

WRIT PETITION NO. 1595 OF 2026

Versus.

59 taken out by MTDC seeking a declaration that the decree is not executable.

2) Office premise admeasuring 5950 sq.ft. (carpet area) on 9th floor of the building 'Express Tower', situated at Nariman Point, Mumbai-400 021 are the '**suit premises**'. According to the Applicant, the land in question was originally leased by the Government of Maharashtra to the Respondent-Indian Express Newspapers (Bombay) Pvt. Ltd. (**Indian Express**) on 2 September 1963 who constructed a building thereon. By virtue of the Lease Deed dated 8 December 1972, the Government of Maharashtra leased the land and the building to Indian Express. It is the case of the Respondent that by draft agreement sent on 4 January 1975, the Government was put in possession as tenant in respect of the suit premises. MTDC was formed by the Government of Maharashtra as an extension of tourism department with 100% share owned by the Government and directors of MTDC being appointed by the Government.

3) Indian Express filed TE&R. Suit No. 73/79 of 2001 seeking recovery of possession of the suit premises from MTDC. The suit was resisted by MTDC by filing written statement contending *inter-alia* that the Government of Maharashtra was the tenant in respect of the suit premises and the tenancy was protected under Section 3(a) of the Maharashtra Rent Control Act, 1999 (**MRC Act**). The Trial Court however decreed the suit on 16 March 2004 directing MTDC to handover possession of the suit premises to the Indian Express.

4) MTDC filed Appeal No. 323 of 2004 challenging the eviction decree dated 16 March 2004. During pendency of the appeal, MTDC paid to Indian Express interim compensation of Rs.8,30,97,451/-. The Appeal Court however dismissed the Appeal of MTDC on 6 March 2009. The Appellate Court's decree was challenged by the Applicant in Civil Revision Application 634 of 2009 which came to be dismissed by order dated 18 November 2009. The Apex Court refused to entertain the Special Leave Petition filed by MTDC. MTDC accordingly handed over possession of the suit premises to Indian Express on 30 December 2010. During pendency of the Appeal, Indian Express had taken out Mesne Profits Misc. Application No. 20 of 2007 for determination of mesne profits for the period from 30 January 2001 to 30 December 2010. The application was opposed by MTDC. Based on pleadings, Small Causes Court framed issues. Parties led evidence in support of their respective claims. Indian Express examined its Director-Vaidehi Thakar as P.W.1 and Harshad Maniar-Architect and valuer as P.W.2. MTDC examined Sanjay Dhekane as D.W.1 and Yatish Kini-Architect and valuer as D.W.2. After considering the pleadings, documentary and oral evidence, the Small Causes Court proceeded to allow Mesne Profits Misc. Application No. 20 of 2007 by judgment and order dated 16 October 2012. The Court determined mesne profits in respect of the suit premises at Rs.163/- per sq. ft. per month from 31 January 2001 to 31 December 2005 and at Rs.233/- per sq. ft. per month from 1 January 2006 till the date delivery of possession i.e. 30 December 2010. The Trial Court granted interest @ 6%p.a. in favour of the Indian Express.

5) MTDC filed Appeal No. 62 of 2013 before the Appellate Bench of the Small Causes Court. The Appeal has been dismissed vide judgment and order dated 8 February 2019, which is the subject matter of challenge in the present Revision Application. By order dated 28 August 2023, this Court admitted the Revision Application and granted stay to the impugned orders subject to deposit of entire decretal amount in the Small Causes Court within a period of 12 weeks. It appears that on account of failure on the part of the Applicant, the stay to the impugned orders has not remained operational and this is clarified by the Court vide order dated 30 July 2024.

6) It appears that the Applicant had deposited an amount of Rs. Rs.8,30,97,451/- which has been withdrawn by the Respondents. Additionally, Respondent has shown willingness to pay to the Respondent further amount of Rs. 2,00,00,000/- at the time of closure of the proceedings for judgment. With the consent of the learned counsel appearing for the parties, the Revision Application is called out for final hearing.

7) In the meantime, the decree was put in execution by the Respondent-Indian Express by filing Execution Application No. 436 of 2013. The Petitioner opposed the execution proceedings by filing application on 12 December 2024 at Exhibit 59 in Execution Application No. 436 of 2013 on the ground of decree being nullity on account of willful misrepresentation and fraud played by Respondent-Indian Express and also on account of lack of jurisdiction. The application at Exhibit 59 was filed seeking following prayers:

- a) That this Hon'ble Court may be pleased to allow the instant Application by exercising the power under section 47 of the code of civil procedure and dismiss the Execution Application No.436 of 2013 as not executable.
- b) It may be declared that the order dated 16-10-2012 in Misc. Application No.20 of 2007 and confirmed in Misc. Appeal No. 62 of 2013 passed as per the preliminary decree in TE&R SUIT NO 73/69 of 2001 and the execution application no 436 of 2013 filed by the decree holder opponent plaintiff are not executable.
- c) The execution application no 436 of 2013 be dismissed
- d) The decree holder be directed to redeposit the amount of mesne profit paid by the applicant as per the order below Exh-9 in Misc. Appeal No. 62 of 2013 with accrued interest till date, forthwith
- e) That such other order as justice and convenience may deem from time to time be passed in favor of the Applicant by this Hon'ble Court.

8) The application was opposed by the Respondent-Indian Express by filing reply. The Executing Court has proceeded to dismiss the application at Exhibit 59 filed by the Petitioner-MTDC by order dated 5 December 2025, which is the subject matter of challenge in the present petition.

9) I have heard Mr. Gorwadkar, the learned senior advocate appearing for Petitioner-MTDC and Mr. Surel Shah, learned senior advocate appearing for Respondent-Indian Express. I have considered submissions canvassed by the learned counsels appearing for the parties. I have gone through the findings recorded by the Executing Court in the impugned order. I have gone through the records of the case filed alongwith the Petition.

10) The eviction decree passed in T.E.& R. Suit No. 73/79 of 2001 has attained finality upto the Apex Court. As observed above, thereafter inquiry into mesne profits is conducted and by order dated 16 October 2012, mesne profits in respect of the suit premises are determined. The Petitioner challenged order dated 16 October 2012 determining mesne profits before the Appellate Bench of the Small Causes Court which dismissed Misc. Appeal No.62 of 2013 by order dated 8 February 2019. Petitioner challenged the orders passed in mesne profit inquiry by filing Civil Revision Application No. 283 of 2022. In that Civil Revision Application, the applicant has raised the issue of decree being nullity by contending that the land is owned by the State Government who has also become owner in respect of the building. The Petitioner has also relied on letter dated 4 January 1975 forwarding draft lease-deed. The Civil Revision Application has been decided by a separate judgment pronounced today. By way of an afterthought and during pendency of the Civil Revision Application, the Petitioner was advised to take out application at Exhibit 59 on 12 December 2024 seeking a declaration that decree is nullity and unexecutable which has been rejected by the order dated 5 December 2025.

11) The chronology narrated above would indicate that filing of the present petition is gross abuse of process of law on the part of the Petitioner-MTDC. After challenging the eviction decree in three hierarchical levels of Appellate Bench, High Court and the Apex Court and after participating in mesne profits inquiry before the Small Causes Court and Appellate Bench, the Petitioner has turned around and

questioned validity of decree in the execution proceedings. It is seeking to re-agitate the grounds which were raised by it while challenging the main eviction decree. This would be apparent from the grounds raised by it before this Court in Civil Revision Application No.634 of 2009 challenging the eviction decree. It would be apt to reproduce paragraph 13 of the said Civil Revision Application, which reads thus:

13. The Petitioner submits that, it is necessary to refer to the letter of 4th January 1975, which was written by the Respondent, to the Director of Tourism, Government of Maharashtra. The copy of this letter is enclosed to the memo of this writ petition and is marked as ANNEXURE A12. Alongwith the said letter dated 4th January 1975, the draft of the Lease Agreement for the Director of Tourism is enclosed. The copy of that draft is enclosed to the memo of this writ petition and is marked as ANNEXURE A13. The Respondent before this Honourable Court is the Plaintiff and therefore the initial burden as to in whose favour, the tenancy has been created is on the Respondent. The Respondent by the earlier notice dated 17th April 2000 has taken the stand that the Lease has been created in favour of the MTDC viz. the Petitioner herein whereas by the second notice dated 11th September 2000, the very Respondent have taken the contention that the lease is made in favour of the Secretary of the Tourism and by the letter dated 4th January 1975 referred to above, it is addressed neither to MTDC nor to the Secretary of the Department of Tourism but it is addressed to the Director of Tourism. The Petitioner submits that, this shows that the Respondent itself is not sure as to in whose favour, the tenancy has been created.

12) Again, before the Apex Court in Special Leave Petition (C) No. 35024 of 2009, the Petitioner raised following grounds:

(C) For that the High Court has erroneously and wrongly recorded that the no material has been placed on record that the tenancy was of the Government. The Petitioner invites the attention of the Hon'ble Court to refer to the following aspects on record:-

(I) It is an admitted position that, on 11.09.2000, the notice has been given by the Respondent. This notice has been given to the Secretary, the Department of Tourism. In the submission of the Petitioner, the Secretary, Department of Tourism is Government of Maharashtra. In the

submission of the Petitioner, in any circumstances, he would be "such officer" in the meaning of Section 3(1)(a). The expression "such officer" would mean an officer, who is referred to in the earlier part of Section 3(1)(a) viz. any officer subordinate to the Government authorized in this behalf. The Petitioner submits that, the very fact that the Respondent have given the notice shows that, the Respondent themselves have accepted that the Secretary of the Government of Maharashtra, Department of Tourism in either the Government or he is such officer, who has taken the premises "on behalf of the Government".

(II) That after incorporation of the Petitioner the Respondent vide their letter dated 04.01.1975 addressed to the Director of Tourism, Government of Maharashtra sought approval of the Government of Maharashtra to the draft lease agreement entered in favour of the Petitioner. And as such the said Act of the Respondent shows that the lease was executed in favour of the Government for the work of the Government.

(III) That essentially the Petitioner Corporation herein has been formed to carry out the responsibility of the promotion of Tourism in the State of Maharashtra and its object is nothing but to carry out the business of the Government. And as such the suit premises was taken out by the Petitioner on behalf of the Government only.

D. For that in view of the Aforesaid facts, the Petitioner submits that, the case would be therefore governed by the provisions of Section 3(1)(a) and either it has to held that the premises are let to the Government or premises are "taken on behalf of the Government on such basis, by such Officers or the premises, "taken on behalf of the Government in the name of such Officers. Even if it is held that in the light of the letter dated 04.01.1975 and the draft or the lease agreement, for the Director of Tourism the premises was let, not even to the Secretary but it was let out, to the Director of Tourism even the Director of Tourism, also would be "such Officers" "sub-ordinate to the Government as contemplated by the provisions of Section 3(1)(a) of the Maharashtra Rent Control Act.

(E) For that the Ld. Single Judge of the High Court as well as the Courts below have concentrated only on the provisions of Section 3(1)(b) of the Maharashtra Rent Control Act. The Petitioner submits that, apart from the provisions of Section 3(1)(b) with respect overlooked by the Courts below, is that the latter portion of Section 3(1)(a) is clearly attracted in the instant case, since in the light of the averment, in the notice dated 11.09.2000 and the circumstantial fact, at the time when the lease was executed itself shows that the leasee even according to the Respondent, was either the Government of Maharashtra, or "lease was taken on behalf of the Government on such basis, or in the name of such Officers.

(F) For that the Ld. Single Judge of the High Court as well as the Courts below ought to have referred to the last two categories of the second part of Section 3(1)(a) viz. (when the lease is taken on behalf of Government on such basis, by such Officers" and another circumstance viz. "when the lease is taken, on behalf of the Government in the name of such Officers. The disjunctive between this two categories viz. "or" would show that both the categories are different. It is submitted that, it is possible that the lease has been taken "on behalf of the Government on such basis by such Officers, which may not be necessarily in his name. It is the submission of the Petitioner that, without prejudice to the contention of the Petitioner, that the lease is given, from the averment in the plaint and from the circumstantial evidence, particularly the notice dated 11.09.2000 it is clear that, the premises is let out to the Government or in any case, the case of the Petitioner would fall in the last category, viz. premises are taken "on behalf of the Government on such basis by such Officers" or it would also fall, in yet another category viz. "premises are taken, on behalf of the Government", in the name of such Officers", because the draft list, shows that the lease was to be executed in the name of Director of Tourism.

(G) For that the Ld. Single Judge of the High Court ought to have considered that in any case the provisions of Section 3(1)(b) are not attracted, and therefore the Provisions of Maharashtra Rent Control Act, are clearly attracted in the case, and therefore it is not open, for the Small Cause Court, working as Small Cause Court and not as Rent Court under the provisions of Maharashtra Rent Control Act, to entertain the said Suit, and to decree in favour of the Respondent. It is submitted with respect, that the decree passed by the Trial Court, and confirmed by the Appellate Court, is clearly nullity and void.

13) Thus, the Petitioner is seeking to reagitate the very same issue which has been considered and decided by this Court and by the Apex Court while determining validity of eviction decree passed in T.E.& R. Suit No.73/79 of 2001.

14) Even otherwise, this Court is not inclined to entertain the present petition which is shown to have been filed under Article 226 of the Constitution of India. Since the order passed by the Executing Court is challenged, the petition ought to have been filed under Article 227 of the

Constitution of India. Considering the conduct of the Petitioner-MTDC, this Court is not inclined to exercise extraordinary jurisdiction either under Article 226 or 227 of the Constitution of India. The jurisdiction under Article 226 is discretionary and the Court can decline to exercise the same considering the facts of the case. The jurisdiction of writ Court cannot be invoked as a matter of right. Even jurisdiction under Article 227 of the Constitution of India is supervisory and it need not be exercised to correct every error of law and fact. Reference in this regard can be made to the judgment of the Apex Court in **Garment Craft vs. Prakash Chand Goel**,¹ in which it has relied on paragraph 15 as under :

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order 1 is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

15) Considering the above position, this Court is not inclined to entertain the present petition. By a separate order passed in Civil Revision Application No.283 of 2022 this Court has already granted partial respite to the Petitioner in respect of the quantum of mesne

¹ 2022 (4) SCC 181

profits payable in respect of the suit premises. The Petitioner has already vacated possession of the suit premises and the only reason why it is fighting litigation is to avoid the liability to pay mesne profits in respect of occupation of the suit premises from 31 January 2001 to 30 December 2010. Reduction of quantum of mesne profits in Civil Revision Application No. 283 of 2022 has already resulted in grant of some solace to the Petitioner. Thus, part of the objective behind the present litigation initiated by the Petitioner-MTDC before this Court is fulfilled. It is yet another reason why this Court is not inclined to entertain the present petition.

16) The Writ Petition is accordingly **dismissed** with no order as to costs.

[SANDEEP V. MARNE, J.]