

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 131 OF 2026

1. Vipul Dhansukhlal Sanghvi & Ors.

..... APPLICANTS

: VERSUS :

Shri Tilak Khetshi Shah, decd. through

1(a) Smt. Sobhana Tilak Khetshi & Ors

....RESPONDENTS

Mr. Vaibhav Sugdare with Mr. Gaurav Sawant i/b. Ms. Pooja Thakkar, for the Applicants.

Mr. Shravan Vyas with Mr. Vivek Vyas, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

JUDGMENT RESD. ON : 16 April 2026.

JUDGMENT PRON. ON : 4 May 2026.

JUDGMENT :

1) The Applicants are the Obstructionists, who have obstructed execution of decree passed in T.E. & R. Suit No. 268/291 of 2003. The Trial Court has made the Obstructionist Notice absolute by judgment and order dated 11 December 2024 directing the Applicants/Obstructionists to deliver possession of the suit premises to the Plaintiffs. The order passed by the Trial Court is upheld by the Appellate Bench of the Small Causes Court by dismissing Execution Appeal No.13 of 2025. The Applicants have

accordingly filed the present Revision Application challenging the decisions of the Trial and the Appellate Courts.

2) Plaintiffs had instituted T.E. & R. Suit No.268/291 of 2003 for recovery of possession of land admeasuring 489 sq. mtrs. forming part of Cadastral Survey No. 6/172 of Parel Sewree Division, situated at Acharya Donde Marg, Sewree, Mumbai-400 015 (**suit plot**). By judgment and decree dated 10 March 2006, the Trial Court decreed the Suit and directed the Defendants to handover possession of the suit plot to the Plaintiffs. The decree was put in execution by filing Execution Application No. 260 of 2017. After the warrant of possession was issued and the bailiff visited the premises, he noticed several galas/structures on the suit plot were occupied by different individuals. The Applicants/Obstructionists were found in possession of Gala Nos.4 and 5. Obstructionist No.1 was found in occupation of a shed erected on the suit plot but he stated that he was merely a caretaker and Obstructionist No.2 alongwith Obstructionist Nos.3 to 5, who are partners of Obstructionist No.2, were in possession of the suit premises. The Obstructionists refused to vacate the structures in their possession and a report to that effect was submitted by the Bailiff.

3) In pursuance of Bailiff's Report, Plaintiff instituted Obstructionist Notice No. 232 of 2018 for removal of obstruction from the structures. The notice was replied by the Obstructionists/Applicants claiming independent rights in respect of the structures. Based on the pleadings, issues were framed by the Trial Court. Parties led evidence in support of their respective claims.

4) After considering the pleadings, oral and documentary evidence, the Trial Court proceed to make the Obstructionist Notice absolute vide judgment and order dated 11 December 2024. The Trial Court directed the Obstructionists to vacate the possession of the suit premises. The Appeal preferred by the Applicants/Obstructionists has been dismissed by the Appellate Bench of the Small Causes Court vide judgment and order dated 20 January 2026. Accordingly, the Applicants have filed the present Revision Application.

5) Mr. Sugdare, the learned counsel appearing for the Revision Applicants has submitted that the Trial and the Appellate Courts have grossly erred in not appreciating the position that the entire plot of land is declared as Slum vide Notification dated 16 February 1979 issued by the Dy. Collector and Competent Authority. That CTS No.6/172, of which the suit plot forms a part, is undoubtedly declared as slum. That Appeal preferred by the Plaintiffs against the Notification dated 16 February 1979 has been dismissed by the Tribunal constituted under the provisions of Maharashtra Slum Areas (Improvement, Clearance Redevelopment) Act, 1971 (**Slum Act**) vide judgment and order dated 8 July 1981. He submits that the Plaintiff suppressed the factum of land being declared as slum. That Plaintiff did not lead any evidence to prove that the premises in occupation of the Applicants do not form part of slum declaration. That once the Applicants produced Notification showing slum declaration in respect of CTS No.6/172, the onus gets shifted on the Plaintiff/deed holder to prove that the premises in occupation of Obstructionists fell within the excluded area in the Notification. That there is bar under Section 22 of the Slum Act from entertaining any suit for eviction without

the permission of the Competent Authority. That the decree therefore is nullity and cannot be executed.

6) Mr. Sugdare further submits that the decree has been secured behind the back of the Obstructionists despite Plaintiffs having full knowledge of their presence in the constructed structures. That non-impleadment of Obstructionist has resulted in passing of a faulty decree on account of gross suppression indulged into by the Plaintiffs.

7) Mr. Sugdare further submits that the execution proceedings were otherwise time barred. That the Execution Application was filed beyond the period of 12 years and the same ought to have been dismissed by the Trial and the Appellate Courts.

8) Mr. Sugdare further submits that the Trial and the Appellate Courts have erroneously treated the Applicants to be claiming through the Judgment Debtors. That there is no evidence showing interconnection between the Applicants and Judgment Debtors. That the Applicants produced reliable and credible evidence in the form of Partnership Deed, Shop and Establishment Certificate, Municipal tax receipts, rent receipts etc. for proving their lawful possession prior to 1 February 1973. That thus independent right to occupy the structure under Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (**Bombay Rent Act**) was clearly established. That mere withdrawal of R.A.D. Suit is inconsequential and a full fledged enquiry into the tenancy status of the Applicants ought to have been conducted in the Obstructionist Notice under the provisions of Order 21 Rule 101 of the

Code of Civil Procedure, 1908 (**the Code**). On above broad submissions, Mr. Sugdare prays for setting aside the orders passed by the Trial and the Appellate Courts.

9) Mr. Vyas the learned counsel appearing for the Respondents/decreed holders opposes the Revision Application. He submits that the Suit was filed for recovery of possession of open piece of land and that therefore decree is passed in respect of the land and not in respect of the structures. He submits that concurrent findings are recorded by the Trial and the Appellate Courts about absence of independent rights, which do not warrant any interference in exercise of revisionary jurisdiction of this Court.

10) So far as the point of slum declaration is concerned, he submits that the burden was on the Applicants/Obstructionists to prove that their structures are located on portion of land which is declared as slum. That the entire land bearing CTS No.6/172 is not declared as slum. That in the Written Statement, no issue of land being declared as slum was raised. That therefore Obstructionists cannot have any *locus* to raise the said issue.

11) Mr. Vyas further submits that the Applicants have direct linkage with the original Defendant-lessee-B. Shantilal & Co. That the Trial and Appellate Courts have rightly held that Applicants do not have any independent rights and that their rights flow only through the tenant/Defendant in the main suit. That presentation of obstruction by the Applicants was gross abuse of process of law. He invites my attention

to Written Statement filed in T.E. & R. Suit No. 268/291 of 2003 to demonstrate that the Defendant therein had specifically raised a defence of D. Kanaiyalal & Co. being the tenant of the suit premises. That Mr. Natwarlal Balubhai is partner, both of D. Kanaiyalal & Co., as well as of B. Shantilal & Co. and he verified the Written statement on behalf of the Firm-B. Shantilal & Co. That therefore direct nexus of Natwarlal Balubhai with the two partnership firms is clearly established. That therefore rights, if any, of the Applicants flow out of the Original Defendant in the Suit. On above broad submissions, Mr. Vyas would pray for dismissal of the Revision Application.

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

13) The challenge to the concurrent findings recorded by the Trial and Appellate Courts is raised by the Applicants mainly on the ground that the decree cannot be executed in the light of provisions of Section 22 of the Slum Act without seeking prior permission of the Competent Authority. Applicants have relied on Notification dated 16 February 1979 issued by the Deputy Collector and Competent Authority under the Slum Act in support of their contention that CTS No. 6/172 has been declared as Slum area. However, perusal of the Schedule to the said Notification would indicate that only portion of land admeasuring 3468.26 sq. mtrs. was declared as Slum area and the entire land bearing C.T.S No. 6/172 is not declared as slum. More importantly, Notification excludes certain portions of land in CTS No. 6/172, which is clear from the

exclusion in the Schedule to the Notification "*excluding permanent building known as 'Old Post Chawl', 'Timber Depot', 'Garage'*".

14) It appears that there was no occasion for the Trial Court to conduct enquiry into suit plot being declared as slum. The said defence was sought to be raised for the first time in reply to Obstructionist Notice by the Applicants. Since Applicants took the said defence, the burden was on them to prove that the land, on which their structures are located, is declared as slum. In view of the fact that only certain portion of land in CTS No.6/172 is declared as slum, the burden was on the Applicants to prove that their structures are located on the land which is declared as slum by the Notification. However, the Applicants have thoroughly failed to prove the same by leading cogent evidence. They ought to have undertaken the exercise of conducting measurements for proving that their structures are located on land which is declared as slum vide Notification dated 16 February 1979. Reliance by the Applicant on judgment of the Apex Court in **Laxmi Ram Pawar Versus. Sitabai Balu Dhotre & Anr.**¹ is inapposite. No doubt permission of the Competent Authority under Section 22 is required even for execution of the decree. However, since the Applicants have failed to prove that their structures are located on the land which is declared as slum, the question of seeking prior permission of the Competent Authority for execution of decree does not arise. The allegation of suppression sought to be raised by the Applicants is misplaced as they have failed to prove that the portion of land on which their structures are situated has been declared as slum. Hence reliance on judgment of the Apex Court in **S.P. Chengalvaraya**

1 2011 1 SCC 356

*Naidu (Dead) by LRs. Versus. Jagannath (Dead) by LRs and Ors.*² is inapposite. The Appellate Court has recorded an emphatic finding that the Notification explicitly excluded certain portions and that the suit premises are situated within the excluded portion.

15) Though full-fledged enquiry into existence of an independent right of Obstructionist may be warranted in given circumstances under Rule 101 of Order 21 of the Code, under the guise of conduct of such enquiry, the Executing Court cannot go behind the decree. The Obstructionist cannot seek to establish as to how the Defendant in the Suit could have raised a particular defence and prevented the decree from being passed. All that an obstructionist can do under Rules 97 and 101 of Order 21 of the Code is to establish his independent right, *dehorse* the judgment debtor, to occupy the premises. This is the limited scope of enquiry in the obstructionist proceedings. In the present case, however, Applicants expected the Executing Court to go beyond the decree and questioned its very validity. It must be borne in mind that the obstruction is by an inductee of original tenant. Therefore, the limited enquiry which needs to be conducted in such circumstances is whether such inductee can have any independent right to occupy the structure even if the tenant is evicted from the premises/land. Under the garb of obstructing the decree, the obstructionists cannot be permitted to question the very validity of the decree. The objection of land being declared slum therefore needs to be considered and decided keeping in mind the above broad principles.

2 (1994) 1 SCC 1

16) In my view, the Trial and Appellate Courts have conducted sufficient enquiry into the claim of Applicants in respect of the Slum Act. The findings recorded by the Courts do not suffer from the vice of perversity. In that view of the matter, the defence of land being declared as slum is clearly misconceived and taken for the sole purpose of somehow protecting possession of the premises even after two Courts concurrently ruling against the Applicants.

17) Coming to the issue of establishment of independent right, the Applicants have failed to prove the same. The Trial and Appellate Courts have concurrently rendered a finding that there is direct nexus of Applicants/Obstructionists with the Original Defendant in the Suit filed against B. Shantilal & Co. Perusal of Written Statement filed in T.E. & R. Suit No.268/291 of 2003 would indicate that the same was verified by Mr. Natwarlal Balubhai in his capacity as Partner of B. Shantilal & Co. In that Written Statement, B. Shantilal & Co., raised a defence that D. Kanaiyalal & Co. is the real tenant of the suit premises. However, this defence could not be established and the decree for eviction was passed. The Obstruction was however caused by the partners of the Firm-D. Kanaiyalal & Co. Mr. Vyas has invited attention of this Court to Income-Tax Returns filed by Kanaiyalal & Co. for the year 1975 in which name of Mr. Natwarlal Balubhai is indicated as partner of the Firm, D. Kanaiyalal & Co. The case thus clearly involves fraudulent stand taken by the Applicants who have direct nexus with the Original Defendant-Firm in the Suit. They clearly claimed right to occupy the premises through the Original Defendant-Judgment Debtor.

18) The Applicants have thus failed to prove existence of any independent right to occupy the suit premises. The Revision Application is devoid of merits. It is accordingly **dismissed** with no order as to costs. The Respondents/Plaintiff shall be at liberty to withdraw the deposited amount of interim compensation after a period of 4 weeks.

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[SANDEEP V. MARNE, J.]