

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3565 OF 2026**

Gool Rusi Vatcha through

Viraf Rusi Vatcha

....PETITIONER

VERSUS.

Naziya Wasim Shaikh & Ors.

....RESPONDENTS

Mr. Nirman Sharma with Mr. Deeshank Doshi and Ms. Uma Sharma i/b. Dharam & Co., for the Petitioner

Mr. M.A. Vaid with Ms. Vidhya N. Shet i/b. Vaid & Associates for Respondent No.1.

CORAM: SANDEEP V. MARNE, J

JUDG. RESD. ON: 07 APRIL 2026.

JUDG. PRON. ON: 22 APRIL 2026.

JUDGMENT:

1) The extent of inquiry to be conducted by the Executing Court under Order 21 Rule 101 of the Code of Civil Procedure, 1908 (**Code**) when objection of the obstructor is found to be *ex facie* baseless is the issue involved in the Petition. Whether it is necessary to conduct a full-fledged inquiry like a trial in the suit in every obstruction application filed under Order 21 Rule 97 or Rule 99 on account of use of the words 'all questions' coupled with impermissibility to file a fresh suit under Rule 101 of Order

21 or whether in a given case, it is permissible to conduct a summary inquiry for rejection of baseless obstruction claim?

2) The issue arises in the light of challenge raised by the Petitioner-decree holder to the judgment and order dated 27 November 2025 passed by the Appellate Bench of the Small Causes Court allowing Execution Appeal No. 95 of 2023 and setting aside Trial Court's judgment and order dated 6 May 2023 passed in Obstructionist Notice No.43 of 2023. The Appellate Court has remanded the proceedings to the Trial Court for fresh decision by providing due opportunity to both the parties to lead evidence and for deciding the Obstructionist Notice afresh.

3) Petitioner is the owner and landlady of the building known as Jamset Building situated at C.T.S. No.19, Jacob Circle, Mahalaxmi, Mumbai-400 011. Room No.15 situated on third floor of Jamset Building are the 'suit premises'. It is the case of the Petitioner-Plaintiff that the suit premises were originally let out to Defendant No.1-Yusufali Danawalla for residential use. According to the Plaintiff, Defendant No.1 unlawfully sublet and parted with possession of the suit premises in favour of Mr. Kalam Khan (Defendant No.2). Plaintiff accordingly instituted R.A.E. Suit No.262/449 of 2009 against both the Defendants for recovery of possession of the suit premises on the ground of unlawful subletting, acquisition of alternate premises, *bona fide* requirement and unauthorized additions and alterations. Defendant No.1-tenant failed to appear and contest the suit. Defendant No.2 resisted the suit by filing written statement and claimed *inter alia* that he was residing with the original tenant for several years in capacity as distant relative. That Defendant No.2 had paid amount of Rs.2

lakhs to the Constituted Attorney of the Plaintiff for transfer of the rent receipts. The Trial Court proceeded to decree the Suit by judgment and order dated 27 September 2011 by upholding the grounds of unlawful subletting and *bona fide* need. Both the Defendants were directed to handover possession of the suit premises to the Plaintiff.

4) Petitioner-Plaintiff filed Execution Application No. 528 of 2022. Defendant No.2 appeared before the Executing Court and filed undertaking dated 3 January 2023 accepting the decree. He undertook to pay to the Petitioner an amount of Rs. 46 lakhs towards rent and other dues. He specifically undertook that in case of default he would not challenge execution of decree and would not induct any third parties. Defendant No.2 however did not act in terms of the undertaking and failed to make payment to the Petitioner. He also stopped attending before the Executing Court. When Plaintiff was about to secure possession of suit premises from Defendant No.2, Ms. Naziya Wasim Shaikh (Respondent No.1/Obstructionist) suddenly appeared on the scene and filed Obstructionist Notice No. 43 of 2023 objecting to the execution of the decree. She claimed herself to be the niece of Defendant No.2 and claimed that the Constituted Attorney of the Plaintiff had demanded amount of Rs.10 lakhs from Defendant No.2 for transferring the rent receipt in his name. However, since Defendant No.2 showed inability to pay the said amount, the Constituted Attorney enquired with Naziya whether she is willing to have the rent receipt transferred in her name. She claimed that she started paying installments of Rs.10,000/- per month and cleared the entire amount of Rs.10 lakhs during January 2012 to January 2022. She

further claimed that Constituted Attorney of the Plaintiff, instead of transferring the rent receipt, demanded further amount of Rs.50 lakhs from her. She claimed that Plaintiff No.1 and Defendant No.2 were in collusion with each other in securing the decree. She accordingly opposed execution of the decree and in fact prayed for setting aside the same in Obstructionist Notice No.43 of 2023.

5) By order dated 18 February 2023, the Trial Court stayed the eviction decree during pendency of Obstructionist Notice. The Trial Court dismissed Obstructionist Notice No.43 of 2023 filed by Naziya by imposing costs of Rs.5,000/- on her vide judgment and order dated 6 May 2023. Naziya first filed Revision Application No. 143 of 2023 challenging Trial Court's order dated 6 May 2023. The Revision Application was dismissed as not maintainable by order dated 13 June 2023. Naziya thereafter filed Execution Appeal No.95 of 2023 challenging Trial Court's order dated 6 May 2023. Since the Appellate Court refused to condone delay of 7 days in filing the Appeal, Naziya filed Writ Petition No. 8336 of 2023 before this Court, which was allowed by order dated 7 July 2023 and the delay was condoned. The Appellate Court thereafter passed order dated 24 November 2023, directing Naziya to deposit interim compensation at the rate of Rs.18,000/- per month from the date of the order of the Trial Court.

6) According to the Petitioner, Naziya defaulted in payment of interim compensation and the Petitioner moved for issuance of warrant for possession. Defendant No.2 filed application dated 27 March 2024 seeking stay in the execution proceedings on the ground that he was

residing with Naziya in the suit premises as a relative. On 27 July 2024, Defendant No.1 filed application for setting aside the *ex parte* decree.

7) Execution Appeal No.95 of 2023 was heard by the Appellate Court and has been allowed by judgment and order dated 27 November 2025. The Appellate Court has set aside the Trial Court's order and has remanded Obstructionist Notice No.43 of 2023 for fresh decision on merits after providing due opportunity to both the parties to lead evidence. Aggrieved by the Appellate Court's order dated 27 November 2025, the Petitioner has filed the present Petition.

8) Mr. Sharma, the learned counsel appearing for the Petitioner submits that the Appellate Court has grossly erred in allowing the Appeal and in remanding the Obstructionist Notice for fresh decision. He submits that in every case, it is not necessary to hold an in depth enquiry while deciding application under Order 21 Rule 97 of the Code of Civil Procedure, 1908 (Code). That in a given case where the obstruction is found to be *prima facie* baseless, the Execution Court can conduct summary inquiry into alleged independent claim of the obstructionist. He relies on judgment of this Court in Indubai D. Kothawale and Ors. vs. Laxman Balwant Chougule and Ors.¹ in support of his contention that conduct of detailed inquiry by the Executing Court is not necessary. He submits that if Executing Court arrives at the conclusion that the Obstructionist has no semblance of rights to present obstruction, the Court can summarily reject the application. That reliance by the Appellate Court on judgment of the Apex Court in Brahmdeo Choudhary vs.

1 Civil Revision Application No. 636 of 2023 decided on 21 December 2023

Rishikesh Jaiswal² is inapposite as the Supreme Court has nowhere held that summary approach is impermissible while deciding obstructionist proceedings.

9) Mr. Sharma submits that the very claim of Naziya is mischievous. That she resides with Defendant No.2 and therefore, since eviction decree is passed against Defendant No.2, she must vacate possession of the premises. He relies on bailiff's report, as well as photographs in support of his claim that Defendant No.2 was found in possession of suit premises as on 21 March 2024 belying Naziya's claim of collusion between Plaintiff and Defendant No.2. That in the present case, the Trial Court had rightly observed that Naziya has derivative rights through Defendant No.2 and that she does not have independent right to occupy the premises. He relies on copy of covering letter dated 14 March 2026 by which the present Petition was served on Naziya, who has accepted the same, both for herself as well as for Defendant No.2. He relies on photographs at page- 129 of the Petition in support of his contention that Defendant No.2 and Naziya were seen together in the Court premises. He submits that this is a classic case where valid decree passed by the Small Causes Court is attempted to be frustrated by raising an objection by relative of Defendant No.2 residing with him. He relies on order passed by Division Bench in Writ Petition No. 13205 of 2025 in which costs are imposed on Defendant No.2 for suppressing passing of eviction decree against him. He submits that Naziya's name is in the Ration Card of Defendant No.2. He submits that the case of Naziya of payment of Rs.10 lakhs to Constituted Attorney of Plaintiff is false to her knowledge. That

2 AIR 1997 SC 856

Defendant No.2 offered to pay Rs.46 lakhs to the Plaintiff vide undertaking dated 3 January 2023 which belies Naziya's claim of having paid Rs.10 lakhs to the Plaintiff or to her constituted attorney. Mr. Sharma accordingly prays for setting aside the order passed by the Appellate Court.

10) Mr. Vaid, the learned counsel appearing for Respondent No.1-Naziya opposes the Petition. He submits that no interference is warranted in the impugned order since the order merely directs decision of claim of Naziya by providing her an opportunity to lead evidence. That the recording of evidence can be completed in a time-bound manner and Trial Court can be requested to return findings on the evidence so recorded. That therefore there is no need to set aside the order passed by the Appellate Court which does not cause prejudice to the Petitioner. That the Trial Court has grossly erred in dismissing the Obstructionist Notice without even giving an opportunity to Naziya to lead evidence. That her case is specifically based on claim of having paid amount of Rs.10 lakhs to the Plaintiff and that she must be given an opportunity to prove the same.

11) Mr. Vaid further submits that the execution proceedings were filed after gross delay of 10 long years. So far as no prejudice would be caused if the execution is delayed by few more months by grant of opportunity to Naziya to lead evidence. He submits that this Court has already observed in order dated 7 July 2023 that the claim of Naziya needs to be adjudicated. He also relies on order passed by the Trial Court on 22 February 2022 in support of his contention that Defendant No.2 was not in

possession of the suit premises as per the bailiff's report. He relies on affidavits of two witnesses filed in the Obstructionist Notice and submits that Naziya must be permitted to lead evidence of those witnesses. He submits that Naziya is not an educated lady and may have accepted notice on behalf of Kalam Khan which does not mean that Kalam Khan occupies the suit premises. He accordingly prays for dismissal of the Petition.

12) Rival contentions urged on behalf of the parties now fall for my consideration.

13) Petitioner-Plaintiff has secured eviction decree against the original tenant (Defendant No.1) as well as against the sublettee (Defendant No.2) on 27 September 2011 in R.A.E. Suit No. 262/449 of 2009. When decree was put to execution in the year 2022, Defendant No.2 came forward and showed willingness to acquire tenancy rights in respect of the suit premises by filing Undertaking dated 3 January 2023. He undertook to pay amount of Rs.40,00,000/- towards lumpsum amount and Rs. 1,00,000/- towards arrears of rent. He also agreed to pay further amount of Rs.5,00,000/- towards advocate fees. This is how Defendant No.2 undertook to pay the amount of Rs.46,00,000/- to the Plaintiff for the purpose of recognition of his tenancy rights in the suit premises. In paras- 7 and 9 of the Undertaking, Defendant No.2 agreed as under :

7. I say that if I fail to make the payment to the Plaintiff in terms of paragraph-6 above, I will voluntarily handover vacant and peaceful possession of the suit premises from me. I also undertake that I shall not seek any extension of time from this Hon'ble Court or any other Court for the payment mentioned above.

9. In undertake that on and after the execution of this undertaking till 31st January, 2023 I shall not induct any third party or shall not part with possession of the suit premises in any manner whatsoever or damage the suit premises in any way.

14) Thus, as on 3 January 2023, Defendant No.2-Kamal Khan claimed possession in respect of the suit premises and undertook not to induct any other person therein.

15) After Defendant No.2 failed to make payment as agreed in the Undertaking dated 3 January 2023, and the decree became executable, Naziya has appeared on the scene 27 days later on 30 January 2023 to file Obstructionist Notice No.43 of 2023. She claimed that after she got married in 2007, she started residing separately with her husband but returned to the suit premises in 2010 after being separated from her husband. In paras-3(A) to 3(D) of her Application, Naziya has raised following claims :

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A. Even after taking monies from Defendant No.2 by C.A. of the Plaintiff, false and frivolous suit came to be filed by the Plaintiff. It is after passing of exparte decree in RAE Suit No. 449 of 2009 there was a joint meeting held between myself, Defendant No.2 and C.A. of Plaintiff wherein the C.A. of Plaintiff demanded for Rs. 10,00,000/- for transferring the rent receipt in the name of Defendant No.2. However Defendant No.2 showed inability to pay the said amount and asked me if I was interested to purchase the suit premises in my name. As I was residing in the suit premises alongwith my child and I had no other shelter, I agreed to pay this consideration to the CA of the Plaintiff however in installments of Rs. 10,000/- every month as arranging such an huge amount was not possible for me readily. The CA of the Plaintiff agreed to the said proposal.

B. It is since January, 2012 that CA of the Plaintiff started collecting Rs.10,000/- every month from me in cash. Here is the schedule of the payment made to the Ca of the Plaintiff:

Sr. No.	Period	Payment
1.	January, 2012 to December, 2012	1,20,000
2.	January, 2013 to December, 2013	1,20,000
3.	January, 2014 to December, 2014	1,20,000
4.	January, 2015 to December, 2015	1,20,000
5.	January, 2016 to December, 2016	1,20,000
6.	January, 2017 to December, 2017	1,20,000
7.	January, 2018 to December, 2018	1,20,000
8.	January, 2019 to December, 2019	1,20,000
9.	January, 2020 to March, 2020	30,000/-
10.	January, 2022	10,000/-
Total		10,00,000/-

C. As the entire country was under lockdown and I was under financial hardships I could not complete the payment after March, 2020 and hence last payment was made in the month of January, 2022. However after collecting the entire payment the CA of the Plaintiff initially started dilly delaying for issuance of rent receipt. Thereafter when CA of the Plaintiff he started giving excuses that he would issue rent receipt in her name after end of financial year 2022.

D. Accordingly I approached the CA of the Plaintiff in the month of April, 2022 and I was shocked to hear from him that now he wanted Rs. 50,00,000/- from me for transfer of rent receipt as according to him it was not feasible for him now to issue tenancy in my favour for Rs. 10,00,000/-. I pleaded and requested the CA of the Plaintiff to no blackmail however the CA of the Plaintiff threatened me that if I did not vacate the suit premises he would get a court order to throw me and my child out from suit premises.

16) Naziya claimed collusion between Plaintiff and Defendant No.2 and pleaded in paras-5(B) as under :

(B) The conduct of the Defendant No.2 clearly shows collusion with the Plaintiff wherein after giving up possession of the suit premises he appears before executing court and gives an undertaking without any information or knowledge to me.

17) Naziya suppressed the fact that she is the niece of Defendant No.2 in the Obstructionist Notice. She however admitted residence with Defendant No.2 since the year 2002. Though she claimed separate residence between 2007 to 2010 and raised her claim of continuous residence after 2010 with her son, she did not plead as to how Defendant No.2 vacated possession of the suit premises and how she became exclusive possessor thereof.

18) While claiming collusion between Plaintiff and Defendant No.2, Naziya has raised the plea of Defendant No.2 giving up possession of the suit premises. The collusion is essentially alleged to explain the act of Defendant No.2 in filing Undertaking dated 3 January 2023. Be that as it may. It is Naziya's case that Defendant No.2 has given up possession of the suit premises and she is in exclusive possession thereof. This theory of Naziya appears to be false to the core, which is clear from the following :

(i) After Naziya failed to deposit interim compensation fixed by the Appellate Court vide order dated 24 November 2023, Petitioner took out application for issuance of possession warrant. When the bailiff approached the suit premises to serve the warrant on 21 March 2024, he met Defendant No.2 and served the warrant on Defendant No 2. At that time, it appears that only Defendant No.2 was found at the suit premises. Defendant No.2 informed the bailiff that he alone was residing in the suit premises and Defendant No.1 had left possession long back. Petitioner has produced bailiff's report dated 21 March 2024 together photograph showing

Defendant No.2 accepting service of warrant from the bailiff. The photograph does not depict causal presence of Defendant No. 2 in the suit premises, but his residence therein. Thus, Defendant No.2 is found residing in the suit premises on 21 March 2024, thereby belying Naziya's claim of he acting in collusion with the Plaintiff as well as the claim of exclusive possession after Defendant No. 2 gave up the possession.

(ii) Defendant No.2 filed Writ Petition No. 13205 of 2025 claiming certain rights in respect of the terrace and for carrying out repair works of the building through MHADA. Defendant No.2 was Petitioner No.5 in WP-13205 of 2025. The fact that Defendant No. 2 filed a petition in the year 2025 clearly shows his interest in the suit premises and not that of Naziya's. While filing the said petition, Defendant No.2 suppressed the factum of passing of eviction decree against him, as well as furnishing of Undertaking by him about loss of rights in respect of the suit premises. The Division Bench of this Court passed following order on 28 January 2026 :

5. Thus, the aforesaid order passed by this Court is very clear that it was ultimately for the MHADA to take appropriate steps. Therefore, a second petition for the same reliefs could not have been filed and cannot be held to be maintainable. Apart from this, the suppression which we have noted pertains to an eviction decree passed by the Small Causes Court at Bombay, which the petitioner is suffering which has not been disclosed in this petition. We also find that the petitioner has also furnished an undertaking before the Appellate Court that he would not obstruct execution of the decree meaning thereby that he has lost all rights in respect of the said tenements in question. These material facts have been suppressed in the memo of the petition.

Thus, as on 28 January 2026 also, Defendant No.2 is found to be residing in the suit premises. The Petition is dismissed by this Court by imposition of costs due to suppression by Defendant No. 2.

(iii) When the present Writ Petition was sought to be served on the Respondents, the notice is accepted by Naziya in the suit premises on 16 March 2026 not only for herself but also for Defendant No.2-Kalam Khan.

(iv) After being caught on 21 March 2024 by the bailiff, Defendant No.2 made attempt to salvage the situation by filing application at Exh.33 in Execution Application No. 528 of 2022 seeking stay of proceedings. In that application, Defendant No.2 referred to Obstructionist Notice taken out by Naziya and stay order passed on 18 March 2024. In his application, Defendant No.2 pleaded as under:

“The Defendant No.2 resides with the Obstructionist in the aforementioned matter and is her family member”

Thus, there is a specific admission by Defendant No.2 on 27 March 2024 of residence in the suit premises with Naziya.

(iv) Defendant No.2 has made one more attempt to frustrate execution of decree by filing application before the Trial Court on 23 July 2024 claiming that he was never served with the suit

summons. Apart from the fact that claim of Defendant No.2 of not being served with the suit summons being false, as he filed Written Statement in the suit and also filed undertaking before the Executing Court accepting the decree, filing of such application shows interest of Defendant No.2 in the suit premises as on 23 July 2024 belying Naziya's claim of Defendant No.2 acting in collusion with Plaintiff and Defendant No.2 relinquishing possession of the suit premises.

19) In the light of the above position, the question that arises for consideration is whether it is incumbent for the Executing Court to conduct an in depth enquiry into the obstruction claim of Naziya. No doubt, once application under Order 21 Rule 97 of the Code is filed, inquiry into 'all questions' arising between the parties to a proceeding on that application and relating to the adjudication of the application, needs to be determined by the Court under Rule 101. The objective behind Order 21 Rule 101 of the Code is to ensure that all questions relating to right of obstructionist *qua* decree holder must be determined in application filed under Rule 97 and parties cannot be relegated to a remedy of filing a fresh suit. Rule 101 of Order 21 is aimed at preventing multiplicity of proceedings. To illustrate, if obstructionists claims title in respect of the suit property, the Executing Court cannot expect him to secure declaration of title through separate suit. The issue of title between obstructionist and decree holder needs to be decided in enquiry under Rule 101. Similarly, if obstructionist claims possessory right, that right also needs to be adjudicated in the Rule 101 inquiry instead of expecting parties to file a

separate suit. Rule 101 however cannot be read to mean that it is mandatory to decide all questions by conducting a full-fledged inquiry in every case. In a given case, where Executing Court is satisfied that the obstructionist has no semblance of right, it need not conduct full-fledged trial in such a case. In **Silverline Forum Pvt. Ltd. vs. Rajiv Trust and Anr.**³ the Apex Court has held in paras-12 and 14 of the judgment as under:

12. The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resistor raised it. The questions which executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g. if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree- holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resistor or the obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in Order 21 Rule 97(2) of the Code, execution court can decide whether the question raised by a resistor or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.

14. It is clear that executing court can decide whether the resistor or obstructor is a person bound by the decree and he refused to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. **The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resistor. Of course the Court can direct the parties to adduce evidence for such determination if the Court deems it necessary.**

(emphasis added)

³ (1998) 3 SCC 723

20) Following the judgment of the Apex Court in *Silverline Forum* (supra) and after taking into consideration the ratio of the judgment in *Brahmdeo Chaudhary* (supra), this Court held in *Indubai D. Kothawale* (supra) in para-16 of the judgment as under:

16. Thus every baseless application made by a third party to present obstruction need not be taken to a detailed enquiry by the executing Court. The executing Court is competent to make a summary enquiry as to whether the question raised by the Obstructor legally arises between the parties or not. If the executing Court arrives at a conclusion that an Obstructor has no semblance of right to present obstruction, it can summarily reject the application. In the present case, there is specific admission on the part of the Revision Applicants that the Judgment Debtor (Respondent No.2) is in possession of the suit property. Additionally, no material was presented before the executing court to demonstrate actual or constructive possession of the suit property by them. Therefore, no error can be traced in the order passed by the executing court in rejecting the application filed by the Revision Applicants.

(emphasis and underlining added)

21) Thus, it is not mandatory for the Executing Court to conduct a full-fledged trial every time a baseless objection is presented under Order 21 Rule 97 of the Code. It is permissible for the Executing Court to make adjudication based on admitted facts or even based on averments made by the Obstructor. Rule 101 of Order 21 cannot be misread to mean that an avenue is created for persons presenting baseless objections to execution of decree to have their objection determined like a full-fledged Suit thereby indefinitely delaying execution of the decree.

22) The Appellate Court has grossly erred on relying on judgment of the Apex Court in *Brahmdeo Choudhary* and of this Court in *Gaurihar Batane and Ors. vs. Ashok Gajare and Anr*⁴. What is held by the Apex

4 2000 SCC Online Bom 220

Court in *Brahmdeo Choudhary* (supra) is that once obstruction is presented by a person claiming independent right in the property, the Executing Court cannot brush aside or bypass such obstruction and insist on re-issuance of warrant for possession. The Apex Court held that inquiry under Rule 101 and 105 of Order 21 becomes necessary only after it is held that application under Order 21 Rule 97 was maintainable. This follows that in a case where the objection under Order 21 Rule 97 is found to be grossly baseless, it is the duty of the Executing Court to reject the same at the threshold by conducting a summary inquiry as held by the Apex Court in *Silverline Forum* and by this Court in *Indubai D. Kothawale*.

23) Keeping in mind the above settled principles, I proceed to examine whether a summary inquiry was sufficient for deciding Naziya's obstruction. The Trial Court has recorded following findings while rejecting Naziya's Obstructionist Notice:

13. In catena of Judgments, Hon'ble Apex Court has held that, if prima facie it is seen that, the obstructionist has no independent rights, title and interest, then there is no need of framing issues and to go for trial and the application can be decided at the time of first hearing. In such circumstances, it is necessary to see whether applicant has shown that she has independent rights in suit premises. It is the applicant's own contention that before marriage, she was in occupation and possession of suit premises along with defendant No.2 since 2002 and after marriage, she is residing in suit premises since 2010. The further contention of applicant shows that the applicant was having knowledge about the suit as she has mentioned that, "Even after taking money from defendant No.2 by C.A. of plaintiff, false and frivolous suit came to be filed by the plaintiff". The applicant has not clarified as to why she did not intervene the suit if she was having independent rights in suit premises.

14. The applicant has mentioned that she has paid amount of Rs.10 Lakhs to the plaintiff for transfer of tenancy rights in her name. The applicant has made contrary statements. In one place she is saying that, she is lawful occupant and tenant in respect of suit premises and at other place, she is saying that she has paid Rs.10 Lakhs to the plaintiff for transfer of tenancy rights in her name. She

has filed affidavits of Salma Khatun Attar Khan and Ayesha Iqbal Shaikh to show that she has paid an amount of Rs. 10 Lakhs to C.A. of plaintiff. These affidavits are not sufficient to show that the applicant was having funds and she has paid the amount to the plaintiff. She has not filed on record any other documentary evidence like bank statements etc. to prove the same. She has filed her marriage certificate, Aadhar Card and School ICard of her son to show that she is residing in suit premises. Mere residence in suit premises is not sufficient to prove independent rights in it and applicant has to show that, she is not claiming through defendant No.2 and she has independent rights in suit premises.

15. It is not disputed to the applicant that her name is appeared in the ration card of defendant No.2. It is not the contention of applicant that she is claiming through defendant No.1. On perusal of Judgment and decree in RAE Suit No.449 of 2009, it is seen that this Court has held that, "the defendant No.2 was unlawful sublettee and occupant in suit premises". When defendant No.2 himself was not having any rights, title and interest in suit premises, then how applicant will get any rights in the suit premises. It is not her contention that the plaintiff had executed any agreement with her at any point of time. The said Judgment also shows that, defendant No.2 had contended in written statement that he had paid amount of Rs.2 Lakhs to the C.A. of plaintiff but he did not transfer rent receipt in the name of defendant No.2. It is seen that defendant No.2 and applicant are in habit to make statements about payment of amount to C.A. of plaintiff without any proof.

16. So also, the defendant No.2 had given undertaking in execution application No.528 of 2022 and has undertaken that on and after the execution of that undertaking till 31/01/2023, he shall not induct any third party or shall not part with possession of the suit premises in any manner whatsoever or damage the suit premises in any way. It means till 31/01/2023, defendant No.2 himself was in possession of suit premises though it may be with applicant. In such circumstances, the applicant has not clarified how she got independent rights in the suit premises.

17. The applicant has stated that the plaintiff and defendant No.2 are in collusion with each other. This statement is also made contradictory by the applicant. The applicant herself has stated in the application that she approached defendant No.2 to have the word with C.A. of plaintiff to which he assured her that he would resolve the issue and convince plaintiff to issue rent receipt in her name. So also, it is applicant's own contention that, the defendant No.2 shown his inability to pay Rs.10 Lakhs for transfer of rent receipt in his name and he asked applicant whether she is interested to purchase suit premises in her name. In such circumstances, the applicant has to prove how and in what manner, plaintiff and defendant No.2 are in collusion with each other which is not proved by her. There is no evidence about alleged collusion except bare words of the applicant. Moreover, as soon as defendant No.2 failed to comply his undertaking, plaintiff applied for issuance of warrant of possession. It is also pertinent to note that, if applicant is paying amount to the C.A. of plaintiff since 2012 and according to

her, last payment was made in the year 2022 and it was with consultation of defendant No.2, then how defendant No.2 himself has given undertaking that, he will pay lumpsum amount of Rs.40 Lakhs and Rs.10 Lakhs towards arrears of rent on or before 30/01/2023.

18. The ration card filed on record, the undertaking given by defendant No.2 in execution application and applicant's own contention that she was/is residing with defendant no.2 in suit premises when suit was filed show that the applicant is claiming through defendant No.2. The applicant has not clarified when defendant no.2 has relinquished his so called rights in suit premises and in whose favour. She has not clarified where defendant no.2 is residing when she again came in suit premises since 2010. She purposely not mentioned in the application that defendant no.2 is residing in suit premises as on today also and only mentioned that she is residing in suit premises along with her son, even though the address of defendant no.2 mentioned in title clause of obstructionist notice is of suit premises. It shows that applicant herself has not come before the Court the clean hands. Such malafide litigants shall be thrown out of the Court and they are not entitled for any relief from the Court. Admittedly, rent receipt is yet not transferred in the name of defendant No.2 or the applicant. As discussed earlier, the defendant No.2 himself has no right, title and interest in suit premises being unlawful occupant, the applicant who is claiming through defendant No.2 also has no independent right, title and interest in the suit premises. Therefore, there is no need to proceed for the trial and to determine whether applicant has independent right, title and interest in the suit premises and that will be futile exercise.

24) I am in full agreement with the above findings recorded by the Trial Court. From the material produced by Naziya, one can draw a presumption that she resides in the suit property with her child. However, the residence is with Defendant No.2 and not independent of Defendant No.2. Here the pleaded case of Defendant No.2 relinquishing possession of the suit premises and she possessing the same exclusively, is found to be grossly false. Defendant No.2 is repeatedly found in the suit premises. He himself appeared before the Executing Court and gave Undertaking in January 2023 claiming exclusive possession and undertook not to induct a third party in the suit premises. Even Naziya has admitted that she used to reside with Defendant No.2 in the suit premises. Considering the above

position, the conclusions reached by the Trial Court about absence of any independent right in favour of Naziya to claim possession of the suit premises cannot be found fault with.

25) The Appellate Court has egregiously erred in reversing well-reasoned order passed by the Trial Court. As against detailed reasons recorded by the Trial Court, the Appellate Court has passed a terse order, which though runs into 18 pages, contains reasons in barely two pages, most of which are grossly perverse. The findings recorded by the Appellate Court are as under:

37. On considering the rival stands, it does appear that the obstructionist initially entered the premises through defendant no. 2. Prima facie, therefore, her occupation may seem derivative. However, she does not base her claim on such derivative possession. Instead, she asserts an independent claim on the basis of having paid Rs. 10 lakh to the C.A. of the plaintiff towards transfer of rent receipts. Her asserted claim is thus independent not merely founded on residence with defendant no. 2. The plaintiff and the Trial Court have emphasized the absence of documentary proof of payment.

38. Yet, where a detailed assertion of payment is made specific amount, specific period, specific mode a reasonable opportunity must be afforded to the obstructionist to prove such facts. This requirement becomes even more compelling when viewed in the light of the plaintiff's own conduct. Though the eviction decree was passed on 27.09.2011, the execution application was filed only on 28.07.2022 almost eleven years later.

39. True, mere delay within the permissible limitation period cannot, by itself, lend support to the obstructionist's version. Nonetheless, the timing is relevant when considered alongside her allegation that the disputed payments were made precisely between the decree and the initiation of execution.

40. Therefore, the veracity of these alleged payments must be examined through proper evidentiary process. A summary rejection, without affording an opportunity to prove such facts, was not a legally sound approach.

41. The obstructionist had also relied on affidavits of two individuals in support of her claim. The Learned Trial Court failed to consider these materials. The Trial

Court and the plaintiff have largely focused on the fact that defendant no. 2 had given an undertaking to hand over possession by 31.01.2023, using this to imply that defendant no. 2 alone was in possession.

42. However, the Trial Court simultaneously acknowledged certain documents (such as the AADHAAR card, school ID card of the child, marriage certificate) which indicated the obstructionist's residence in the premises. It then dismissed residence as insufficient to establish an independent right, yet also concluded that defendant no. 2 alone was in possession. These inconsistent findings highlight the need for a proper inquiry and indicate that the Trial Court ought to have examined the obstructionist's evidence fully.

43. Indeed, mere residence is not enough to prove independent right. However, the obstructionist's case is not based on residence but on alleged payment of Rs. 10 lakh pursuant to a demand for transfer of rent receipts. Such a claim cannot be dismissed summarily; it must be tested through the procedure mandated under Rules 101 to 105.

44. Thus, her claim is not derivative through defendant no. 2 but independent, founded on alleged monetary consideration. This cannot be adjudicated without evidence. The Learned Trial Court erred in rejecting the claim summarily and in relying solely on previous residence and defendant no. 2's undertaking.

26) The Appellate Court thus recorded a *prima facie* finding of claim of possession of Naziya being derivative. However, because she has taken the defence of payment of Rs. 10 Lakh for acquiring the tenancy rights in the premises, the Appellate Court has held that an opportunity needs to be granted to her to prove the said assertion. The Appellate Court has thus dealt with the Appeal in a mechanical manner. It has failed to notice the apparent collusion between Naziya and Defendant No. 2. There is ample material on record, which is admitted, to hold that it is Defendant No. 2 who is occupying the suit premises. He has taken several steps to protect his possession of the premises. That material ought to have been considered by the Appellate Court in the light of plea raised by Naziya that Defendant No. 2 had acted in collusion with the Plaintiff. The theory of collusion was required to be set up by Naziya to explain the act of

Defendant No. 2 filing Undertaking before the Executing Court 27 days prior to she filing her obstructionist notice. However, the admitted material on records shows collusion between Defendant No. 2 and Naziya. It is Defendant No. 2 who is found to be in possession of the premises. He is driving the whole litigation through his niece Naziya. Instead of appreciating this admitted material on record, the Appellate Court has erroneously adopted a technical approach in the present case by remanding the proceedings to the Trial Court.

27) The Appellate Court's finding of inconsistency in the findings of the Trial Court about exclusive possession of Defendant No. 2 in the light of documents showing proof of residence of Naziya in the suit premises is again not well founded. Whether Defendant No. 2 resides in the suit premises alone or with Naziya is irrelevant factor. The issue is whether Naziya resides in the suit premises to the exclusion of Defendant No. 2 for establishing her own independent right. The answer to the question is admittedly in the negative. Apart from Defendant No. 2 being found by the bailiff in the suit premises while serving the warrant of possession, he himself has filed a specific application stating that he resides with Naziya in the Suit premises as a part of her family.

28) The Appellate Court has also laid unnecessary emphasis on Plaintiff's conduct of filing execution proceedings after 11 years, which is totally irrelevant factor for deciding the issue of Naziya's independent right to occupy the suit premises. The Appellate Court failed to notice falsity into Naziya's claim of Defendant No.2 giving up possession of the suit premises and she exclusively possessing the same, despite availability

of ample material on record. The Appellate Court had the record of bailiff finding Defendant No.2 residing in the suit premises on 21 March 2024. It also had the records of Trial Court indicating filing of two applications by Defendant No.2 on 27 March 2024 claiming residence through Naziya, as well as application on 23 July 2024 under Order 9 Rule 13 of the Code for setting aside *ex parte* decree. However, all this material is completely ignored by the Appellate Court. Instead of passing strictures against Naziya for filing false claim of Defendant No.2 colliding with Plaintiff and she being in possession of the suit premises to the exclusion of Defendant No.2, the Appellate Court has proceeded to reward Naziya by ensuring that Defendant No.2 continues to occupy the suit premises taking benefit of opportunity of leading evidence granted to Naziya.

29) The Appellate Court ought to have appreciated the position that it is Defendant No.2 who is operating the entire litigation behind the curtains. In fact, he has come out openly by filing applications dated 27 March 2024 and 23 July 2024 claiming rights in respect of the suit premises contrary to the eviction decree. It is unfortunate that the Appellate Court has failed to appreciate this position and has allowed its jurisdiction to be grossly misused and abused by Naziya and by Defendant No.2.

30) While this Court would ordinarily not interfere with the order which only permits parties to lead evidence, however, it is seen that Naziya is just a front set up by Defendant No. 2, who is operating the entire litigation behind the scenes. He has set up Naziya for putting an obstruction to execution of the decree. There are photographs on records of Defendant No. 2 and Naziya being seen together in the Court premises.

He has admitted his residence in the suit premises with Naziya. In such circumstances, upholding the order of the Appellate Court on the ground that it merely grants opportunity to Naziya to lead evidence in support of her claim, would tantamount to assisting the Defendant No. 2 in his nefarious designs. There is material irregularity in exercise of jurisdiction by the Appellate Court, which has failed to lift the veil and notice as to how Defendant No.2 is taking the Courts for a ride. The order passed by the Appellate Court is thus indefensible and liable to be set aside.

31) The Petition succeeds and I proceed to pass the following order:

- (i) Judgment and order dated 27 November 2025 passed by the Appellate Bench of the Small Causes Court in Execution Appeal No. 95 of 2023 is set aside.
- (ii) Trial Court's Order dated 6 May 2023 passed in Obstructionist Notice No.43 of 2023 is confirmed.

32) The Writ Petition is allowed in the above terms and **disposed of** with no order as to costs.

[SANDEEP V. MARNE, J.]

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signed by
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SHAILESH
SAWANT
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