

---

**(1970) 03 BOM CK 0030**

**In the Bombay High Court**

**Case No :** Criminal Revision Application No. 1164 of 1969

Dhanrajmal Gobindram and Company Private Ltd.

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

---

**Date of Decision :** 04-03-1970

**Acts Referred:**

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 24  
Penal Code, 1860 (IPC) — Section 198, 341, 451

**Citation :** (1970) 72 BOMLR 495 : (1970) MhLj 873

**Hon'ble Judges :** Vimadalal, J

**Bench :** Single Bench

---

## **Judgement**

Vimadalal, J.—This is an application in revision by the present landlords of a building in the Fort area in Bombay against an order passed by the Presidency Magistrate, 20th Court, Esplanade, Bombay on September 16, 1969 refusing an application made by them to the said Magistrate for stay of criminal proceeding pending the disposal of a civil proceeding adopted by the present respondent No. 2 against them in the Court of Small Causes at Bombay. The facts necessary for the purpose of disposing of this revision application are that respondent No. 2 became the tenant of the third floor premises in the building in question named "Calcot House" some time in the year 1936 and is at present a statutory tenant thereof. It is the case of respondent No. 2 that the lift in the said building stopped functioning in December 1965 and there was some correspondence in regard to the same between him and the then landlord of the building. The building was purchased by the petitioners in June, 1968 and respondent No. 2 continued to correspond with the new landlords in regard to the lift. In course of the correspondence, various proposals, including a proposal that the tenants should share the cost of repairs to the lift were discussed, but the present petitioners never refused to repair the lift in question and to restore that amenity. On April 24, 1969, the present respondent No. 2 filed a complaint u/s 24(1) read with Section 24(4) of the Bombay Rent Act in the Court of the Presidency Magistrate 20th Court, Esplanade, Bombay, and also filed an

application in the Court of Small Causes for restoration of the amenity of the lift u/s 24(2) of the said Act. It is necessary to note that criminal proceedings were initiated by the present respondent No. 2 by means of a private prosecution, and that both the private prosecution and the application to the Court of Small Causes Bombay were filed by him on the same day. The petitioners before me then applied to the learned Magistrate for stay of the criminal proceeding pending the disposal of the proceeding in the Court Small Causes, but that application was refused by the learned Magistrate by his order dated September 16, 1969. It is from that order that the petitioners have approached this Court in revision.

2. In dismissing the application for stay made to him by the present petitioners, the learned Magistrate based his order almost entirely on the view which he took that, by Section 24 of the Bombay Rent Act, the Legislature had advisedly provided two remedies "which are exclusive" and the authorities cited before him were, therefore, not applicable, and on that ground alone, the application for stay made to him was held by him to be not sustainable. I am afraid I cannot agree with that view of the learned Magistrate. The material part of Section 24 of the Bombay Rent Act is in the following terms ;

24. Landlord not to cut off or withhold essential supply or service.-(1) No landlord either himself or through any person acting or purporting to act on his behalf shall without just or sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him.

(2) A tenant in occupation of the premises may, if the landlord has contravened the provisions of Sub-section (1), make an application to the Court for a direction to restore such supply or service.

(3) If the Court on inquiry finds that the tenant has been in enjoyment of the essential supply or service and that it was cut oft" or withheld by the landlord without just or sufficient cause, the court shall make an order directing the landlord to restore such supply or service before a date to be specified in the order. Any landlord who fails to restore the supply or service before the date so specified shall for each day during which the default continues thereafter be liable upon a further direction by the Court to that effect to fine which may extend to one hundred rupees.

(4) Any landlord, who contravenes the provisions of Sub-section (i) shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both.

3. Even a cursory perusal of the said section shows that scope of the remedy by way of criminal prosecution and the remedy by way of an application to the Court of Small Causes provided for by the section is not the same. The remedy which the said section provides in the nature of an application to the Court of Small Causes is not only a more comprehensive remedy, but is in fact a complete remedy, in so far as it not only empowers the Court to order restoration of the

amenity in question by the landlord, but also provides for punishment of a criminal nature if the order for restoration is disobeyed by the landlord. Though initiated in a Civil Court, it is, therefore, not a mere civil remedy, but a remedy which is civil as well as criminal in nature. Once the section is properly understood in that manner, the whole basis of the learned Magistrate's order disappears.

4. On the question of stay of criminal proceedings pending disposal of civil proceedings several authorities have been discussed before me in course of the hearing of this revision application. The first of them in chronological order is the decision of a Division Bench of this Court in the case of Louis Philip Dias Vs. Mahadev Barik Raut, . The facts of that case were that the complainant had executed a sale deed of his land in favour of the two accused, Mahadeo and Damodar, and had got the same registered. The complainant thereafter instituted a complaint of cheating and conspiracy against the two accused and some others on the ground that the said deed had been obtained from him whilst he was drunk and did not know what he was doing. On the very next day after that complaint was filed the two accused filed a civil suit to recover possession of the land from the complainant and then made an application to the Magistrate trying the criminal proceedings for stay of those proceedings pending the disposal of the civil suit. The Magistrate dismissed that application and, on a reference by the Additional Sessions Judge of Thana to this Court, a Division Bench of this Court declined to interfere. In doing so, Broomfield J. in the course of his judgment, after referring to the authorities, observed as follows (pp. 1058-1059) :

.. .Although, generally speaking, it is not desirable that civil and criminal litigation between the same parties on substantially the same facts should go on simultaneously, the mere fact that a civil case is pending is not by itself a sufficient ground for staying criminal proceedings. The rule which was laid down in Anna Ayyar v. Emperor ILR (1906) 30 Mad. 226 that the defendant in a civil suit ought not to be allowed to prejudice the trial of such suit by launching and proceeding with a criminal prosecution on the same facts against the plaintiff and his witnesses has been approved by this Court, and I take it we should generally stay criminal proceedings if there were reasons to believe that they had been launched with that object. Conversely, if we saw reason to believe that a civil suit had been launched with the object of prejudicing criminal proceedings, we should not be likely to stay the latter, though we should, if necessary, stay the civil suit. In all such cases one of the matters which the Court has to consider is whether, as Mr. Justice Patkar said in Jehangir Pestonji Wadia Vs. Framji Rustomji Wadia, , the object of the criminal proceedings is to prejudice the trial of the civil suit or to use them as a lever to coerce the accused into a compromise of the civil suit, and in that connection the question whether the criminal complaint or the civil suit was instituted first is always important. The Courts have frequently drawn a distinction between public and private prosecutions and indicated that stronger reasons for staying proceedings should be required in the case of the former

than in the case of the latter.

Broomfield J. further observed that these, however, are not the only tests and indicated that some cases are obviously more suitable for determination by a civil Court, for instance, cases of criminal breach of trust by one partner against another and, under such circumstances, a criminal prosecution might properly be stayed, although there might be no reason whatever to infer any intention to prejudice or embarrass the civil litigation. Summing up his observations, Broomfield J. himself stated that there was no hard and fast rule in the matter and that the Court had to consider the circumstances of each particular case and decide on grounds of justice and expediency whether it was proper that the criminal proceedings should be stayed, or civil proceedings should be stayed, or that both should be allowed to take their course.

5. The next decision for consideration is the decision of another Division Bench of this Court in the case of *Thakorlal Vadilal Vs. Ambalal Bhikhabhai Patel*, . In that case, Thakorlal had filed a civil suit against his father and other members of his family to obtain partition and separate possession of his share in the joint family property. More than a year after the date of that suit, one of the members of his family filed a complaint against Thakorlal charging him with offences under Sections 451 and 341 of the Indian Penal Code in respect of one of the alleged joint family properties. Thakorlal thereupon applied for stay of the criminal proceedings pending the decision of the civil suit, but the Magistrate refused to grant stay and the Sessions Judge confirmed that order. Thakorlal having applied to this Court in revision, this Court granted stay of the criminal proceedings pending the hearing of the civil suit and, in so doing, laid down that the ultimate title to the property would have to be determined in the civil suit, and if one of the parties to the suit contended that there had been wrongful dispossession, the obvious remedy of such party was to apply in the civil suit for an injunction or receiver, but no conceivable advantage was to be gained by allowing the prosecution to proceed pending the determination of the civil suit. The learned Chief Justice in his judgment observed that it was unfortunate that subordinate criminal Courts, in dealing with cases of that sort, did not consider that the interest of the public was opposed to multiplicity of proceedings but seemed to regard the matter as some of competition between the civil and criminal Courts. The last paragraph of that judgment clearly shows that the decision of the Division Bench in the said case was ultimately based on the facts of that case. The next decision in the chronological order, to which a reference may be made is the unreported decision of *Weston and Shah JJ. in V.G. Sayadiants v. J.P.C. Shroff* (1949) Criminal Revision Application No. 707 of 1949, decided by *Weston and Shah JJ.*, on September 29, 1949 (Unrep.). In the said case the petitioner had filed a revision application against an order passed by the Presidency Magistrate refusing to issue process and discharging the notice on a complaint filed by the petitioner against the opponent for an offence u/s 24(4) of the Bombay Rent Act. One of the amenities which was alleged to have been withdrawn in the said case was also the lift, as in the present case. Referring to

the scheme of Section 24 of the Bombay Rent Act, Shah J. delivering the judgment of the Bench, observed that ordinarily a tenant, if he finds that an essential supply or service is either cut-off or withheld by his landlord is entitled to go to the Small Cause Court and make an application for restoration of the essential supply or service. Shah J. further observed as follows :

...Excepting in very exceptional circumstances, it would not be expected that a criminal court would be called upon to consider whether a landlord has, without just or sufficient cause, cut off or withheld any essential supply or service enjoyed by the tenant in respect of the premises let to him.

Shah J. then referred to the view of the learned Magistrate who held that the landlord has a right of reasonably regulating the hours during which the service could be made available and that the withdrawal of the service during certain parts of the night could not be said to be unreasonable or indiscriminate, and stated that under the circumstances there was no reason for interfering with the order of the learned Magistrate. This unreported decision of Weston and Shah JJ. has been cited by another Division Bench of this Court in the later case of Haji Mahomed Haji Alli Mahomed Vs. State, . It must however be pointed out that all that was laid down in Haji Mahomed's case was that the fact that no civil proceeding had been taken for restoration of the essential supply or service under Sub-section (2) of Section 24 was not a bar to the conviction of the landlord u/s 24(4) of the Bombay Rent Act. The judgment in the said case did not lay down any proposition contrary to the one laid down by Weston and Shah JJ. in their judgment in V.G. Sayadiants v. J. P. C. Shroff discussed above. In the case of M.S. Sheriff Vs. The State of Madras and Others, , which has been cited by the learned Magistrate in the present case, two persons, Govindan and Damodaran, filed petitions u/s 491, Criminal Procedure Code, for release claiming that they had been illegally detained by two Sub-Inspectors of Police who were appellants before the Supreme Court. Both the Sub-Inspectors denied that the petitioners were in their custody and swore affidavits in support of that contention. The High Court of Madras directed that a prosecution should be filed against the said two Sub-Inspectors for perjury u/s 198, Indian Penal Code in respect of the statements made on affidavit, and it was against that decision of the High Court that the two Sub-Inspectors went in appeal to the Supreme Court. The Supreme Court was informed that, at the time when the said case was going on, two further sets of proceedings arising out of the same facts were pending against the appellants, one being two civil suits for damages for wrongful confinement, and the other being two criminal prosecutions u/s 844, Indian Penal Code for wrongful confinement which, however, were withdrawn by the time the Supreme Court delivered judgment. The Supreme Court stated that the simultaneous prosecution of the criminal proceedings out of which the appeal before it arose, and the civil suits, would embarrass the accused and it had therefore to determine which should be stayed. The Supreme Court observed (para. 15) that, as between the civil and the criminal proceedings, it was of opinion that the criminal matters should be given precedence, but went on to

state that there was no hard and fast rule which could be laid down. The Supreme Court, however, stated that it did not consider that the possibility of conflicting decisions in civil and criminal Courts was a relevant consideration, since the law itself envisaged such an eventuality when it expressly refrained from making the decision of one Court binding on the other, or even relevant except for certain limited purposes such as sentence or damages. The Supreme Court laid down, "the only relevant consideration here is the likelihood of embarrassment."

6. Both the judgment of the Division Bench of this Court in the case of Thakorlal Vadilal v. Ambalal Bhikhabhai as well as the judgment of the Supreme Court in M. S. Sheriff v. State of Madras, which have been discussed by me above, were considered by Chagla C. J. and Shah J. in their unreported judgment in Messrs. National Traders v. Atlas Assurance Co. Ltd. (1954) O.C.J. Appeal No. 3 of 1954, decided by Chagla C.J. and Shah J., on August 12, 1954 (Unrep.) It may, at this stage, be observed that in none of the later judgments discussed by me has the decision of Broomfield and Divatia JJ. in the case of Dias v. Mahadev has been considered at all. The case before Chagla C. J. and Shah J. was an appeal from an order of Coyajee J. refusing to restore a suit which he had dismissed for default on the ground that no sufficient cause had been shown by the plaintiffs for their absence. The suit had been filed to recover a large amount from the defendant insurance company in respect of the plaintiffs' claim for indemnity for the value of insured goods which were alleged to have been destroyed by fire. About a month prior to the filing of that suit, a complaint was filed before a Magistrate to the effect that the plaintiffs were guilty of very serious offences under the Indian Penal Code comprising of arson, cheating etc. When the civil suit reached hearing on August 25, 1953, the plaintiffs applied for an adjournment and, on that application being refused, counsel for the plaintiffs withdrew and the learned judge dismissed the suit for default. An application was then made by the plaintiffs for restoration of the suit which was dismissed by Coyajee J. as already stated above, and it was against that order that the appeal came up before Chagla C. J. and Shah J. The main ground which was urged on behalf of the appellant-plaintiff was that, if the plaintiffs had gone on with the suit, it would have seriously embarrassed their defence in the criminal proceedings. While declining to interfere in appeal, Chagla C. J. referred to the judgment of the Supreme Court in M. S. Sheriff's case and construed the same as laying down that the mere fact of conflicting decisions should not be looked upon as an overpowering factor so as to ignore other factors, and it seemed to Chagla C. J. that the Supreme Court was referring to the case before it when it said that the only relevant consideration was the likelihood of embarrassment. The learned Chief Justice pointed out that the Supreme Court emphasized the fact that no hard and fast rule could be laid down and stated that he did not read the decision of the Supreme Court in M. S. Sheriff's case as laying down a rule that where there was a civil suit and a criminal proceeding, the civil suit should necessarily be stayed. The learned Chief Justice construed the said decision as

meaning that the Court should consider various circumstances, out of which one was embarrassment to the parties, the second was delay in the decision of the civil suit, and the third was the interests of justice, and decide the question as to which of the two proceedings should go on. Shah J. in his judgment in the said unreported case, while concurring with the view of Chagla C. J. referred to the decision in Thakorlal Vadilal's case cited above and pointed out that in that case the prosecution was a private prosecution and went on to observe that the rule stated by Beaumont C. J. was, however, not inflexible and, in a proper case, even where the prosecution is a private prosecution, the Court may not direct stay of a criminal prosecution, having regard to the conduct of the parties and the larger interests of the administration of justice. Shah J. further observed :

The rule that a prosecution will normally be stayed during the pendency of the suit, in which the same question arises for determination, does not apply where there is a public prosecution in the sense that the State is prosecuting an offender for commission of an offence relating to property or right in respect of which a civil suit is also pending or where substantially common questions of law or fact fall to be decided in the civil find the criminal proceeding.

Shah J. also observed :

...No hard and fast rule can be laid down for judging whether the civil suit or the criminal proceeding should be allowed to be continued; but the question as to what course should be followed must be decided on the facts and circumstances of each case and having regard to the nature of the proceedings, the conduct of the parties in the civil and the criminal proceedings, likelihood of delay, embarrassment, loss of evidence and the suitability of the particular dispute being more effectively and more satisfactorily decided by the civil or the criminal court, and also having regard to the paramount consideration as to where the interest of the public as distinguished from the interest of one or the other contesting party lie?.

The Court then proceeded to dismiss the appeal before it.

7. The same question arose before Shah and Vyas JJ. while deciding the criminal application in the case of Kanaiyalal Chandulal Monim Vs. Indumati T. Potdar and Another, , S.C. wherein it was laid down by Shah J., delivering the judgment of the Bench, as follows :

...When there are simultaneously two proceedings relating to the same subject matter between the same parties, one in the civil court and another in the criminal court, it is always safe to have the question decided in the civil court, unless there has been gross delay in filing or prosecuting the civil suit or the civil proceeding has been filed mala fide.

8. The learned judges were considering an application for stay of a criminal proceeding u/s 24(4) of the Bombay Rent Act similar to the one with which I am concerned in the present case, pending the disposal of a civil suit between the

parties, and it was in that connection that the learned judges laid down the law as stated above. Their lordships granted the application for stay. Mr. Kothari on behalf of respondent No. 2 in the present case also cited the decision of the Supreme Court in the case of Kanaiyalal Chandulal v. Indumati (1956) Criminal Application No. 283 of 1956, decided by Shah and Vyas JJ., on April 16, 1956 (Unrep.) as authority for the proposition that both the civil and the criminal remedies must be regarded as being on a par, but I am afraid the judgment in the said case lays down no such proposition. The said authority is, in my opinion, not relevant for the purpose of disposing of the matter before me and I, therefore, do not propose to deal with the same.

9. As far as general principles, if principles they can be called, which emerge from the authorities discussed above regarding the question of stay are concerned, they are only two, and both of them are of a negative character viz., (1) that there is no hard and fast rule as to whether a criminal proceeding should be stayed or a civil proceeding should be stayed, the question being one which has to be decided on the facts and circumstances of each particular case—a principle which emerges from all the authorities discussed above; and (2) that the possibility of conflicting decisions in civil and criminal courts is not a relevant consideration since the law itself envisages such an eventuality, a principle which forms ratio of the decision of the Supreme Court in *M. S. Sheriff's* case also discussed above. Apart from these two negative "principles" laid down by authorities, the others are not principles at all, but are merely in the nature of guide lines chalked out by judicial decisions indicating how the Court's power to grant stay should be exercised. Some of them have only an illustrative value. Turning to these statements of law, the authorities do lay down that the primary consideration is the interests of justice which are opposed to multiplicity of proceedings on the same facts. This would imply that the Court must consider whether one of the proceedings was instituted with a view to prejudice the other, or what is the same thing, whether one of those proceedings would tend to embarrass the other, and in that connection, the question whether the criminal proceeding or the civil suit was instituted first, as well as the question as to whether the former was a public or a private prosecution are important, though not conclusive. These, however, are not the only considerations. There are other considerations which the Court must also bear in mind. One such consideration is whether the object of instituting the criminal proceeding was to use the same as a lever to coerce a compromise of the civil suit, as laid down by Broomfield J. in the case of *Dias v. Mahadev*. According to the judgment of the Supreme Court in *M. S. Sheriff's* case cited above, as interpreted by Chagla C. J. and Shah J. in their unreported judgment also cited above, some other facts and circumstances which have to be taken into consideration by the Court are, the nature of the proceeding, the conduct of the parties, the likelihood of delay in the decision of the civil suit, the possible loss of evidence, and the suitability of a particular dispute being more effectively and more satisfactorily decided by the civil or the criminal Court. What is, however, important to note is that, except for a stray

observation by Broomfield J. in Louis Bias's case, none of the authorities discussed by me above, lays down that both the criminal proceeding as well as the civil proceeding should be allowed to continue, even if both are between the same parties and relate to the same facts. Broomfield J. himself has, in the passage from his judgment in the said case which has been quoted above, stated that, generally speaking, it is not desirable that civil and criminal litigation between the same parties on substantially the same facts should go on simultaneously. Respondent No. 2's stand that both the proceedings in the present case should be allowed to continue is, therefore, clearly untenable. That is the position emerging from the authorities on the question of stay, in general, apart from two of the unreported decisions discussed by me above which specifically deal with the position in regard to Section 24 of Bombay Rent Act to which I must now refer.

10. Shah J. in delivering the judgment of the Bench in the unreported decision in V. G. Sayadiants v. J. P. C. Shroff, has in a passage which I have already quoted above, laid down that, excepting in very exceptional circumstances a criminal Court would not be expected to consider the question of withholding of an amenity by the landlord, and in another judgment of the Bench in Tulsidas Chhaganlal Shah Merchant v. Vishram Sabaji Shinde, the same learned Judge has in respect of Section 24 itself made observations of a more general nature which have also been quoted by me above. In my opinion, the view taken by Shah J. in the said two unreported judgments is merely an application to Section 24 of the Bombay Rent Act of the considerations mentioned in the preceding paragraph which, according to the authorities discussed above, must be borne in mind by Courts in deciding the question of stay, I cannot help observing that, as far as Section 24 of the Bombay Rent Act is concerned, it would be a relevant consideration that the Legislature has nominated a special Court viz., the Court of Small Causes in Bombay, for the trial of all questions arising under that Act and that Court must, therefore, be regarded as the most suitable forum for deciding all questions under it. I am bound by the view taken by Division Benches of this Court in the said two unreported decisions, both of which related specifically to Section 24 of the Bombay Rent Act, and I may state that I am in complete agreement with the same. I may, however, add one more consideration in support of the view taken in the said two unreported decisions, and that is, that, as already stated by me above, the proceeding instituted by respondent No. 2 in the Court of Small Causes u/s 24(2) of the Bombay Rent Act is a far more comprehensive proceeding than a criminal prosecution u/s 24(4) of Rent Act and, in fact, the same provides a complete remedy, to him, in so far as Sub-section (3) of that section not only makes relief by way of restoration of the amenity in question available to respondent No. 2 in that proceeding, but also provides for punishment if the order for restoration made therein is disobeyed by the present petitioners.

11. Mr. Kothari for respondent No, 2 has, however, contended that there is a very exceptional circumstance in the present case, and that is, that unlike all other

authorities discussed by me in this judgment, the civil as well as the criminal proceedings in this case are not in the nature of cross-proceedings but have both been instituted by the same party viz., the present respondent No. 2, That, in my opinion, is, however, only one of the circumstances which the Court has to consider along with the other circumstances of the present case in deciding the question of stay. After giving it due consideration, I have come to the conclusion that far from helping respondent No. 2 in this appeal, the same goes against him. The fact that the same party viz., respondent No. 2 has, on the same day, initiated both civil as well as criminal proceedings against his landlord u/s 24 of the Bombay Rent Act shows that his intention was only to embarrass the trial of the civil proceeding by instituting, simultaneously, a criminal proceeding as well, and to use the criminal proceedings as a lever to coerce the landlord into a compromise of the civil suit. It may, at this stage, be pointed out that the criminal proceeding in the present case has been initiated on a private complaint by respondent No. 2 and is not in the nature of a public prosecution. It is true that respondent No. 2 has a statutory right to file a civil and/or a criminal proceeding, but the fact that he has filed both on the same day for, as the correspondence shows, no apparent reason, in my opinion, gives away his real intention as being what I have just stated it to be. In this connection, it may be pointed out that the correspondence between respondent No. 2 and the present petitioners shows that, right from June 1968 when the present petitioners became the landlords of the building in question, till the civil as well as the criminal proceedings were instituted on April 24, 1969, the present petitioners had at no time refused to restore the amenity of the lift which had already stopped functioning since about two-and-a-half years prior to the petitioners becoming landlords of that building. There was, therefore, no immediate reason for instituting not only the civil proceeding, but criminal proceedings as well, on the same day, except for the purpose of embarrassing the trial of the civil proceeding and using the criminal proceeding as a lever to coerce a compromise of the proceeding in the Court of Small Causes,

12. Mr. Kothari next sought to contend that to grant stay of criminal proceedings on the present application would be contrary to Section 844(1) of the Code of Criminal Procedure which provides that criminal proceedings must be disposed of as expeditiously as possible. He has submitted that the Magistrate had, therefore, no power to grant the application made to him for stay of the criminal proceedings, and that I should not make an order on this Revision Application which the learned Magistrate could not himself have made. In my opinion, Section 344(I) lays down, only a general rule which, from its very nature, can have no application when the question of stay or of adjournment of criminal proceedings pending before a Magistrate arises. The concluding words of the said Section 844(1) clearly show that the Court has the power to grant such an application in a proper case. In any event, now that the matter is before this Court, I treat the present revision application as an application to invoke the inherent jurisdiction which this Court undoubtedly has. I hold that the interests

of justice demand that, in the present case, the criminal proceedings before the learned Magistrate should be stayed pending the disposal of R.A.N. Application No. 579/RES of 1969 by the Court of Small Causes, and I order accordingly. As was laid down by Beaumont C.J. in the final order by him in Thakorlal Vadilal's case cited above (at p. 763), the order which I am making will be subject to the usual proviso that if the proceeding in the Court of Small Causes is not prosecuted diligently by the petitioners before me, respondent No. 2 will be at liberty to move this Court for removal of the stay granted by me.