

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.189 OF 2025

Ballam Trifla Singh

...Applicant

Versus

Gyan Prakash Shukla & Ors.

...Respondents

Mr. Ranjit Thorat, Senior Advocate i/b Ms. Pratibha Shelke, for the Applicant.

Mr. Vijay Kurle a/w Ms. Bhagyasha Kurane.

Mr. Anand A. Pande, for the Respondent No.1.

Ms. R. S. Tendulkar, APP for the Respondent – State.

Mr. S. K. Dhekale, Court Receiver, High Court, Bombay, present.

CORAM: MADHAV J. JAMDAR, J.

DATED: 9th APRIL 2025

JUDGMENT:

1. On 4th April 2025, I have heard submissions of Mr. Ranjit Thorat, learned Senior Advocate i/b Ms. Pratibha Shelke, learned Advocate on behalf of the Applicant and Mr. Anand A. Pande, learned Advocate appearing for the Respondent No.1. The submission of both the learned Advocate were heard completely on 4th April 2025.

2. The impugned orders in this Civil Revision Application are arising out of the Obstructionist proceedings. The Applicant – Obstructionist is the son of the Defendant No.3 i.e. Judgment Debtor. Both the Courts recorded the concurrent findings that the Applicant has produced manipulated and fabricated documents. Therefore, after hearing both the parties this Court expressed that apart from dismissal of Civil Revision Application with exemplary cost, drastic orders are required to

be passed and therefore Mr. Ranjit Thorat, learned Senior Advocate took time to take instructions of withdrawal of the Civil Revision Application. Accordingly, on 4th April 2025, time was granted for taking instructions regarding withdrawal of the Civil Revision Application and the matter was adjourned to 8th April 2025. On 8th April 2025, Ms. Pratibha Shelke, learned Advocate on record appeared for the Applicant and informed this Court that Applicant has given instructions not to withdraw the Civil Revision Application and therefore requested the Court to pass the order. Accordingly, the Civil Revision Application was adjourned on 8th April 2025 to 9th April 2025 i.e. today for passing order.

Conduct of Mr. Vijay Kurle, Learned Advocate:

3. In the above background, when the matter is called out today, initially Ms. Bhagyesha Kurane, learned Advocate appeared and informed that Mr. Vijay Kurle, learned Advocate has instructions to file vakalatnama and Applicant has obtained NOC from Ms. Pratibha Shelke, learned Advocate on record and request was made to adjourn the matter as Mr. Vijay Kurle, learned Advocate will be arguing the matter. At that time, this Court informed Ms. Bhagyesha Kurane, learned Advocate that the matter is already completely heard and the same is kept today for passing order and therefore there is no question of adjourning the matter. At that stage Mr. Vijay Kurle, learned Advocate

appeared and he made the same request that the matter be adjourned as in the meanwhile he will file vakalatnama and thereafter he will argue the matter. It is made very clear to Mr. Vija Kurle, learned Advocate that the submissions of both the parties were heard on 4th April 2025 and the Civil Revision Application is kept today for passing order and therefore there is no question of adjourning the matter.

4. The above conduct of Mr. Vijay Kurle, learned Advocate is totally unacceptable and *prima facie* is a misconduct. This Civil Revision Application was completely heard and submissions were advanced by Mr. Ranjit Thorat, learned Senior Advocate on behalf of the Applicant and this matter is kept earlier for taking instructions regarding withdrawal of Civil Revision Application and thereafter for passing order and at the stage of passing order Mr. Vijay Kurle, learned Advocate appears and is seeking time. Mr. Vijay Kurle, learned Advocate accepted that he has not taken any efforts to get information from Ms. Pratibha Shelke, learned Advocate about the stage of the proceeding. However, it is shocking to note that even after this Court informed Mr. Vijay Kurle, learned Advocate that the Civil Revision Application is kept for passing order he repeated his request to adjourn the matter. Thus, the said conduct of Mr. Vijay Kurle, learned Advocate clearly shows that he is completely aware that the matter is kept today for passing order and to ensure that the order is not passed today and the proceedings

are delayed Mr. Vijay Kurle, learned Advocate has appeared and made the said request.

5. In view of the above conduct of Mr. Vijay Kurle, learned Advocate it is required to be noted that the Advocates are the Officers of the Court and their first duty is to the Court. Advocates are not the agents of their client. In this behalf it is significant to note the Rules governing Advocates framed by the Bar Council of India concerning Standards of Professional conduct and Etiquette framed under Section 49(1) of the Advocate Act, 1961. The relevant rules are as under :-

“Preamble

An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court/a privileged member of the community and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an Advocate shall fearlessly uphold the interests of his client, and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides, yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned.

Section I-Duty to the Court

*1. An Advocate shall, during the presentation of his case and while otherwise acting before a Court, **conduct himself with dignity and self-respect.** He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.*

2. *An Advocate shall maintain towards the Court a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.*

3. *An Advocate shall not influence the decision of a Court by any illegal or improper means. Private communication with a judge relating to a pending case are forbidden.*

4. *An Advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the Advocate himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client and shall exercise his own judgement in the use of restrained language in correspondence avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Courts.”*

(Emphasis added)

Thus, an Advocate shall act at all times in a manner befitting his status as an Officer of the Court. An advocate shall conduct himself with dignity and self respect. An Advocate shall not influence the decision of a Court by any illegal or improper means. An Advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the Court. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client.

6. If the above referred conduct of Mr. Vijay Kurle, learned Advocate is examined, on the touchstone of the above Rules governing Advocates

framed by the Bar Council of India concerning Standards of Professional conduct and Etiquette, then it is clear that Mr. Vijay Kurle, learned Advocate has acted in complete breach of the said rules. Although the matter is completely heard on 4th April 2025 and kept for passing order he was seeking time for file vakalatnama and arguing the matter. Thus, Mr. Vijay Kurle, learned Advocate has acted as agent/mouthpiece of the Applicant and not as the Officer of the Court.

7. The merits of the Applicant's case in the Civil Revision Application will be discussed in detail in later part of this Judgment, however, for appreciating the conduct of Mr. Vijay Kurle, learned Advocate, it is necessary to set out certain factual aspects :-

- i.** The subject Suit is filed in the year 1996 by the Plaintiff - Landlord alleging that the Defendant No.1 – Original tenant has *inter alia* sublet the suit premises to the Defendant No.3. The suit premises is of 990 sq. ft area where hotel is conducted by the Applicant.
- ii.** The said Suit is decreed in the year 2016 i.e. after about 20 years on the ground of subletting *inter alia* directing that Defendant No.3 shall hand over vacant and peaceful possession of the suit premises to the Plaintiff.
- iii.** Although the Defendant No.3 filed Appeal challenging the eviction decree stay was not sought or conditions of

stay were not complied and therefore stay was vacated. In any case the stay was not operating in the said Appeal filed by the Defendant No.3.

iv. The present Applicant is the son of the Defendant No.3 - Judgment Debtor and he obstructed the execution of the decree by contending that he is the owner of the suit premises on the basis of the sale deed dated 26th November, 1990.

v. In said Obstructionist proceeding and Appeal challenging the same both the Courts have concurrently recorded findings that when the said alleged sale deed dated 26th November 1990 was executed, the Applicant was minor, there is no evidence of payment of consideration, the alleged sale deed is unregistered and unstamped document and therefore the Applicant has failed to establish independent right, title and interest. It is significant to note that both the learned Courts have concurrently held that the documents produced by the Applicant are manipulated and fabricated.

vi. This Civil Revision Application was argued by Mr. Ranjit Thorat, learned Senior Advocate i/b Ms. Pratibha Shelke, learned Advocate on 4th April 2025 and when this

Court pointed out the concurrent findings recorded by both the Courts to the effect that the Applicant has produced manipulated and fabricated documents, Mr. Thorat, learned Senior Advocate took time to take instructions from the Applicant about withdrawal of the Civil Revision Application and therefore the Civil Revision Application was adjourned to 8th April 2025.

vii. On 8th April 2025, Ms. Pratibha Shelke, learned Advocate informed this Court that the Applicant is not ready to withdraw the Civil Revision Application and therefore requested the Court to pass the order and therefore the Civil Revision Application is adjourned to 9th April 2025 i.e. today for passing order.

viii. Today when the matter is called out and when I started dictation of the order, earlier Ms. Bhagyasha Kurane, learned Advocate appeared and thereafter Mr. Vijay Kurle, learned Advocate appeared and submitted that Ms. Pratibha Shelke, learned Advocate has given “No-Objection” and Mr. Vijay Kurle, learned Advocate has instructions to appear in the matter and argue the matter.

ix. This is a case where the Applicant i.e. Obstructionist is the son of the Judgment Debtor i.e. Defendant No.3. Both

the Courts have recorded concurrent finding that the documents on the basis of which Applicant - Obstructionist was claiming right of ownership are manipulated and fraudulent documents. The factual position on record shows that the Suit filed in the year 1996, decreed in the year 2016 i.e. after 20 years and thereafter execution of said decree is delayed for last 9 years as the Obstructionist proceedings are going on. Thus, on the basis of fraudulent documents, successfully it is ensured that the decree is not executed.

x. As noted earlier when after Civil Revision Application is argued completely and when the same is kept for passing order today, Mr. Vijay Kurle, learned Advocate appeared on the basis of NOC given by Ms. Pratibha Shelke, learned Advocate.

xi. Ms. Pratibha Shelke, learned Advocate states that in the morning the Applicant approached her and took her NOC and informed her that he will be engaging another Advocate.

8. As noted herein above the Rules framed by the Bar Council of Maharashtra and Goa concerning the Standards of Professional Conduct and Etiquette *inter alia* provides as follows :-

- i. An Advocate shall, at all times, conduct himself in a manner benefiting his status as an officer of the Court.
- ii. An Advocate shall, during the presentation of his case and while otherwise acting before a Court, conduct himself with dignity and self respect.
- iii. An Advocate shall not influence the decision of a Court by any illegal or improper means.
- iv. An Advocate shall use his best effort to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the Court.
- v. An Advocate shall not consider himself a mere mouthpiece of the client and shall exercise his own judgment.

9. The conduct of Mr. Vijay Kurle, learned Advocate clearly shows that instead of restraining and preventing the Applicant from resorting to sharp and unfair practices, Mr. Vijay Kurle, learned Advocate has acted as agent of the Applicant. Mr. Vijay Kurle, learned Advocate instead of acting as an Officer of the Court actively participated with the Applicant in resorting to sharp and unfair practice by appearing in the matter which has been completely heard and kept for passing order. Although it is informed to Mr. Vijay Kurle, learned Advocate that the matter is kept for passing order still to delay passing of order he sought

adjournment for filing vakalatnama and for arguing the matter. The said conduct clearly shows that Mr. Vijay Kurle, learned Advocate has resorted to sharp and unfair practice with complete knowledge that the matter is completely heard and kept for passing order. *Prima facie* I am satisfied that Mr. Vijay Kurle, learned Advocate has committed misconduct. Thus, in the facts and circumstances it is necessary to direct that the Bar Council of Maharashtra and Goa to conduct enquiry in the conduct of Mr. Vijay Kurle, learned Advocate. It is specifically made clear that the observations made in this order regarding the conduct of Mr. Vijay Kurle, learned Advocate are *prima facie* and all contentions are expressly kept open to be decided in the said enquiry to be conducted by the Bar Council of Maharashtra and Goa, in accordance with law.

10. It is also required to be noted that when this order is being dictated in the open Court, Mr. Vijay Kurle, learned Advocate wanted to leave the Court, however, this Court directed Mr. Vijay Kurle, learned Advocate not to leave the Court as this Court wanted to dictate the entire order in his presence in view of the peculiar facts of the case and as set out hereinabove this Court will be directing in the operative part of the order to the Bar Council of Maharashtra and Goa to conduct enquiry in his conduct.

Decision on Civil Revision Application No.189 of 2025:-

11. By the present Civil Revision Application the challenge is to the legality and the validity of the Judgment and Decree dated 19th March 2025, passed by the learned Appellate Bench of the Small Causes Court, Mumbai in Appeal No.53 of 2024 in Obstructionist Notice No.1 of 2024 in R.A.E. & R. Suit No.83/228 of 1996 as well as to the Judgment and Decree dated 5th July 2024, passed by the learned Judge, Small Causes Court, Mumbai in the Obstructionist Notice No.1 of 2024 (Old Marji Application No.33 of 2017) in R.A.E. & R. Suit No.83/228 of 1996.

12. Mr. Ranjit Thorat, learned Senior Advocate submitted that the Applicant is the owner of the suit premises as he has purchased the suit premises by sale deed dated 26th November 1990. He submitted that the Applicant has produced several documents to substantiate said contention that the Applicant is the owner of the suit premises. Mr. Ranjit Thorat, learned Senior Advocate therefore submitted that as the Applicant is having independent right, title and interest both the impugned Judgments and Decrees be quashed and set aside and the suit be dismissed.

13. On the other hand, Mr. Anand A. Pande, learned Advocate appearing for the Respondent No.1 submitted that the said sale deed dated 26th November 1990, is unstamped and unregistered and therefore it has no consequences in law. He further submitted that the vendor who allegedly executed the said sale deed has no right, title and

interest. He submitted that the photocopy of the said sale deed which is produced alongwith Obstructionist proceedings mentions C.T.S. No.200 whereas in the original of said alleged sale deed C.T.S. No. mentioned is 210. Mr. Anand A. Pande, learned Advocate also submitted that as per the said sale deed vendor is Mr. Momin Rajubhai Sawaj Ali whereas an Affidavit dated 10th August 1996, executed by Mr. Shaikh Faqir Mohammed Abdul Latif produced by the Applicant before the authorities of the Bombay Municipal Corporation for the purpose of issuance of Shop and Establishment Licence mentions that the Applicant and his two brothers purchased the suit premises by sale deed dated 2nd September 1995 from said Mr. Shaikh Faqir Mohammed Abdul Latif. Thus, he submits that the documents produced by the Applicants are manipulated and fraudulent as held by both the Courts and therefore, the Civil Revision Application be dismissed with exemplary cost.

14. It is necessary to set out certain factual aspects :-

- i. The Plaintiff i.e. Respondent No.1 filed R.A.E.& R. Suit No.82/228 of 1996 on 19th March 1996. The Suit is filed against Defendant Nos. 1 to 3. It is the contention in the Plaint filed by the Respondent No.1 – Plaintiff that the Original tenant is Defendant No.1 and he has sublet the same to the Defendant No.2 and thereafter to Defendant No.3.

ii. The learned Trial Court decreed the Suit by Judgment and Decree dated 15th December 2016, by passing the eviction decree. Thus, the Suit which has been filed in the year 1996 has been decreed by the learned Trial Court after a period of about 20 years and 8 months. The learned Trial Court decreed the Suit on the ground of default and subletting. The learned Trial Court has held that Defendant No.1 has sublet the suit premises to Defendant No.2 without consent and permission of the Plaintiff and further proved that Defendant No.1 after obtaining possession from the Defendant No.2 illegally assigned tenancy in respect of the suit premises to the Defendant No.3.

iii. It is significant to note that, the Defendant No.3 – Trifla Singh Jugal Singh, filed Appeal No.41 of 2017 and Stay Application has also been filed in the said Appeal. However, either the said Stay Application has not been pressed by the Defendant No.3 i.e. present Respondent No.4 or the conditions imposed of deposit of compensation has not been complied with and therefore stay stands vacated. In any case it is admitted position that stay is not operating in the said Appeal.

iv. It is significant to note that thereafter, Marji Application No.33 of 2017 has been filed by the present Applicant / Obstructionist - Mr. Ballam Trifla Singh who is the son of Original Defendant No.3 i.e. Judgment Debtor. The said Marji Application No.33 of 2017 has been converted as Obstructionist Notice No.1 of 2024.

v. It is significant to note the following contentions raised in said Marji Application No.33 of 2017 which are very relevant.

“1. I say that I am in exclusive use, occupation and possession of a commercial premises being Census No.KWX-C-1/1 situated at Vindavan Chawl, Near Vishal Nagar, Link Road, Jogeshwari (West), Mumbai - 400102 as the owner thereof since last so many years.

2. I say that since the said premises is a commercial premises I am doing the business there from in the name and style of Linkway Hotel since last so many years. I say that for doing the said business I have obtained licence from the B.M.C. being Shop and Establishment Licence and Health Licence. Hereto annexed and marked Exhibit-A (colly.)is the Xerox copy of the Shop and Establishment Licence issued in my name by the Corporation at the address of said premises.

3. I say that since I am doing the business from the said premises in the Name and Style of M/s. Linkway Hotel and therefore, I have also obtained the Licence from other concerned authorities such as Police Licence issued in my name at the address of said room. Hereto annexed and marked Exhibit-B is the copy of Police Licence issued in my name at the address of said premises in the name of my said

business.

4. I say that I have purchased the above said structure from its earlier owner Mr. MominRajuSawaj Ali in the year 1990 by sale deed dated 26th day of November, 1990 for a total sum of Rs.95,000/-. I shall crave leave to, referred to and rely upon the said agreement as and when produced. The said structure is admeasuring about 990 sq.ft. Hereto annexed and marked Exhibit-C is the copy of said agreement."

(Emphasis added)

vi. In said Obstructionist proceedings following issues were framed by the learned Judge, Small Causes Court, Mumbai by Order dated 9th January 2024 :-

"1) Whether obstructionist prove that he is an owner of the suit premises?

2) Whether obstructionist prove that he is in exclusive use, occupation and possession of the suit premises since the year 1990?

3) Whether obstructionist prove that decree is not binding upon him?

4) What order?"

vii. In the Affidavit of Examination-in-Chief the Applicant / Obstructionist has *inter alia* stated as follows :-

"1. I say that I am in exclusive use, occupation and possession of a commercial premises being Census No.KWX-C-19/1/1 situated at Vindavan Chawl, Near Vishal Nagar, Link Road, Jogeshwari (West), Mumbai 400102 ("said premises") as the owner thereof since last several years.

2. I say that since said premises is a commercial premises. I am doing business in name and style of 'Linkway Hotel' from said premises since last several years.

3. I say that for the purpose of running my business, I have obtained Shop and Establishment License from Brihan Mumbai Mahanagarpalika (B.M.C.). I am producing herewith at Serial No. 1 colly alongwith a List of documents two original Shops & Establishment License dated 13.07.2000 issued by the B.M.C. in my name. The said License is issued by the B.M.C. in routine course of business and the same is a public document. Contents of the said two Licenses are true and correct. The same be marked as an exhibit.

4. I further say that, I have also obtained the Licence from Police authorities for the purposes of my business being run in the name and style of 'Linkway Hotel'. I am producing herewith at Serial No. 2 alongwith a List of documents original Police License dated 13.03.2002 issued in my favour and bears the address of the said premises. The aforesaid police license has been issued to me by the authority in routine course of business and the same is a public document. Contents thereof are true and correct. The same be marked as an exhibit.

5. I say that I have purchased the said premises from its previous owner Mr. Momin Raju Sawaj Ali in the year 1990. By a Sale Deed dated 26.11.1990 entered into between the previous owner - MominRajuSawaj Ali and myself, the said premises were sold to me for a total consideration of Rs. 95,000/- (Rupees Ninety Five Thousand Only). The said premises admeasures about 990 sq.ft. I am producing herewith at Serial No. 3 alongwith a List of documents Original Sale Deed dated 26.11.1990 entered into between the previous owner Momin Rajubhai Sawaj Ali and myself. It bears my signature. I identify my signature as well as signature of Momin Rajubhai Sawaj Ali on the Sale

Deed dated 26.11.990. The said Momin Rajubhai Sawaj has signed in my presence. Contents of the Sale Deed dated 26.11.1990 are true and correct. The same be marked as an exhibit.”

(Emphasis added)

viii. The relevant cross-examination of the Applicant/Obstructionist is as follows :-

“a) I am 10th fail. I could understand English language very little. I have started Linkway Hotel in the year 1998. The structure of hotel is pakka/permanent structure. The area of the suit premises is 990 sq. ft. The suit premises are in my possession since the year 1990. Between the years 1990-98, I had given the suit premises on rent. I do not remember to whom the premises were let out. There was no rent agreement executed. Exh.37 (Shop and Establishment) is now shown to me. This Shop Act Licence is obtained in the year 2000. I had applied for the licence in the year 1998 when I started my hotel business. I have no copy of that application. In the Shop Act Licence, there is no structure number mentioned

b) My date of birth is 08.10.1973. I can show document to verify my birth date. I cannot produce my School Leaving Certificate or Birth Certificate. When I purchased the suit premises, my age was around 17 and ½ years. My birth place is not Mumbai. I have taken education in my native place. My uncle had purchased the suit premises in the year 1990 for Rs.95,000/-. The name of my uncle is Nanu Jugalkishor Singh. He was a driver in B.E.S.T. Exh.39 is now shown to me. It is not mentioned therein that my uncle purchased the premises for me. There is no document to show that my uncle purchased the suit premises for me. The suit premises situated at C.T.S. No.210. On page No.2 of agreement (Exh.39) C.T.S. No.210 is written. In the xerox copy of agreement annexed with Exh.1, C.T.S. No.200 is written. I cannot assign any reason why in the xerox copy different

C.T.S. number is mentioned. It is not true to say that I have prepared forged agreement mentioning C.T.S. No.210 in it. It is not true to say that when I came to know my mistake, I changed the C.T.S. number in original agreement in order to create forged document. The suit premises has been purchased from Momin Rajuhai Sawaj Ali. He was owner of the suit premises. I had not seen any document of title of the vendor before purchasing the suit premises. It is not true to say that Momin Sawaj Ali was neither owner, tenant nor occupant of the suit premises and that is why no title document was verified before purchasing it.

*c) I am now shown the xerox copy of information supplied for filing Appeal against the order passed below Exh.18 in MARJI Application No.33/2017 dated 01.03.2022. In this matter, in Annexure-V(A) my birth date is mentioned as 08.10.1977 instead of 08.10.1973 by mistake. I have two brothers i.e. Jayprakash and Omprakash. It is not true to say that the date of birth written in this information is correct and I have told my wrong birth date. It is not true to say that I have obtained PAN Card by mentioning wrong birth date. When I was carrying on Link View Hotel, my brothers were not working with me. **I had obtained Shops and Establishment Licence in 1998.** AWIV000887 is the licence number. Now copy of my application made for obtaining Shop Act Licence is shown to me. The licence number written, on this application is the same. The address mentioned on it is the address of my hotel. It is not true to say that these are the documents which were submitted while obtaining Shop Act Licence. **It is not true to say that while submitting the application, I had mentioned that the suit premises were obtained from Shaikh Fakir Mohd. Abdul Latif. It is not true to say that I had also mentioned that Shaikh Fakir had obtained that premises from one Amina Begam Abdul Majid. It is not true to say that this Amina Begam is wife of original defendant No.1. It is not true to say that I wanted to show that the property was obtained from wife of defendant No.1. It is not true to say that I have not acquired the suit premises in 1999.***

It is not true to say that the person named Momin Rajubhai Sawaj was never in possession of the suit premises. It is not true to say that my father had purchased the suit premises from original defendant Nos.1 and 2. It is not true to say that for grabbing possession of the suit premises, this false application is made. It is not true to say that since the beginning, I was aware about pendency of suit of 1996. I am not aware that in Appeal, the Hon'ble Appellate Court had ordered my father to pay the money and as my father was not having money to comply the order, the present application is filed. It is not true to say that I am deposing false and I have no right in the suit premises.”

(Emphasis added)

ix. It is significant to note that the entire case of the Applicant / Obstructionist is on the basis of the sale deed dated 26th November 1990. The said sale deed was executed by Mr. Momin Rajubhai Sawaj Ali as vendor. As noted earlier copy of said sale deed produced by the Applicant alongwith the Marji Application mentions the premises purchased as bearing C.T.S. No.200 whereas original of the same produced by the Applicant at Exhibit-39 mentions the same as C.T.S. No.210.

x. In view of the production and reliance by the Applicant on the sale deed dated 26th November 1990, it is significant to note the Affidavit dated 10th August 1996, executed by “Shaikh Faqir Mohammed Abdul Latif”

produced by the Applicant before the authorities of shop and establishment department of M.C.G.M for getting the licence. The relevant paragraphs of said Affidavit dated 10th August 1996 are as follows :-

“A F F I D A V I T:

I, MR. SHAIKH FAQIR MOHAMMED ABDUL LATIF, an Indian Inhabitant of Mumbai, resident of 227/181 Motilal Nagar No.1, Goregaon (West), Mumbai 400 104 do hereby state and declare on solemn affirmation as under:

I state and declare that I was the owner and as such was absolutely seized and possessed of a business premises, i.e. a shop premises, admeasuring about 10Feet x 60Feet, situated on. the Plot of land, bearing survey No.25 part, Hissa No.20 Part, C.T.S. No. 200 Part, of village Oshivara, Taluka Andheri, situate near Vishal Nagar, Vrindavan Chawl, Linking-Road, Jogeshwari (W), Mumbai 400 102 (hereinafter refer to as "the said shop premises"). I state that I have purchased the said document from one Smt. AMINABEGAM ABDUL MAJID by virtue of an Affidavit and other relevant documents to that effect dated 4th April, 1995. I state that the said Smt. AMINABEGAM ABDUL MAJID was the original owner of the said shop premises, holding the relevant documents in her name. I state that on the said date of execution of the said documents, I took the vacant and absolute possession of the said shop premises.

I state that in turn, I by virtue of an Sale deed dated 2nd day of September, 1995, I had sold, transferred, assigned and relinquished all my right, title, claim and interest, over the said shop premises to (1) SHRI BALLAM SINGH

TRIPLA SINGH, (2) JAIPRAKASH SINGH TRIFLA SINGH aged 15 years, (3) OMPRAKASH SINGH TRIFLA SINGH, aged 10 years, No.2 and 3 minors, through their legal guardian and father SHRI TRIFLA SINGH JUGAL SINGH (hereinafter referred to as "the Transferees") and now they are in the absolute and exclusive possession of the said shop premises."

xi. Thus, the position on record shows that the Applicant has relied on unregistered and unstamped sale deed dated 26th November 1990, allegedly executed by Momin Rajubhai Sawaj Ali executed in his favour. As already noted there is variation between the photocopy of the said sale deed produced earlier in the year 2017 and original sale deed produced in the evidence in the year 2024. However, it is significant to note that to the M.C.G.M authorities the Applicant had submitted above referred Affidavit dated 10th August 1996 executed by Shaikh Faqir Mohammed Abdul Latif *inter alia* stating that by virtue of the sale deed dated 2nd day of September, 1995, he had sold, transferred, assigned and relinquished all his right, title, claim and interest, over the said shop premises to (1) SHRI BALLAM SINGH TRIPLA SINGH, (2) JAIPRAKASH SINGH TRIFLA SINGH aged 15 years, (3) OMPRAKASH SINGH TRIFLA SINGH, aged 10 years, No.2 and 3 minors, through their legal guardian and father SHRI TRIFLA

SINGH JUGAL SINGH. It is significant to note that the Applicant has not produced any document to show that either said Momin Rajubhai Sawaj Ali or said Shaikh Faqir Mohammed Abdul Latif are the owners of the suit premises. Thus, it is clear that the entire case of the Applicant is false and the Applicant has relied on manipulated and fabricated documents.

xii. The said Obstructionist Notice No.1 of 2024 (Old Marji Application No.2017) filed by the Obstructionist i.e. present Applicant - Ballam Trifla Singh, son of Defendant No.3 was dismissed by a learned Judge, Small Causes Court, Mumbai by Order dated 5th July 2024, passed in Obstructionist Notice No.1 of 2024 (Old Marji Application No.33 of 2017) in R.A.E. & R. Suit No.83/228 of 1996. Thus, it is clear that the said Obstructionist Notice No.1 of 2024 (filed in the year 2017) has been dismissed after a period of 7 years and 2 months.

xiii. Said Order dated 5th July 2024 is confirmed by the learned Appellate Court by Order dated 19th March 2025.

15. The learned Judge of the Small Causes Court, Mumbai in the impugned Order dated 5th July 2024, observed that the claim is made by the Applicant i.e. Obstructionist on the basis of sale deed dated 26th

November 1990. The said sale deed is not legal and valid as the same is an unregistered and unstamped document and thus no legal right passes in favour of the Obstructionist. The Applicant / Obstructionist in his cross-examination has admitted that he was a minor at the time when the sale deed was executed and the consideration money was paid by his uncle. The learned Judge has observed that in the said sale deed such averment is not to be found and in fact the Applicant i.e. Ballam Trifla Singh is shown and referred to as an adult in the said sale deed when actually he was minor at that time. Apart from the said aspects photocopy of the sale deed dated 26th November 1990, produced alongwith said Marji Application mentions the suit premises as C.T.S. No.200, whereas original sale deed produced in the evidence mentions the said C.T.S. No. as 210. In the sale deed the name of the vendor is shown as Momin Rajubhai Sawaj Ali whereas Affidavit of Mr. Shaikh Faqir Mohammed Abdul Latif produced before the M.C.G.M. states that the Applicant has purchased the suit premises from said Shaikh Faqir Mohammed Abdul Latif. Thus, it is clear that document produced by the Applicant are manipulated and fraudulent.

16. The learned Judge, of the Small Causes Court, Mumbai has observed in Paragraph No.16, 17 and 18 as under :-

*“16] Herein this case, this argument rendered by the learned counsel has no bearing as **the plaintiff has also examined the witness of B.M.C who had brought the original documents alongwith him so as to compare it***

with the photocopies and to confirm its authenticity. The obstructionist, on the other hand mischievously denied the authenticity of his own documents when confronted to him during his cross-examination. Even the objection raised by the obstructionist at the time of exhibiting that document was not sustainable as the concerned authority has produced that document which was received by it in regular course of its business. Notably, the obstructionist has been exposed to the fraudulent act committed by him in tendering ! altogether different documents that were not submitted by him to the B.M.C. while obtaining the Shop Act licence in respect of the premises that are definitely not related to the suit premises.

17] The document exhibit 71 only is suffice enough to reveal the fraud submitted by the obstructionist in moving the present notice. The copy of application submitted by him to B.M.C. for running his hotel and annexures submitted with it clearly show that, no C.T.S. number is mentioned all these documents. The copy of Sale Deed dated 26.11.1990 was not attached with this application but in fact, an agreement executed between himself and Shaikh Fakir Mohd. Abdul Latif was shown to him the source of his title to the property, i.e. shop premises admeasuring 10 x 60 feet, situated at C.T.S. No.200 (Part), bearing Survey No.25 (Part), Hissa No.20 (Part) of Village Oshiwara, near Vishal Nagar, Vrindavan Chawl, Linking Road, Jogeshwari (West). This property was transferred only by way of an affidavit dated 10.08.1996 and General Power of Attorney executed on the same date. There is mention of Sale Deed dated 02.09.1995 executed in favour of Ballam Singh and his minor brothers Jayprakash Singh and Omprakash Singh. That Sale Deed was mentioned to be executed under the guardianship of their father Trifla Singh. Though it is believed that this Sale Deed of 1995 was executed when the obstructionist was an adult, no copy of that-Sale Deed was annexed with the application to verify that it was a registered and a legal document.

18] The obstructionist further tried to show that the C.T.S. number of the suit premises is 210 and 200. Admittedly, the land C.T.S. No.210 falls under the 'slum'

area. But in the document which is relied upon by him which are annexed with this obstructionist notice itself show that the unregistered Sale Deed was executed in respect of the property situated at C.T.S. No.200. Thus, it is crystal clear that the obstructionist has produced false and fabricated documents in collusion with his father in order to frustrate the claim of the plaintiff and to avoid execution of possession warrant in respect of the suit premises. The premises in which he is running his hotel are altogether different than that of the suit premises against which the decree in the eviction suit is passed. In totality of the circumstances, I am inclined to record my "negative" findings as to Issue Nos.1 to 3 and in answer to Issue No.4, proceed to pass following order:

ORDER

- 1. Obstructionist Notice No.1/2024 is made absolute.*
- 2. The decree passed in R.A.E. & R. Suit No.83/288/1996 dated 15.12.2016 is binding upon obstructionist.*
- 3. The plaintiff is entitled to execute the possession warrant issued in Execution Application No.26/2017 against the defendants and the obstructionist for recovering vacant and peaceful possession of the suit premises i.e. Shed No.1 of Gyanprakash Chawl, situated at Shukla Compound, near Vrindavan Chawl, New Link Road, Kajupada, Behrambaug, Jogeshwari (West), Mumbai - 400 102, more precisely described in the aforesaid judgment.*
- 4. Defendants as well as obstructionist are directed to handover vacant and peaceful possession of the suit premises as aforementioned within two months of this order.*
- 5. Decree be drawn up accordingly."*

(Emphasis added)

Thus, perusal of these paragraphs clearly show that the learned Judge of the Small Causes Court, Mumbai on the basis of evidence on record has recorded the finding that the Applicant has produced false and fabricated documents.

17. The Order dated 5th July 2024, passed by the learned Judge, Small Causes Court, Mumbai is challenged by filing E-Appeal No.53 of 2024. The said Appeal is dismissed. The learned Appellate Court has observed in Paragraph Nos.23 to 25 which reads as under :-

“23. We have re-appreciated the evidence of the obstructionist and the plaintiff in the appeal. It revealed that, the affidavit of evidence of the obstructionist is replica of the application/obstructionist notice. However, his cross-examination speaks loud how he is suppressing the material facts from the Court. In the cross-examination, he stated that he started Hotel Linkway in the year 1998. Before that the suit premises had been given on rent, but he does not remember the name of person to whom the suit premises was let out. There was no rent agreement executed between him and the so called tenant. He stated that he obtained the license for hotel in the year 1998. According to his evidence, he purchased the suit premises on 26.11.1990 for consideration of Rs. 95,000/- (Ninety Five Thousand only). In the cross-examination he stated that his date of birth is 08.10.1973. He admitted that when he purchased the suit premises his age was 17^{1/2} years. We calculated the same and it comes to 17 years, 8 months and 16 days. Moreover, he has filed photocopy of the sale deed, which is unregistered. It revealed in the cross-examination that he placed the original sale deed on record at Exh. 39. In the original copy of sale deed C.T.S. Number is mentioned as C.T.S. No. 210, whereas the photocopy of the said sale deed mentioned C.T.S. No. 200, which is prima facie overwriting. The obstructionist has not given any reason as to why there is a difference in the original and photocopy of sale deed in respect of C.T.S. Number. Thereafter, the obstructionist stated in his

evidence that the suit property is purchased by his uncle in his name. But, there is no contemporary evidence placed on record. Moreover, there is not clarification of difference in the description of the property. We are of considered opinion that, the evidence of obstructionist is not trustworthy and not probable evidence. The sale deed, which the obstructionist is relying upon has no legal sanctity in view Section 17 read with Section 49 of the Registration Act. Therefore, the obstructionist has no independent right to use, occupy and hold the possession of suit premises.

24. The documents relied by the obstructionist is not sufficient to justify that he was in possession of the suit premises prior to filing of the suit. The learned trial court has considered all documents. Thus documents does not give any right to the obstructionist to hold the suit premises for use and occupation.

25. The plaintiff has tendered his evidence during trial of obstructionist notice and also examined another witness Mr. Avinash Vichare (Exh. 69) who is Senior Inspector of BMC. He has produced on record various documents below list Exh. 59. The documents were placed on record how the obstructionist has manipulated and prepared the documents contrary to the original record. We have perused the same and noticed that prima facie obstructionist has nothing to do with the suit premises. It seems that after filing of the suit some licenses were obtained by the obstructionist in his name, but it does not give any right, title to him. Therefore, on carefully re-appreciation of the evidence and documents placed on record, we are of view that the obstructionist has no independent right to use and possess the suit premises and he was not in possession prior to filing of suit. Therefore, we answer point No. 1 in the negative.”

(Emphasis added)

Thus, the learned Appellate Court recorded a finding that the Obstructionist has no independent right to use and possess the suit premises. It has been observed by the learned Appellate Court that the

documents placed on record by the Obstructionist show that the said documents are manipulated and the documents are prepared contrary to the original record.

18. The concurrent findings recorded by both the Courts, clearly show that the Applicant has produced fabricated documents.

19. As already noted herein above after hearing the matter completely and when it was pointed out to Mr. Ranjit Thorat, learned Senior Advocate that the documents produced by the Applicant are forged and fabricated, learned Senior Advocate took time to consider withdrawal of the Civil Revision Application. Accordingly, the time was granted and Civil Revision Application was kept on 8th April 2025. On 8th April 2025, Ms. Pratibha Shelke, learned Advocate on record requested the Court to pass the Order as Applicant is not ready to withdraw the Civil Revision Application. As noted earlier, at this stage when the Court was to start dictation of the Order Ms. Bhagyesha Kurane, holding for Mr. Vijay Kurle, learned Advocate appeared and requested the matter be adjourned on the ground that Mr. Vijay Kurle, learned Advocate has instructions to file vakalatnama and argue the matter. Thereafter, Mr. Vijay Kurle, also appeared and made the same request. Thus, the conduct of the Applicant shows that not only fraudulent and manipulated documents were produced but even an attempt is made to delay the matter when the same is kept for passing

order.

20. The Supreme Court in the decision of *S.P. Chengalvaraya Naidu v. Jagannath*¹, has held that the Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. It is observed that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal gains indefinitely. The Supreme Court further observed that we have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

21. The Supreme Court in the recent Judgement in the case of *Auroville Foundation v. Natasha Storey*² has held that Doctrine of "Clean hands and non-suppression of material facts" is applicable with full force to every proceedings before any judicial forum. The party approaching Court must come with clean hands and disclose all correct and material facts. If it is brought to the notice of the Court that a party is guilty of suppression of material and relevant facts or has not come with clean hands, such conduct must be seriously viewed by the Courts as the abuse of process of law and the petition must be dismissed on

¹ (1994) 1SCC 1

² (2005) SCC OnLine 556

that ground alone without entering into the merits of the matter. The said observations of the Supreme Court are squarely applicable to the present case.

22. As observed hereinabove a decree has been passed in a Suit filed in the year 1996 on 15th December 2016 i.e. after a period of 20 years and 8 months. Thereafter the Obstructionist proceedings are filed in or about April 2017 (earlier as Marji Application No.33 of 2017) which has been renumbered as Obstructionist Notice No.1 of 2024. The Obstructionist proceeding initiated in April 2017 has been decided by the learned Judge of the Small Causes Court, Mumbai on 5th July 2024 i.e. after a period of 7 years and 2 months and the learned Appellate Court dismissed the Appeal by Judgment and Decree dated 19th March 2025. Thus, after a period of 8 years, the learned Appellate Court has finally dismissed the Obstructionst proceedings.

23. The Supreme Court in the decision of *Jini Dhanrajgir & Anr. v. Shibu Mathew & Anr.*³ has observed in paragraph No.2 as follows:-

“2. More than a century and a half back, the Privy Council (speaking through the Right Hon. Sir James Colville) in The General Manager of The Raj Durbhunga, Under the Court of Wards v. Maharajah Coomar Ramaput Singh¹ lamented that the difficulties of litigants in India indeed begin when they have obtained a decree. A reference to the above observation is also found in the decision of the Oudh Judicial Commissioner's Court in Kuer Jang Bahadur v. Bank of Upper India Ltd. Lucknow². It was ruled there that the Courts had to be careful to ensure that the process of the Court and the laws of procedure

³ (2023) SCC OnLine 643

were not abused by judgment-debtors in such a way as to make the courts of law instrumental in defrauding creditors, who had obtained decrees in accordance with their rights.”

(Emphasis added)

Thus, the Privy Council a century and half back, lamented that the difficulties of the litigants in India indeed begin when they have obtained a decree. It is observed by the Oudh Judicial Commissioner’s Court, that the Court had to be careful to ensure that the process of the Court and the laws of procedure were not abused by judgment-debtors in such a way as to make the courts of law instrumental in defrauding creditors, who had obtained decrees in accordance with their rights.

24. The above observations are squarely applicable to the present case. This is a case where the Suit has been filed in the year 1996 against the Defendant No.3 who is the father of the present Applicant - Obstructionist. The Suit has been decreed after a period of about 20 years and thereafter, the Obstructionist proceedings have been filed in the year 2017 by the Applicant who is the son of the Defendant No.3. Both the Courts have concurrently *inter alia* held that the documents produced to establish right of the Obstructionist are fraudulent documents. The said documents are discussed in earlier part of this judgment and the same are found to be fraudulent even by this Court. Accordingly, even if the Civil Revision Application is dismissed with exemplary cost the same will not be sufficient to render justice. In the

facts and circumstances of this case, it is necessary that Court Receiver, High Court, Bombay be appointed and immediate possession is to be taken from the Applicant with further direction that the same be handed over to the Respondent No.1 who is the decree holder.

25. In view of the above discussion following order is passed.

ORDER

- i.** The Civil Revision Application No.189 of 2025 is dismissed with cost of Rs.2,00,000/-.
- ii.** The Court Receiver, High Court, Bombay is appointed with respect to the suit premises i.e. Hotel Linkway, Shed No.1, Shop No.1, Census No KWX-C-19-1/1, Shukla Chawl, Near Vrindavan Chawl, New Link Road, Kajupada, Behrambaug, Jogeshwari (West), Mumbai – 400 102 with all the powers under Order XL of the Code of Civil Procedure, 1908.
- iii.** The Court Receiver, High Court, Bombay shall take forcible possession of the said suit premises immediately from the Applicant or any other person found in the possession of the suit premises or by breaking open the lock, if found in locked

condition with the help of local police officials forthwith i.e. today and handover the same immediately to the Respondent No.1.

- iv.** The necessary charges as per the relevant rules will be deposited by the Respondent No.1 with the Court Receiver.
- v.** The Court Receiver is permitted to take Police protection. Ms. R. S. Tendulkar, learned APP is present in Court and she makes a statement on behalf of the State of Maharashtra that protection will be given to the Court Receiver for taking possession of the suit premises. The Senior Inspector, Jogeshwari / Oshiwara Police Station, Mumbai or any other appropriate Police Station to provide adequate Police protection to the officials of the Court Receiver, High Court, Bombay for ensuring compliance of the above directions.
- vi.** In the facts and circumstances of this case as more particularly set out in the Order, the Bar Council of Maharashtra and Goa is directed to conduct appropriate enquiry in the conduct of Mr. Vijay Kurle, learned Advocate, in accordance with law.

26. Stand over to 15th April 2025 at 2:30 p.m. for reporting compliance of directions issued to the Court Receiver, High Court, Bombay.

[MADHAV J. JAMDAR, J.]