertain, try

and decide the suit, as under the provisions of Section 41 of the Presidency Small Causes Courts Act, 1882 (“the Act, 1882”), the Court of Small Causes had exclusive jurisdiction. Thus, the plaint was liable to be returned for presentation to the proper Court under the provisions of Order VII Rule 10 of the code.

**2.11** The application was resisted by the plaintiff.

**2.12** By the impugned order, the learned Judge, City Civil Court, was persuaded to reject the application observing, *inter alia*, that the contention of defendant Nos.1 and 2 that there was no cause of action was clearly untenable; the averments in the plaint did make out a cause of action. The question as to whether the relief of declaration qua the conveyance dated 26<sup>th</sup> December, 2006 was barred by law of limitation was a mixed question of law and facts. The learned Judge was also of the view that, since the plaintiff was seeking relief which the Court of Small Causes was not empowered to grant, only the Civil Court had the jurisdiction to entertain, try and decide the suit.

**3.** Being aggrieved, defendant Nos.1 and 2 have invoked the revisional jurisdiction.

**4.** I have heard Mr. Simil Purohit, the learned Senior Advocate for the applicant, and Ms. Prachi Khandge, the learned

Counsel for respondent No.1 – plaintiff, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record especially the averments in the plaint in Suit No.5170/2024.

5. Mr. Purohit, the learned Senior Advocate for the applicant, would strenuously urge that the learned Judge, City Civil Court, completely misdirected himself in rejecting the application for rejection of the plaint. A clear case of clever drafting to create an illusion of a cause of action was made out. Mr. Purohit laid emphasis on the fact that the suit is primarily for the declaration that the registered conveyance dated 26<sup>th</sup> December, 2006 of the reversionary rights in favour of defendant No.2 is not binding on the plaintiff and co-lessees.

6. According to Mr. Purohit, the plaintiff will have to encounter three insuperable hurdles to the suit of this nature. First, such a declaration sought by the plaintiff premised on the leasehold rights is, in effect, a declaration regarding the status of the plaintiff and others as the lessees. In fact, by way of amendment, an alternate prayer of declaration that the plaintiff and other co-leaseholders are the lessees of the suit property and the registered conveyance deed dated 26<sup>th</sup> December, 2006 does not bind their leasehold rights has been made. In such a

situation, the Civil Court has no jurisdiction in view of the clear and explicit bar contained in Section 41 of the Act, 1882.

7. Secondly, the plaintiff and the other co-lessees, have no locus to seek a declaration against the validity of the instrument executed by the reversioner in favour of defendant No.2. The plaintiff and co-lessees have admittedly no proprietary title in the suit property and, therefore, cannot seek such declaration.

8. Thirdly and most importantly, according to Mr. Purohit, the registered conveyance deed dated 26<sup>th</sup> December, 2006 constitutes a notice to the public at large and the date of the knowledge of the instrument can be attributed to the plaintiff from the date of the registered conveyance i.e. 26<sup>th</sup> December, 2006. In addition, according to Mr. Purohit, in the case at hand, there is material to indicate that in the year 2010 itself, the plaintiff and the co-lessees were aware of the execution of the said conveyance and had addressed a notice on 27<sup>th</sup> July, 2010, questioning the legality and validity of the said conveyance deed dated 26<sup>th</sup> December, 2006. Therefore, the suit is *ex facie* barred by law of limitation. To buttress these submissions, Mr. Purohit placed a very strong reliance on the decisions of the Supreme Court in the cases of *Dilboo (Smt) (Dead) By LRs and*

*others vs. Dhanraji (Smt)(Dead) and others*<sup>1</sup> and *Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and others*<sup>2</sup>.

9. Mr. Purohit would further urge that the learned Judge, City Civil Court, was in error in not reading the averments in the plaint and the documents annexed thereto, in a meaningful manner. A plaintiff cannot be permitted to suppress material facts so as to show the cause of action. To this end, Mr. Purohit placed reliance on the decision of the Supreme Court in the case of *Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman vs. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee*<sup>3</sup>.

10. Mr. Purohit also banked upon the decisions of the Supreme Court in the cases of *T. Arvindam vs. T. V. Satyapa and another*<sup>4</sup>, *Sopan Sukhdeo Sable and others vs. Assistant Charity Commissioner and others*<sup>5</sup> and *Rajendra Bajoria and others vs. Hemant Kumar Jalan and others*<sup>6</sup>.

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**1** (2000) 7 SCC 702.

**2** (2020) 7 SCC 366.

**3** (2012) 8 SCC 706.

**4** (1977) 4 SCC 467.

**5** (2004) 3 SCC 137.

**6** (2022) 12 SCC 641.

11. Mr. Purohit would further urge that the plaintiff had resorted to clever drafting and made prayers in respect of development permission granted by defendant No.8, to camouflage the real nature of the suit. Yet the foundational premise of the plaintiff's claim is the declaration qua the conveyance dated 26<sup>th</sup> December, 2006, and, once, the principal or substantive relief is barred by law of limitation, the consequential reliefs of delivery of possession and injunction cannot be granted. To bolster up this submission, Mr. Purohit placed reliance on the judgment of the Supreme Court in the case of *Padhiyar Prahladi Chenaji (deceased) through Legal Representatives vs. Maniben Jagmalbhai (deceased) through Legal Representatives and ors.*<sup>7</sup>, wherein it was enunciated that once the suit is held to be barred by the law of limitation qua the declaratory relief and when the relief for permanent injunction was a consequential relief, the prayer for permanent injunction, which was a consequential relief can also be said to be barred by law of limitation.

12. In opposition to this, Ms. Khandge, the learned Counsel for respondent No.1, would submit that the claim of defendant Nos.1 and 2 that there is no cause of action is untenable as well

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**7** (2022) 12 Supreme Court Cases 128.

as dishonest. Defendant Nos.1 and 2, after having entered into an agreement for assignment of leasehold rights and getting the possession of the suit property surreptitiously entered into a transaction with the alleged original holders, who had divested their interest in the suit property long back. On the one hand, defendant Nos.1 and 2 made the plaintiff and co-lessees believe that they were in the process of redevelopment and, on the other hand, defendant Nos.1 and 2 behind the back of the plaintiff, clandestinely obtained a purported conveyance from the owners of the suit property and on the strength thereof obtained the development permission.

13. Ms. Khandge further submitted that it is well recognized that, while considering an application for rejection of the plaint, under Order VII Rule 11 of the Code, only the averments in the plaint are required to be taken into account. The submissions on behalf of defendant Nos.1 and 2 that the plaintiff had knowledge about the alleged conveyance in the year 2010 itself is essentially a matter of defence. At this stage, the defence of defendant Nos.1 and 2 is wholly irrelevant. In any event, according to Ms. Khandge, the question of limitation is a mixed question of law and fact and cannot be decided at the primary

stage without providing an effective opportunity of hearing to the parties.

14. Refuting that the City Civil Court lacks inherent jurisdiction to entertain and decide the suit, Ms. Khandge would urge that the various reliefs sought by the plaintiff cannot be granted by the Court of Small Causes. If the reliefs are interconnected, the plaint cannot be rejected at the threshold on the ground that one of the reliefs is not tenable. To lend support to this submission, Ms. Khandge placed reliance on the decision of the Supreme Court in the case of *Sri Biswanath Bank and another vs. Sulanga Bose and others*<sup>8</sup>. Reliance was also placed on the judgment of the Supreme Court in the case of *Balasaria Construction (P) Ltd. vs. Hanuman Seva Trust and others*<sup>9</sup>.

15. I have carefully considered the aforesaid rival submissions canvassed across the bar. To begin with, it may be apposite to note few uncontroverted facts. There is not much controversy over the fact that the Kapaidas had executed a lease for a term of 99 years in favour of Mr. Jayantilal Mehta, under an Indenture of Lease dated 14<sup>th</sup> September, 1962. Nor there is much dispute over the fact that the said Jayantilal Mehta had

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8 (2022) 7 SCC 731.

9 (2006) 5 SCC 658.

erected structures over the suit land and executed an Indenture of Assignment of the leasehold rights in the suit property in favour of the father of the plaintiff and the predecessor-in-title of defendant Nos.3 to 7. The execution of an agreement for assignment of leasehold rights of the plaintiff and co-lessees in favour of defendant No.1, on 22<sup>nd</sup> November, 2002, is also not in contest. The parties are at issue as to who was in default and whether the said agreement dated 22<sup>nd</sup> November, 2002 was lawfully terminated, as alleged by the plaintiff.

16. Under the said agreement, defendant Nos.1 and 2 were put in possession of the suit property. At the heart of the controversy is the capacity in which defendant Nos.1 and 2 started the development of the suit property. Defendant Nos.1 and 2 claimed to have acquired the reversionary rights from the original owner and commenced development on the strength thereof. The plaintiff asserts defendant Nos.1 and 2 were in breach of the agreement for assignment, under which defendant Nos.1 and 2 obtained the possession of the suit property and thereafter surreptitiously obtained the conveyance from the original owner and thereby defeat the rights of the plaintiff and other leaseholders.

17. The legal position as regards the contours of the power to reject the plaint under the provisions of Order VII Rule 11 of the Code is well neigh settled. At the stage of the consideration of a prayer for the rejection of the plaint, the Court is required to read the averments in the plaint to ascertain as to whether the plaint does not disclose any cause of action or the relief claimed therein is otherwise barred by any law. It is trite, the Court is enjoined to read the plaint in a meaningful and not formalistic manner. If an illusion of a cause of action is created, where none exists, by resorting to clever drafting, the Court must decipher the real nature of the suit and nip such vexatious and abortive suit in the bud.

18. In the case of *Dahiben* (supra), after an elaborate analysis of the provisions of Order VII Rule 11 and adverting to the previous pronouncements, the Supreme Court enunciated that the underlying object of Order VII Rule 11(a) is that if in a suit, no cause of action is disclosed or the suit is barred by law of limitation under the Rule 11(d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted. The test for exercising the power under Order VII Rule 11 is that, if the

averments made in the plaint are taken in its entirety, in conjunction with the documents relied upon, would the same result in a decree being passed.

19. On the aforesaid touchstone, reverting to the facts of the case, it is necessary to note that the transaction between the plaintiff defendant Nos.1 and 2, on the one part, and defendant No.2 and the original owner, on the other part, are, in a sense, intertwined. From the perusal of the instruments executed by and between the parties, of which there is a reference in the plaint and, thus, become the part of the plaint in terms of the dictum of the Supreme Court in the case of *Dahiben* (supra), it becomes evident that the grant of lease by the original owner in favour of Mr. Jayantilal Mehta was for a long term of 99 years, thereby justifying an inference of perpetual lease. There are averments in the plaint to the effect that Mr. Jayantilal Mehta had erected structures over the suit land and, thereafter, to redeem the mortgage for a valuable consideration of Rs.1,10,000/-, executed an assignment of leasehold rights in the suit property in favour of the predecessor-in-title of the plaintiff.

20. As noted above, defendant Nos.1 and 2 entered into the suit property, nay obtained the possession thereof for the purpose of development, under an agreement for assignment of

the leasehold rights dated 22<sup>nd</sup> November, 2002. Defendant Nos.1 and 2, in response to the notice of termination, have claimed that they were still ready and willing to perform their part of contract by paying the balance consideration. Lastly, under the conveyance executed by Shantikumar and Jitendra, the successors in interest of Hansraj Kapadia, the original owner, the reversionary rights were conveyed in favour of defendant No.2 by making full disclosure of the various instruments in the interregnum and a specific recital that the suit property was conveyed subject to the deed of lease in favour of the predecessor-in-title of the plaintiff and the term thereby demised and subject to covenants, terms and conditions therein contained.

**21.** In the face of the aforesaid nature of the instrument under which defendant No.2, in particular, asserts proprietary title over the suit property, after having entered into the suit property in the capacity of the prospective assignee of the leasehold rights of the plaintiff and co-lessees, and the subsequent developments giving rise to the disputes between the parties, the submission on behalf of defendant Nos.1 and 2 that there was no cause of action does not merit consideration.

**22.** The situation which obtains is that defendant Nos.1 and 2 entered into the suit property in the capacity of the prospective assignees of the leasehold rights, obtained possession of the suit property from the plaintiff and co-lessees, commenced development and, later on, acquired the reversionary rights without allegedly performing their part of the contract under the agreement for assignment of the leasehold rights.

**23.** The aforesaid nature of the dispute between the parties is required to be kept in view while determining the plea forcefully canvassed by Mr. Purohit that the suit is *ex facie* barred by law of limitation. A two-pronged submission was canvassed by Mr. Purohit. First, the registered instrument itself constitutes a notice about the execution and existence of the instrument and, therefore, the three years period of limitation for a declaratory decree under Article 58 of the Limitation Act begins to run from the date of the said instrument. Two, there is material to show that the plaintiff was aware of the existence of the said instrument and had professed to challenge its legality and validity by addressing a notice dated 27<sup>th</sup> July, 2010, which was suppressed by the plaintiff.

**24.** On the first count, Mr. Purohit would urge, the legal position that, the date of knowledge can be reckoned from the

date of execution of the registered instrument is fairly well settled. Mr. Purohit invited the attention of the Court to the decision of the Supreme Court in the case of *Dilboo* (supra), wherein it was enunciated that whenever a document was registered the date of registration becomes the date of deemed knowledge. In other cases where a fact could be discovered by due diligence then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend period of limitation by merely claiming that he had no knowledge.

25. The judgment in the case of *Dilboo* (supra) was followed by the Supreme Court in the case of *Padhiyar Chenaji* (supra). In the case of *Dahiben* (supra) the plaintiffs therein had not mentioned the date of registered sale deed executed by them in favour of respondent No.1. The Supreme Court held that the plaintiffs deliberately did not mention the date of the sale deed since it would have been evident that the suit was barred by limitation and it was an effort to mislead the Court on the issue of limitation.

26. In the instant case, the Court cannot lose sight of the fact that the plaintiff or for that matter any of the co-lessees are not the parties to the conveyance purportedly executed by the successors in interest of the original owners in favour of

defendant No.2. Thus it is not a case that the plaintiff, being a party to the registered instrument, is seeking a declaratory decree against the legality and validity of the said instrument. Defendant Nos.1 and 2 attribute deemed knowledge of the instrument to the plaintiff.

**27.** At this juncture, the nature of the transaction between the parties, adverted to above, assumes significance. The endeavour of defendant Nos.1 and 2, as is evident, was to first acquire the leasehold rights. Subsequently, the defendant Nos.1 and 2, allegedly surreptitiously, acquired the reversionary rights, after having entered into the suit property as a prospective assignee of the leasehold rights. In such a situation, it would be a matter of adjudication at the trial whether the plaintiff is entitled to declaration as regards the legality and validity of the conveyance executed by the successors in interest of the owners in favour of defendant No.2 and was indeed aware of the execution of the said conveyance.

**28.** It is interesting to note that the conveyance dated 26<sup>th</sup> December, 2006 refers to a purported agreement to sale executed by the owners for assignment of the reversionary rights, dated 26<sup>th</sup> June, 2003, executed under seven months of the execution of the agreement to assign the leasehold rights

dated 22<sup>nd</sup> November, 2002. The dispute between the parties reached a flash point in the year 2015. If the averments in the plaint are read, keeping the aforesaid context in view, an inference cannot be readily drawn that the plaintiff had knowledge about the execution of the conveyance by the successor in interest of the owner in favour of defendant No.2.

**29.** The Court finds that there is no reference to the purported notice dated 27<sup>th</sup> July, 2010 on behalf of Harilal Devji, (which was sought to be tendered before this Court) in the affidavit in support of the Notice of Motion. Nor the learned Judge, City Civil Court, had an occasion to deal with the said document. In any event, whether such a notice was addressed on behalf of the plaintiff would be a matter of defence and would warrant adjudication at the trial. Therefore, at this revisional stage, the applicants cannot be permitted to bank upon the said notice dated 27<sup>th</sup> July, 2010 to bolster up the case that the plaintiff had knowledge about the conveyance in the year 2010 itself.

**30.** Thus, I am impelled to hold that the learned Judge, City Civil Court, was justified in returning a finding that the question as to whether the suit is barred by law of limitation is a mixed question of law and facts and would warrant adjudication at the trial.

**31.** On the aspect of the bar to the jurisdiction of the City Civil Court, it would be suffice to note that defendant Nos.1 and 2 entered into the suit property in the capacity of the prospective assignee of the leasehold rights of the plaintiff and co-lessees. Even the conveyance of the reversionary rights in the suit property under the instrument dated 26<sup>th</sup> December, 2006 was explicitly made subject to the leasehold rights of the plaintiff and other co-lessees. The substance of the plaintiff's case is that defendant Nos.1 and 2 committed default in the performance of their part of the contract contained in the agreement for assignment of the lease, entered into the suit property thereunder, dispossessed the plaintiff and co-lessees and surreptitiously entered into a transaction with the original owner with a view to usurp the suit property. And, therefore, the development permission in favour of defendant Nos.1 and 2 and, subsequently, in favour of defendant No.9, with whom defendant Nos.1 and 2 have executed the development agreement, are not binding on the plaintiff and co-lessees and deserves to be quashed and set aside. The plaintiff also seeks injunctive relief.

**32.** If the aforesaid true nature of the plaintiff's claim is appreciated, the learned Judge, City Civil Court, can be said to be justified in holding that the aforesaid reliefs cannot be

granted by the Court of Small Causes and it is only the Civil Court which can adjudicate the disputes and grant the reliefs.

**33.** The conspectus of aforesaid consideration is that, no interference is warranted in the impugned order in exercise of limited revisional jurisdiction. I am, therefore, inclined to dismiss the application.

**34.** Hence, the following order:

**: O R D E R :**

- (i)** The application stands dismissed.
- (ii)** It is, however, clarified that the observations made hereinabove are confined to determine the legality, propriety and correctness of the impugned order and they may not be construed as an expression of opinion of merits of the matter and the trial court shall not be influenced by any of the observations made hereinabove while adjudicating the suit in accordance with law.

No costs.

**[N. J. JAMADAR, J.]**