

(2008) 04 AHC CK 0219
In the Allahabad High Court

Jagdish Saran

APPELLANT

Vs

IXth Addl. District Judge and Others
 Jagdish Saran and
Another Vs XVth Addl. District Judge and Others

RESPONDENT

Date of Decision : 22-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 227
Transfer of Property Act, 1882 — Section 106

Citation : (2008) 3 AWC 2592

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—It was only a fortnight ago when this Court expressed its deep anguish at the conduct of a tenant who had resisted dispossession from the premises under his tenancy for a period of more than two years by raising frivolous objections before the Executing Court despite specific directions of this Court that the tenant must handover peaceful possession of the accommodation to the landlord within three months.

2. The facts of the present petition are far more disturbing and reveal how an unscrupulous tenant in his attempt to cling on to the tenanted premises has been able to resist the decree of eviction passed against him in 1969 and that too when this Court, as far back as on 10th February, 1987, had directed the Executing Court to take immediate steps for executing the decree and get the possession delivered to the decree-holder without any further delay after noticing the "fraudulent" conduct of the judgment-debtors.

3. The Court is reminded of the note of caution sounded by the Supreme Court in *Ravinder Kaur v. Ashok Kumar and Anr.* AIR 2003 SCW 7158 :

Courts of law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree-holders the fruits of the decree

obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system.

4. The Court is also reminded of what was observed by the Supreme Court in *T. Arivandandam Vs. T.V. Satyapal and Another*,

The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes decrees with judicial seals *brutum fulmen*. The long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive.

5. The conduct of such unscrupulous tenants in attempting to circumvent the orders of the Courts by adopting dubious ways has been strongly deprecated by the Supreme Court and this Court time and again and exemplary costs have also been imposed.

6. In *Gayatri Devi and Ors. v. Shashi Pal Singh* AIR 2005 SCW 2070 the Supreme Court, in one such case, made the following observations:

This appeal demonstrates how a determined and dishonest litigant can interminably drag on litigation to frustrate the results of a judicial determination in favour of the other side....

On 1.11.1987 the appellant committed perhaps the gravest blunder of her life of letting out the suit property to the respondent-tenant at a monthly rent of Rs. 13,00/-, which subsequently came to be increased to Rs. 1500/- w.e.f. 1.1.1990.

The history of this litigation shows nothing but cussedness and lack of bona fides on the part of the respondent. Apart from his tenacity and determination to prevent the appellants from enjoying the fruits of the decree, there appears to be nothing commendable in the case. Even before us the same arguments of fraud, and that the appellants were not legally owners of the suit property, were pleaded.

In our view, the conduct of the respondent deserves condemnation which we indicate by imposition of exemplary costs of Rs. 20,000/- on the respondent.

7. Coming to the facts of the present case, it is to be noticed that Suit No. 241 of 1966 was filed by the petitioner-landlord Jagdish Saran against the tenants Shri Nanhey Mal and Shiv Shanker for ejectment and recovery of arrears of rent in respect of a shop situated in district Moradabad. This Suit was decreed on 16th May, 1969 on the basis of the compromise between the parties for ejectment and for arrears of rent at the rate of Rs. 20/- per month from 4.5.1966 to 7.8.1966. A decree for mesne profit was also passed at the rate of Rs. 20/- per month from 4.8.1966 till the date of delivery of possession. The judgment-debtor did not comply with the decree as a result of which an application for execution of the decree was filed by the decree-holder in the Court of Munsif on 23.12.1972 which was registered as Execution Case No. 200 of 1972.

8. It is this decree which has yet to be executed because of the calculated and systematic, though absolutely dishonest, tactics adopted by the judgment-debtors and the son of one of the judgment-debtor. As will be seen hereinafter, the two judgment-debtors and the son of one of the judgment-debtor initiated frivolous and mala fide proceedings one after the other and made as many as six attempts to prolong the execution proceedings so that they could retain possession of the tenanted shop.

FIRST ATTEMPT (6.4.1973 to 13.11.1982)

9. On 6.4.1973 the judgment-debtor Shiv Shankar filed objections u/s 47 of CPC 1908 (hereinafter referred to as "CPC") alleging that fresh tenancy rights had been created in his favour on the basis of an agreement between him and the landlord and that the rate of rent had been fixed at Rs. 60/- per month. The Executing Court examined the matter in detail and dismissed the objections on 22.1.1980. Categorical findings were recorded that Shiv Shanker had forged the rent receipts and that there was no fresh contract of tenancy between the parties as alleged by Shiv Shanker. The Revision filed by Shiv Shanker against the said order was dismissed on 13th November, 1982.

SECOND ATTEMPT (21.12.1982 to 7.5.1987)

10. After these proceedings u/s 47 CPC were concluded, the petitioner landlord moved an application on 21.12.1982 requesting the Executing Court to proceed with the execution. This time the judgment-debtor Shiv Shanker took an ingenious plea that as he had already handed over possession of the shop in dispute to the petitioner-landlord the execution should be dropped. The plea set up by Shiv Shanker was resisted by the petitioner-landlord. It was stated that in fact, both the judgment-debtors Nanhey Mal and Shiv Shanker continued to be in possession of the property in dispute and that the assertions made that the possession had been delivered was a completely false allegation. As a matter of fact what Shiv Shanker did was that after intimation of vacancy to the Rent Control and Eviction Officer, he got an allotment order passed of the shop in dispute in favour of his son on 27.11.1982. Shiv Shanker also filed an application before the Rent Control and Eviction Officer stating that he had handed over possession to his son Rajendra Kumar. On that very day Rajendra Kumar, son of Shiv Shanker also made an application before the Rent Control and Eviction Officer in which he stated that he had obtained the possession of the shop. On 25th March, 1983 the Munsif, Chandausi before whom the execution application was pending dismissed the execution application on the ground that the allotment order had been passed on 27.11.1982 in favour of Rajendra Kumar and possession had also been delivered to him.

11. Against this order dated 25th March, 1983 Misc. Appeal No. 34 of 1983 was filed by the landlord. The Ist Additional District Judge, Moradabad, by his order dated 27th July, 1984 dismissed the Appeal though the Court found that the allotment order dated 27.11.1982 was wholly void and without jurisdiction. He

took the view that the execution cannot proceed since Rajendra Kumar had come into possession on the basis of the allotment order.

12. This order dated 27th July, 1984 and the order dated 25th March, 1983 were challenged by the petitioner-landlord in Writ Petition No. 12541 of 1984. The Writ Court noticed that the decree which was passed in 1969 could not be executed because of the "fraudulent" conduct of the judgment-debtors in getting the allotment order passed in favour of Rajendra Kumar, son of judgment-debtor, Shiv Shankar without delivering the possession of the property to the decree holder. The Court agreed with the conclusion arrived at by the lower Appellate Court that the allotment order passed in favour of Rajendra Kumar was wholly void and without jurisdiction but disagreed with the view taken by the Appellate Court that because of the allotment order execution cannot proceed. The writ petition was, accordingly, allowed by the judgment and order dated 10th February, 1987 and the orders dated 25th March, 1983 and 27th July, 1984 as well as the allotment order dated 27th November, 1982 were quashed. The Court further directed the Executing Court to take immediate steps to execute the decree ignoring the allotment order passed in favour of Rajendra Kumar and get the possession delivered to the decree holder without any further delay. The judgment and order dated 10th February, 1987 was challenged before the Supreme Court, but the SLP No. 4305 of 1987 was dismissed on 7th May, 1987.

THIRD ATTEMPT(1987 to 9th May, 1988)

13. Rajendra Kumar, even after the aforesaid directions of this Court, made another attempt by filing Original Suit No. 484 of 1987 for injunction to restrain the defendant-petitioner from evicting him from the premises in dispute without resorting to the procedure established by law and also for not taking possession of the premises on the basis of the proceedings in Execution Case No. 200 of 1972. It was inter alia asserted in the plaint that the allotment order dated 27th November, 1982 had been passed by the Rent Control & Eviction Officer in his favour and he had been given possession of the shop on 23rd December, 1982; that the defendant by the notice which was received by the plaintiff on 5th May, 1987 demanded Rs. 200/- per month as rent which was acceptable to the plaintiff but the defendant subsequently started demanding Rs. 300/- per month as rent; that the defendant agreed to take Rs. 300/- per month as rent w.e.f. 1st April, 1987 and any dispute about the earlier rent stood settled and that rent receipts were also issued by the defendant but subsequently he demanded Rs. 700/- per month as rent and threatened that if this rent was not paid then he would get the plaintiff dispossessed on the basis of the decree which had been put to execution in Execution Case No. 200 of 1972. Along with the plaint an application for grant of temporary injunction was also filed with a prayer that the defendant be restrained from proceeding further in Execution Case No. 200 of 1972. This application was rejected by the Munsif Chandausi by the order dated 17th October, 1987. Feeling aggrieved Rajendra Kumar filed First Appeal From Order No. 839 of 1987 before this Court which was dismissed on 24th November,

1987. The aforesaid Original Suit No. 484 of 1987 was then fixed for hearing on 9th May, 1988. It appears that since Rajendra Kumar could not obtain any interim injunction, he did not appear in the Suit on 9th May, 1988 and the suit was, accordingly, dismissed under Order IX Rule 8 CPC.

FOURTH ATTEMPT(1987 to 2nd August, 1988)

14. During the pendency of the aforesaid Suit No. 484 of 1987, Rajendra Kumar, also filed objections under Order XXI Rule 97 CPC in Execution Case No. 200 of 1972 on the basis of the allotment order issued in his favour. These objections were rejected by the Executing Court by the order dated 13th August, 1987. Rajendra Kumar filed a Revision for setting aside the said order but the Revision was also dismissed by the order dated 15th May, 1988. These two orders dated 13th August, 1987 and 15th May, 1988 were challenged by Rajendra Kumar in Writ Petition No. 15093 of 1988 which was dismissed summarily on 2nd August, 1988. The Court held that the application filed under Order XXI Rule 97 was not maintainable as the petitioner was the son of the judgment-debtor who had obtained an allotment order which allotment order had been quashed and was directed to be ignored by the judgment rendered by this Court on 10th February, 1987 in Writ Petition No. 12541 of 1984.

FIFTH ATTEMPT(1987 to 16th December, 1991)

15. It also needs to be mentioned that Nanhey Mal, judgment-debtor also filed an objection in Execution Case No. 200 of 1972 which was registered as Misc. Case No. 49 of 1987. The objection was that the execution was not maintainable since the boundaries of the property had not been mentioned. This objection was rejected by the Munsif, Chandausi by the order dated 14th August, 1987 holding that it was without any merit and was only an attempt to obstruct the execution. Nanhey Mal then filed Civil Revision against this order which was dismissed on 7th October, 1987. These two orders dated 14th August, 1987 and 7th October, 1987 were challenged by Nanhey Mal in Writ Petition No. 23352 of 1987 which was dismissed by this Court on 16th December, 1991.

SIXTH ATTEMPT (18th February, 1992 to 16th February, 1993)

16. After exhaustion of all these frivolous "litigative acrobatics" another round of litigation was started by Rajendra Kumar by filing yet another suit on 18th February, 1992, being Original Suit No. 98 of 1992. This suit was filed for reliefs that the plaintiff be declared as a tenant in possession of the premises in dispute since 1st April, 1987 on a monthly rent of Rs. 300/- and that the defendant Jagdish Saran be restrained from taking possession of the premises on the basis of orders passed in Execution Case No. 200 of 1972. Along with the plaint an application for grant of temporary injunction was also filed. The Munsif Chandausi, however, this time by the order dated 29th May, 1992 granted temporary injunction and restrained the defendant from evicting the plaintiff during the pendency of the suit on the basis of the order passed in Execution Case No. 200 of 1992. The defendant-petitioner filed Misc. Civil Appeal No. 156

of 1992 for setting aside the aforesaid temporary injunction order but the Appeal was dismissed by the order dated 16th February, 1993.

17. Writ Petition No. 17357 of 1993 has been filed for setting aside these two orders dated 29th May, 1992 and 16th February, 1993. A further prayer has been made in this petition to quash the proceedings of Original Suit No. 98 of 1992.

18. Writ Petition No. 5894 of 2003 has been filed for quashing the order dated 29th January, 1993 by which the release application filed by the petitioner-landlord u/s 16(1)(b) of the U.P. Urban Buildings, (Regulation of Letting, Rent & Eviction) Act, 1972 (hereinafter referred to as the "Act") was rejected. The petitioner has also sought the quashing of the judgment and order dated 28th October, 2002 by which the Revision filed by the petitioner-landlord for setting aside the aforesaid order was dismissed.

19. Writ Petition No. 40551 of 1999 has been filed by the petitioner-landlord for setting aside the order dated 27th January, 1993 passed by the Rent Control & Eviction Officer on the application filed u/s 18(3) of the Act. The petitioner has also sought the quashing of the order dated 26th July, 1999 by which the Revision that had been filed for setting aside the said order was dismissed.

20. Writ Petition No. 17357 of 1993 shall be considered first and thereafter the other two petitions.

WRIT PETITION No. 17357 of 1993

21. As noticed hereinabove, this petition has been filed for setting aside the order dated 29th May, 1992 by which temporary injunction was granted in Original Suit No. 98 of 1992 that had been filed by Rajendra Kumar against the decree holder Jagdish Saran which order was confirmed in Misc. Civil Appeal. A further prayer has been made for quashing the proceedings of Original Suit No. 98 of 1992.

22. On 18th May, 1993 when this Writ Petition was initially taken up by the Court, the following order was passed:

Petitioner is permitted to serve respondent No. 3 personally in addition to normal mode of service. Steps shall be filed within three days. Office shall issue notice returnable within six weeks. Affidavit of service may be filed by next date of listing.

List this petition in the week commencing 12th July, 1993. Till 31st July, 1993 operation of order dated 29th May, 1992 passed in O.S. No. 98 of 1992 and affirmed by appellate Court in Misc. Appeal No. 156 of 1992 shall remain stayed. Executing Court is directed to proceed with execution of decree passed in O.S. No. 241 of 1966 in Ex. Case No. 200 of 1972 which has already been affirmed upto Hon'ble Supreme Court.

23. A Counter affidavit was filed by respondent No. 3 Rajendra Kumar and subsequently rejoinder affidavit was also filed. This Court by the order dated

14th October, 1993 passed the following order on the Stay Extension Application:

List with previous papers on 4th November, 1993. Meanwhile interim order dated 18th May, 1993 shall remain in force.

24. During the pendency of the writ petition, the Trial Court proceeded with Original Suit No. 98 of 1992 and framed issues including issue Nos. 6 and 7 which are as follows:

(6) Whether the Suit is barred by Order II Rule 2 CPC.

(7) Whether the Suit is barred by Order IX Rule 9 CPC.

25. These two issues were decided by the Trial Court in favour of the defendant by the order dated 12th January, 1994. It held that the suit was barred by Order II Rule 2 and Order IX Rule 9 CPC. The plaintiff-respondent No. 3 then filed Civil Revision No. 6 of 1994 which was allowed by the judgment and order dated 6th September, 1996. The order passed by the Trial Court deciding issue Nos. 6 and 7 against the plaintiff was set aside and the said issue Nos. 6 and 7 were decided in favour of the plaintiff holding that the suit was not barred either under Order IX Rule 9 or Order II Rule 2 CPC.

26. An amendment application was filed by the petitioner in this petition for adding relief 1-A and also for treating the facts mentioned in the affidavit filed in support of the amendment application as supplementary affidavit to the writ petition. The additional relief that was sought was for quashing the aforesaid order dated 6th September, 1996 passed in Civil Revision No. 6 of 1994. This Amendment application was allowed by the order dated 31st March, 2008.

27. As mentioned above, this Court while entertaining the present petition had passed an order on 18th May, 1993 that till 31st July, 1993 the operation of the order dated 29th May, 1992 as affirmed by the Appellate Court shall remain stayed. It was further directed that the Executing Court shall proceed with the execution of decree passed in Original Suit No. 241 of 1966 in Execution Case No. 200 of 1972. This interim order was subsequently extended on 14th October, 1993 when the Court directed that the application filed by the petitioner for extension of the interim order shall be listed with previous papers on 4th November, 1993 and that meanwhile the interim order dated 18th May, 1993 shall remain in force.

28. Learned Counsel appearing for the plaintiff-respondent No. 3 has stated that the execution has not proceeded because the interim order was not extended after 4th November, 1993. There is, however, nothing on the record to indicate why final orders were not passed in Execution Case No. 200 of 1992 between 18th May, 1993 and 4th November, 1993 even if it is assumed that the interim order expired on 4th November, 1993.

29. I have heard learned Counsel for the petitioner as well as learned Counsel appearing for the respondent-tenant.

30. Learned Counsel for the petitioner submitted that the plaint as well as the proceedings of Original Suit No. 98 of 1992 should be quashed as it is an abuse of the process of the Court; that even otherwise issue Nos. 6 and 7 were correctly decided by the Trial Court holding that the suit was barred under Order II Rule 2 and Order IX Rule 9 CPC but the Revisional Court committed an illegality in allowing the Revision and holding that the suit was not barred; that the plaintiff was not entitled to temporary injunction as the suit itself was not maintainable and, therefore, the order passed by the Trial Court granting temporary injunction and the order of the Appellate Court confirming the said order were liable to be set aside and that, in the facts and circumstances of the case, when the decree in favour of the landlord was passed in 1969 for eviction of the tenant from the property in dispute, heavy exemplary costs should be awarded against the tenant as the decree is being resisted on absolutely frivolous grounds merely to enable the tenant to retain possession of the shop.

31. Learned Counsel appearing for the respondent-tenant, however, submitted that the Revisional Court has not committed any illegality in deciding issue Nos. 6 and 7 in favour of the plaintiff in holding that the suit was not barred either under Order II Rule 2 or Order IX Rule 9 CPC and nor has the Trial Court or the Appellate Court committed any illegality in granting temporary injunction in favour of the plaintiff as the suit was not barred. He, therefore, submitted that in such circumstances, the prayer made by learned Counsel for the petitioner for imposing exemplary costs was without any basis and the petition was liable to be dismissed.

32. The contention of the learned Counsel for the petitioner that the proceedings as well as the plaint of Original Suit No. 98 of 1992 deserve to be quashed as they are nothing but an abuse of the process of the Court is required to be examined first because if the proceedings are quashed on this ground then it would not be necessary to decide whether the Trial Court was justified in granting temporary injunction to the plaintiff or whether the Revisional Court committed any illegality in deciding issue Nos. 6 and 7 in favour of the plaintiff that the suit was not barred either under Order II Rule 2 CPC or under Order IX Rule 9 CPC.

33. However, before undertaking this task, it would be useful to examine what the Supreme Court and this Court have observed while dealing with the conduct of such unscrupulous tenants who made attempts to resist their eviction from the premises even though the decree for eviction against them had attained finality.

34. In *Rajappa Hanamantha Ranoji v. Mahadev Channabasappa and Ors.* 2000 SCFBRC 321, the Supreme Court made strong observations against such a tenant when it found that the tenant had adopted dubious methods to defeat the orders of the Court:

It is distressing to note that many unscrupulous litigants in order to circumvent orders of Courts adopt dubious ways and take recourse to ingenious methods

including filing of fraudulent litigation to defeat the orders of Courts. Such tendency deserves to be taken serious note of and curbed by passing appropriate orders and issuing necessary directions including imposing or exemplary costs. As noticed, despite eviction order having become final nearly a quarter century ago, respondent No. 1 still could not enjoy the benefit of the said order and get possession because of the filing of the present suit by the brother of the person who had suffered the eviction order. Under these circumstances, we quantify the costs payable by the appellant to respondent No. 1 at Rs. 25,000/-.

35. In *Suresh Chandra Jain v. Jai Krishna Swami and Ors.* 1993 (2) ARC 484, the Supreme Court also had an occasion to examine a case where the tenant made repeated attempts to hold on to the tenanted premises in spite of the directions given by the Court to vacate the premises and in this connection observed:

This case is of sheer abuse of the process of the Court. The respondents suffered an ex-parte decree which this Court ultimately confirmed and dismissed the SLP No. 8382 of 1992 on July 9, 1992. The respondents also had given an undertaking that they will vacate the premises within three months from the date of the High Court order. The High Court order was on July 1, 1992, reported in 1992 (2) ARC 246. They did not vacate. Again they launched upon the second front of litigation and filed a Writ Petition No. 3466606/92 which was dismissed by the High Court on August 18, 1992, reported in 1992 (2) ARC 645. Thereafter, a Regular Suit No. 400 of 1992 was got filed in the Court of the Civil Judge, Mahura through proxy for declaration and injunction. Civil Suit was dismissed on September 1, 1992 which was confirmed by the Division Bench of the High Court on September 30, 1992. Again in the third round of litigation in execution objecting as to jurisdiction was raised but disallowed by the Executing Court. Two proceedings were initiated against that order one before the Second Additional Civil Judge, Mathura and another by the writ petition in which the impugned orders came to be made. It is stated that the High Court has heard the matter and the orders were reserved. That order does not detain us from disposing of the matter on merits. As stated earlier, this process adopted by the respondents is in sheer abuse of the process of the Court and cannot be permitted to agitate the matter even on points of jurisdiction. The appeals are allowed with exemplary costs fixed at Rs. 15,000/-. The orders of the High Court as well as of the District Court are set aside. The Execution Court is directed to give police assistance and to deliver the possession of the property within a period of two weeks from the date of the receipt of this order.

36. In *Pushpa Devi Bhagat (D) by LR v. Rajinder Singh and Ors.* AIR 2006 SCW 3549 the Supreme Court also made similar observations:

At the cost of repetition, we may recapitulate the facts of this case. The suit was a simple suit for possession by a landlord against a tenant filed in the year 1993. Plaintiff's evidence was closed in 1998. The contesting defendant (defendant No. 2) did not lead any evidence, and her evidence was treated as closed. The matter was dragged on for 3 years for defendant's evidence after the conclusion

of plaintiff's evidence. It was noted on 19-5-2001 that no further adjournment will be granted for the evidence of defendants 4 and 5 (who are not contesting the matter), on the next date of hearing (23-5-2001). When the matter finally came up on 23.5.2001, no evidence was tendered. On the other hand, a statement was made agreeing to vacate the premises by 22.1.2002. The trial court took care to ensure that the statements of both counsel were recorded on oath and signed. Thereafter, it passed a consent decree. The attempts of tenants in such matters to protract the litigation indefinitely by raising frivolous and vexatious contentions regarding the compromise and going back on the solemn undertaking given to court, should be deprecated.

...

This appeal is, therefore, liable to be dismissed as being devoid of merit. The consent decree is upheld, though for reasons different from those which weighed with the High Court. The landlords (respondents) will be entitled to seek mesne profits for the period from 22.1.2002 to date of delivery of possession in accordance with law. The appeal is accordingly dismissed with costs. The costs payable by the appellant are quantified at Rs. 25,000/-.

37. In *T. Arivandandam* the Supreme Court had an occasion to deal with "litigative acrobatics" of the father and the son to cling on to the tenanted shop by abusing the process of Court repeatedly and unrepentantly and it was observed:

What is the horrendous enterprise of the petitioner? The learned Judge has, with a touch of personal poignancy, judicial sensitivity and anguished anxiety, narrated the sorry story of a long-drawn out series of legal proceedings revealing how the father of the petitioner contested an eviction proceedings, lost it, appealed against it, lost again, moved a revision only to be rebuffed by summary rejection by the High Court. But the Judge, in his clement jurisdiction, gratuitously granted over six months' time to vacate the premises. After having enjoyed the benefit of this indulgence the maladroit party moved for further time to vacate. All these proceedings were being carried on by the 2nd respondent who was the father of the petitioner. Finding that the court's generosity had been exploited to the full, the 2nd respondent and the petitioner, his son, set upon a clever adventure by abuse of the process of the court. The petitioner filed a suit before the Fourth Additional First Munsif, Bangalore, for a declaration that the order of eviction, which had been confirmed right up to the High Court and resisted by the 2nd respondent throughout, was one obtained by "fraud and collusion". He sought an injunction against the execution of the eviction order. When this fact was brought to the notice of the High Court, during the hearing of the prayer for further time to vacate, instead of frowning upon the fraudulent stroke, the learned Judge took pity on the tenant and persuaded the landlord to give more time for vacating the premises on the basis that the suit newly and sinisterly filed would be withdrawn by the petitioner. Gaining time by another five months on this score, the father and son belied the hope of the learned Judge

who thought that the litigative skirmishes would come to an end, but hope can be duped when the customer concerned is a crook.

The next chapter in the litigative acrobatics of the petitioner and father soon followed since they were determined to dupe and defy the process of the court to cling on to the shop. The trick they adopted was to institute another suit before another Munsif making a carbon copy as it were of the old plaint and playing upon the likely gullibility of the new Munsif to grant an ex parte injunction. The 1st respondent entered appearance and exposed the hoax played upon the court by the petitioner and the 2nd respondent. Thereupon the Munsif vacated the order of injunction he had already granted. An appeal was carried without success. Undaunted by all these defeats the petitioner came to the High Court in revision and managed to get an injunction over again. The 2nd respondent promptly applied for vacating the temporary injunction and when the petition came up for hearing before Mr. Justice Venkataramayya, counsel for the petitioner submitted that he should not hear the case, the pretext put forward being that the petitioner had cutely mentioned the name of the Judge in the affidavit while describing the prior proceedings. The unhappy Judge, who had done all he could to help the tenant by persuading the landlord, found himself badly betrayed. He adjourned the case to the next day. The torment he underwent is obvious from his own order where he stated "I spent a sleepless night yesterday." Luckily, he established himself the next day and heard arguments without yielding to the bullying tactics of the petitioner and impropriety of his advocate. He went into the merits and dismissed the revision. Of course, these fruitless proceedings in the High Court did not deter the petitioner from daring to move this Court for special leave to appeal.

We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to.

38. In *Smt. Mahadevi and Ors. v. Civil Judge, Farokkhabad and Anr.* 1987 (1) ARC 406, a learned Judge of this Court observed:

It is clear from the facts stated above that the release application of the landlord was allowed and after due contest, the case became final upto the High Court. Thereafter, Naresh Chandra's father woke up and started objecting the release order passed in favour of the landlords. Those proceedings also came up to the High Court and became final. Mangali Prasad initially tried to succeed in the Court of Munsif, Fatehgarh. When he failed, he filed another suit now in the Court of the Civil Judge, Fatehgarh. In my opinion, this is one of those rare cases where the filing of the present suit is nothing but an abuse of the process of the Court of the highest order. Civil Judge has acted most arbitrarily in granting an ad-interim injunction order staying the order of the Prescribed Authority directing enforcement of the release order, which had been confirmed by the High Court.

39. A Division Bench of this Court in *Gulab Chandra v. Munsif-West Allahabad and Ors.* 1988 (14)ALR 265 also made the following observations:

The foregoing discussion leaves no room for doubt that the opposite party No. 2 has no right qua disputed house and it in collusion with the opposite parties No. 3 to 5 that she has filed the suit in question at the behest of the opposite parties No. 3 to 5 with an oblique design to obstruct their lawful eviction and that her pleadings set up in the plaint are frivolous and vexatious and finally, that if the proceedings emanating from such eminently bogus pleadings are allowed to go on it would be grossest abuse of the process of court resulting in destruction of the credibility of judicial system itself.

Where it is established that the litigation is sham, illusory, collusive and inspired by nefarious and vexatious design courts not only have jurisdiction but owe a duty to throttle such litigation at the threshold. In *Prem Shankar Tripathi v. First Additional District Judge, Allahabad* and Ors. 1986 (12) ALR 317 this Court, in almost similar circumstances, quashed the plaint of a suit exercising its power under Article 227 of Constitution of India suo motu.

40. These two decisions were followed by a learned Judge of this Court in *Biswanath Malik v. Munsif Magistrate West, Allahabad* and Ors. 1996(27) ALR 475 and the proceedings in the suit were quashed as the Court found that the suit has been filed only to put a clog on the execution proceedings that had been instituted for executing the order of the Prescribed Authority and the appellate authority whereby the accommodation in question was released in favour of the landlord.

41. It is in the light of the observations made in the aforesaid decisions of the Supreme Court and this Court that the relief claimed by the petitioner-landlord for quashing the proceedings of Original Suit No. 98 of 1992 has to be examined.

42. To recapitulate, Suit No. 241 of 1966 that had been filed by the petitioner-landlord for ejectment and recovery of arrears of rent in respect of the shop in dispute was decreed on 16th May, 1969. This decree was not complied with by the judgment-debtor which compelled the decree-holder to initiate execution proceedings on 23rd December, 1972. To resist this execution, the two judgment-debtors Nanhey Mal and Shiv Shankar and Rajendra Kumar son of Shiv Shankar between themselves made as many as six attempts to resist the execution of the decree.

43. The first attempt was made by Shiv Shankar by filing objections u/s 47 CPC on 6th April, 1973 alleging that fresh tenancy rights had been created in his favour on the basis of the alleged agreement between him and the landlord. The objections were rejected on 22nd January, 1980 and the Revision was dismissed on 13th November, 1982.

44. Thereafter when the petitioner-landlord moved an application on 21st December, 1982 that the Execution Case should now proceed, the judgment-debtor Shiv Shankar came up with a plea that after intimation of the vacancy to the Rent Control & Eviction Officer, the shop in dispute was allotted in favour of his son Rajendra Kumar on 27th November, 1982 and possession had also been

handed over to him and so the execution application should be dismissed. The Executing Court on 25th March, 1982 dismissed the execution case and the Appeal filed by the landlord against the said order was dismissed on 27th July, 1984. The landlord filed a writ petition in this Court for setting aside the said two orders and this petition was allowed on 10th February, 1987. The allotment order dated 27th November, 1982 allotting the shop in dispute in favour of Rajendra Kumar was set aside and a direction was given to the Executing Court to take immediate steps to execute the decree ignoring the said allotment order passed in favour of Rajendra Kumar and get possession to the decree-holder without any further delay. The SLP filed by Rajendra Kumar was dismissed on 7th May, 1987.

45. The landlord decree-holder would have little realised, even in his wildest dreams, that after issuance of such directions by the High Court he would still have to wait for over two decades to get possession of the shop. In fact, as will be noticed hereinafter, much greater woes were waiting to engulf him.

46. Rajendra Kumar made the third attempt by filing Original Suit No. 484 of 1987 for injunction to restrain the defendant from evicting him from the premises in dispute without resorting to the procedure established by law and for not taking possession of the shop on the basis of orders passed in Execution Case No. 200 of 1972 which arose from decree passed in Original Suit No. 241 of 1966. Averments were made regarding creating of fresh tenancy w.e.f. 1st April, 1987 and that any dispute about the earlier rent, therefore, stood settled. The rejection of the temporary injunction application led to the filing of First Appeal From Order before the High Court which was dismissed on 24th November, 1987. Subsequently, the Suit was dismissed on 9th May, 1988 under Order IX Rule 8 CPC as the plaintiff did not appear on the date fixed for hearing.

47. Even during the pendency of the aforesaid suit, Rajendra Kumar made the fourth attempt by filing objections under Order XXI Rule 97 CPC which were rejected on 13th August, 1987 and the Revision was also dismissed on 15th May, 1988. Rajendra Kumar then filed Writ Petition to set aside the aforesaid orders which was dismissed on 2nd August, 1988.

48. The fifth attempt was made by the other judgment-debtor Nanhey Mal by filing objections u/s 47 CPC. The rejection of these objections led to the filing of Civil Revision which was dismissed on 7th October, 1987. The writ petition was also dismissed on 16th December, 1991.

49. Thus, from 1972 till December, 1991 the two judgment-debtors and the son of one of the judgment-debtor turn-by-turn either filed objections u/s 47 CPC or instituted a suit, and the orders passed therein were challenged in Revision or in an Appeal and then writ petitions were filed in the High Court. This was all done in a calculated manner, though with malafide intentions, to stall the execution proceedings even though the High Court on 10th February, 1987 had directed the Executing Court to take immediate steps to execute the decree and get the possession delivered to the decree-holder without any further delay.

50. The sixth attempt was taken by Rajendra Kumar by filing Original Suit No. 98 of 1992 on 18th February, 1992. The relief claimed in this suit was basically the same as claimed in earlier Original Suit No. 484 of 1987 which had earlier been dismissed under Order IX Rule 8 CPC on 9th May, 1988 as the plaintiff did not appear on the date fixed for hearing. In this suit the temporary injunction was granted which was confirmed in Appeal.

51. The contention of the learned Counsel for the petitioner is that the filing of this suit is the greatest abuse of process of Court inasmuch as not only was the suit barred under Order IX Rule 9 CPC and Order II Rule 2 CPC but even otherwise it was sham, illusory, collusive and inspired by nefarious and vexatious design.

52. Learned Counsel for the respondent has, however, placed reliance upon the decision of this Court in Abdul Majid v. IVth Additional District Judge Aligarh and Ors. 1985 (2) ARC 412 in support of his contention that when a fresh tenancy had been created, the decree passed in Original Suit No. 241 of 1966 became ineffective.

53. It is evident that the judgment-debtor had set up a case of fresh tenancy. This matter is, therefore, required to be examined in the context of Order XXI Rule 2 CPC and Section 47(1) CPC and the same are quoted below:

Section 47. "Questions to be determined by the Court executing decree.- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) ...

(3) ...

Order XXI Rule 2. "Payment out of Court to decree-holder.- (1) Where any money payable under a decree of any kind is paid out of Court, or a decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor or any person who has become surety for the judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(2-A) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless-

- (a) the payment is made in the manner, provided in Rule 1; or
 - (b) the payment or adjustment is proved by documentary evidence, or
 - (c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under Sub-rule (2) of Rule 1, or before the Court
- (3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any Court executing the decree.

54. It is clear from the aforesaid provisions that Sub-rule (1) of Rule 2 requires that where any money payable under a decree is paid out of Court or the decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, he shall certify that payment or adjustment in the Court which is to execute the decree and the Court is enjoined to record the same. Sub-rule (2) thereof enables the judgment-debtor or a person who has become surety for him to inform the Court of such payment or adjustment and prescribes the procedure to have it recorded. Rule 3 prohibits every Court executing the decree from recognising a payment or adjustment which has not been certified or recorded by the Court under the aforementioned sub-rules.

55. In *Sultana Begum Vs. Prem Chand Jain*, the landlady filed a suit for eviction on various grounds including default in payment of rent, sub-letting, as also for bona fide requirement which ultimately ended in a compromise on 16th September, 1991. The compromise decree which was passed on that date provided that the respondent would vacate the premises and hand-over its possession to the appellant or to her attorney by 10th of February, 1992, and that he would pay rent @ Rs. 3,100/- per month from the date of the suit till the date of delivery of possession. Since the premises were not vacated by the respondent and its possession was not handed over to the appellant in terms of the compromise decree, she filed an application for execution which was resisted by the respondent by means of objections filed u/s 47 CPC in which it was pleaded by him that possession of the premises in question was handed over to her attorney on 31st October, 1991 who, however, allowed the respondent to remain in possession of the premises as a licensee on payment of the licence fee of Rs. 5,000/- per month. It was pleaded that since possession of the disputed premises was handed over to the attorney, the decree stood satisfied and as such it could not be executed. It was also pleaded that in terms of the fresh licence, the respondent had already paid the licence fee @ Rs. 5,000/- to the attorney who had also issued a receipt to him.

56. It was contended by the landlord before the Supreme Court that the agreement set out by the respondent in his objections u/s 47 CPC that possession of the disputed premises was handed over to the appellant's attorney in pursuance of the compromise decree and that the appellant's attorney allowed him to stay on in the premises as a licensee on payment of the licensee fee at a rate which was more than the rate at which the rent was paid by the respondent, amounted to an adjustment of the decree within the meaning of

Order XXI, Rule 2 CPC and, therefore, it could not be recognised by the Executing Court in view of the bar created by Sub-rule (3). The decree was still executable and should have been executed by the Executing Court which was in error in relying upon the respondent's plea that possession of the premises in question was delivered to the appellant's attorney and the decree for eviction stood satisfied.

57. It was, however, contended by the tenant that in view of Section 47 CPC, which specifically lays down that all questions relating to execution, discharge or satisfaction of decree shall be determined by the Court executing the decree, it was open to the respondent to raise the plea regarding the inexecutability of the decree and the executing Court was under an obligation to decide the question whether the decree was inexecutable as possession had already been delivered to the attorney who had reinducted him in the premises in question as a licensee.

58. The Supreme Court analysed the provisions of Section 47 and Order XXI, Rule 2 CPC and observed that it was a case of adjustment of decree and the Executing Court could not give effect to the plea of tenant since the adjustment was not recorded and certified under Order XXI Rule 2 CPC. The relevant observations are:

It is open to the parties namely, the decree-holder and the judgment-debtor to enter into a contract or compromise in regard to their rights and obligations under the decree. If such contract or compromise amounts to an adjustment of the decree, it has to be recorded by the Court under Rule 2 of Order 21. An agreement, contract or compromise which has the effect of extinguishing the decree in whole or in part on account of decree being satisfied to that extent will amount to an adjustment of the decree within the meaning of this rule and the Court, if approached, will issue the certificate of adjustment. An uncertified payment of money or adjustment which is not recorded by the Court under Order 21, Rule 2 cannot be recognised by the executing Court. In a situation like this, the only enquiry that the executing Court can do is to find out whether the plea taken on its face value, amounts to adjustment or satisfaction of decree, wholly or in part, and whether such adjustment or satisfaction had the effect of extinguishing the decree to that extent. If the executing Court comes to the conclusion that the decree was adjusted wholly or in part but the compromise or adjustment or satisfaction was not recorded and/or certified by the Court, the executing Court would not recognise them and will proceed to execute the decree.

...

The decree was for eviction and the respondent himself had agreed in the compromise decree to deliver possession to the appellant by 10th of February, 1992. The plea relating to the delivery of possession in pursuance of the compromise decree, if accepted, would amount to an adjustment of the decree which shall consequently be treated to have been partially satisfied to the extent of eviction of the respondent as a tenant from the disputed property. That being

so, it had to be recorded and certified under Order XXI, Rule 2. Since this was not done, the provisions of Order XXI, Rule 2 (3) prohibiting the executing Court from giving effect to the said plea were applicable and the executing Court acted erroneously in refusing to execute the decree for eviction of the respondent on the ground that possession having been delivered to the appellant's attorney, the decree, to that extent, stood satisfied.

59. The Supreme Court in *Lakshmi Narayanan Vs. S.S. Pandian*, examined the provisions of Section 47 CPC and Order XXI Rule 2 CPC and pointed out that where in any execution proceedings objection to executability of a decree is taken u/s 47 of the C.P.C. on the ground that by virtue of a compromise, the decree got extinguished and became in-executable, the germane question that should be asked is whether the compromise was recorded by the Court whose duty it is to execute the decree. It was then observed that since there was no recording of the compromise as contemplated under Order XXI Rule 2 CPC, the Court cannot recognise the compromise having regard to the language of Sub-rule (3).

60. In the present case, it is not in dispute that the Executing Court has not recorded the adjustment. In view of the law laid down in the aforesaid decisions of the Supreme Court, the creation of the so called fresh tenancy cannot be accepted.

61. In this connection reference may also be made to a decision of this Court in *Hafizur Rehman v. VIth Additional District Judge, Bijnor and Anr.* 1993 (2) ARC 31, wherein after examining the provisions of Order XXI Rule 2 CPC it was observed:

The facts shorn of details and necessary for the disposal of this case are that a suit filed by the respondent-plaintiff seeking a decree for ejectment and recovery of arrears of rent and damages for use and occupation of the premises in dispute was decreed by the Judge Small Causes Court on 8.10.1980. Under the terms of the compromise, which formed part of the decree the Judgment debtor-defendant had been granted time upto 30.9.1984 for vacating the premises and it was provided that in case the possession was not handed over to the plaintiff by the date fixed, in that even the decree will become executable. In the execution proceedings an objection was filed by the petitioner alleging that on 1.7.1984 under an oral agreement the decree holder had accepted the defendant-judgment debtor to be his tenant and in view of this fresh contract of tenancy the decree had become inexecutable.

The Executing Court refused to place any reliance upon such an oral agreement whereunder a fresh contract of tenancy had been asserted to have been entered into between the decree holder and judgment debtor on the ground that the same had not been got recorded and certified as envisaged under Order XXI, Rule 2, CPC. Further the Executing Court, on an appraisal of evidence, recorded a finding that no such oral agreement as set up by the judgment debtor had been

proved to have been entered into. Consequently the objection u/s 47 of the CPC was rejected.

...

In the facts and circumstances of the case, I am of the considered opinion that the claim of the judgment debtor-petitioner that the eviction decree had become inexecutable in view of the alleged subsequent agreement/fresh contract of tenancy set up by him is totally misconceived as such claim clearly fell within the purview of ""adjustment" contemplated under Order XXI, Rule 2 of the CPC and since it had not been got recorded as certified by the petitioner as envisaged under the aforesaid provision such claim could not be recognized or taken notice of by the Executing Court in view of the prohibition contained in Order XXI, Rule 3 of the Code.

It may further be noticed that so far as this question is concerned the controversy stands concluded by the decision of this Court in the case of Kumari Raj Kumari v. Additional District Judge and Ors. reported in 1986 AWC 71 , as well as the Full Bench of the Madhya Pradesh High Court in the case of Rajeev Khandelwal Vs. Arun Pannalal, wherein the judgment of the Court was delivered by Hon''ble N.D. Ojha, C.J. (as he then was)

62. The decision in the case of Abdul Majid (supra) relied upon by the learned Counsel for the respondent does not help the respondent because in that case it was found as a fact that after a fresh tenancy had been created subsequent to the decree, a notice was also given by the landlord to the tenant that the tenant had committed default in complying with the terms of the compromise and, therefore, had incurred liability for being ejected, which notice amounted to a fresh notice u/s 20(1)(a) read with Section 106 of the Transfer of Property Act. In the present case, the landlord has completely denied the execution of any fresh tenancy.

63. This apart, the Trial Court while deciding issue Nos. 6 and 7 of Original Suit No. 98 of 1992 held that the suit was not maintainable since it was barred by Order IX Rule 9 CPC as well as Order II Rule, 2 CPC. The Trial Court had arrived at this conclusion since the cause of action and the reliefs in the two suits namely Original Suit No. 484 of 1987 and Original Suit No. 98 of 1992 were identical. Order IX Rule 8 CPC provides that where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed. Order IX Rule 9 CPC stipulates that where the suit is dismissed under Order IX Rule 8, than the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action.

64. Original Suit No. 484 of 1987 had been filed on the basis of the tenancy said to have been created on 1st April, 1987 and in support of which the defendant had received rent in the month of April, 1987 but subsequently threatened to dispossess the plaintiff in case he did not pay the rent at Rs. 700/- per month. The subsequent Suit No. 98 of 1992 had also been filed on the basis of the

tenancy created on 1st April, 1987 and the only change was that in the earlier suit it was stated that the threat was given by the defendant on 25th May, 1987 while in the subsequent suit it was stated that a fresh threat was given by the defendant on 10th February, 1992. This will not change the cause of action and the Revisional Court committed an illegality in setting aside the order of the Trial Court dismissing the suit under Order IX Rule 9 CPC. It is more than apparent that this suit was filed only for the purpose of getting some injunction order to stall the execution proceedings in Execution Case No. 200 of 1972 when attempts to obtain injunction order in Original Suit No. 484 of 1987 had failed.

65. In fact, the Supreme Court in *T. Arivandandam* came across almost a similar situation. The Supreme Court found that the father of the petitioner contested the eviction proceedings, but lost it up to the High Court which had granted the petitioner six months time to vacate the premises. A suit was then filed for a declaration that the order of eviction which had been confirmed by the High Court was obtained by fraud and collusion. When this fact was brought to the notice of the High Court during the hearing of the application moved in the decided writ petition for extending the six months time granted to vacate the premises, the High Court granted five further months to vacate the property. The tenant still did not vacate the property and in the words of the Supreme Court:

Gaining time by another five months on this score, the father and son belied the hope of the learned Judge who thought that the litigative skirmishes would come to an end, but hope can be duped when the customer concerned is a crook.

The next chapter in the litigative acrobatics of the petitioner and father soon followed since they were determined to dupe and defy the process of the court to cling on to the shop. The trick they adopted was to institute another suit before another Munsif making a carbon copy as it were of the old plaint and playing upon the likely gullibility of the new Munsif to grant an *ex parte* injunction. The 1st respondent entered appearance and exposed the hoax played upon the court by the petitioner and the 2nd respondent. Thereupon the Munsif vacated the order of injunction he had already granted. An appeal was carried without success. Undaunted by all these defeats the petitioner came to the High Court in revision and managed to get an injunction over again.... He went into the merits and dismissed the revision. Of course, these fruitless proceedings in the High Court did not deter the petitioner from daring to move this Court for special leave to appeal.

We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to.

66. The various attempts resorted to by the judgment-debtors and Rajendra Kumar son of one of the judgment-debtor in the present petition reveal that the main basis of the objections were with respect to creation of a fresh tenancy which could not have been taken in view of the discussion made above. Mention was even made of the allotment order dated 27th November, 1982 which had

been set aside by this Court in Writ Petition No. 12541 of 1984. The said litigation was clearly "inspired by nefarious and vexatious design" and amounted to gross abuse of process of the Court "repeatedly and unrepentantly". The Supreme Court in T. Arivandandam pointed out that such dubious practices adopted by the tenant make a mockery of the decree for eviction of the tenant and the Courts must adequately deal with such persons if the confidence of people and credibility of the judicial system is to be maintained. The conduct of such unscrupulous tenants had also been condemned by the Supreme Court in Gayatri Devi, Rajappa Hanamantha Ranoji, Suresh Chandra Jain & Pushpa Devi Bhagat referred to above. This Court in Mahadevi & Gulab Chandra also quashed the proceedings in order to ensure credibility of the judicial system when it was found that the proceedings emanated from bogus pleadings. It was also observed that it was the duty of the Court to throttle such litigation at the threshold.

67. What, therefore, transpires from the above discussion is that the tenant has succeeded in his dubious designs to retain the possession of the shop for which the decree for eviction was passed on 16th May, 1969 even after the judgment dated 10th February, 1987 of this Court whereby a clear and specific direction was given to the Executing Court to take immediate steps for executing the decree and putting the landlord in possession of the shop without any further delay. The judgment-debtor has been able to avoid the execution of the decree by involving the landlord in a series of absolutely frivolous litigations from 1987 till 1993, not to mention of the litigations instituted prior to 1987. Thus, even after 39 years the landlord is yet to reap the fruits of the decree. The conduct of such a judgment-debtor deserves condemnation in the strongest possible words and the landlord is now clearly entitled to get possession of the shop forthwith for maintaining the credibility of the judicial system. Any leniency shown in such a matter will only encourage such judgment-debtors to indulge in crafty manipulations. It is indeed ironical that the suit took only three years to be decided but the decree is yet to be executed even after almost four decades and that too when there is a direction by this Court to conclude the execution proceedings and put the decree-holder in possession of the shop without any further delay. Section 47 CPC was never intended for such litigants and this case is a classic example of the grossest abuse of this provision by a judgment-debtor. It is, therefore, a fit case where instead of directing the Executing Court to conclude the execution proceedings, a direction which had earlier been given, a direction needs to be issued to respondent No. 3 Rajendra Kumar son of the judgment-debtor Shiv Shankar to handover vacant possession of the premises in dispute to the landlord-decree holder within two weeks from today failing which the District Magistrate, Chandausi shall ensure that the decree-holder is put in possession of the premises within the next three days and for this purpose, if necessary, help of police force may be taken.

68. The question that now remains to be determined is what should be the extent of damages and exemplary costs that should be imposed upon respondent

No. 3. The Court is satisfied, in view of the facts narrated hereinabove, that apart from the decretal amount, the tenant must also pay damages to the landlord. The period for payment of damages can be broadly put into two compartments. The first compartment will be from the date of the decree i.e. 16th May, 1969 till the date of judgment in Writ Petition No. 12541 of 1984 i.e. upto 10th February, 1987 and the second compartment will be from 10th May, 1987 till date of delivery of vacant possession of the shop to the decree-holder. For the period falling in the first compartment, the damages shall be at the rate of Rs. 50/- per month from 16th May, 1969 for the next five years; thereafter at the rate of Rs. 100/- per month for the next five years; thereafter at the rate of Rs. 200/- per month up to 10th February, 1987. In respect of the period falling in the second compartment it needs to be noticed that the tenant was agreeable to pay Rs. 300/- per month as rent. The damages, therefore, for the period from 10th May, 1987 for the next five years shall be at the rate of Rs. 300/- per month; for the next five years thereafter at the rate of Rs. 600/- per month; for the next five years thereafter at the rate of Rs. 1200/- per month and thereafter up to the date the vacant possession is given to the landlord at the rate of Rs. 1800/- per month. This apart, the tenant-respondent No. 3 shall also pay costs of Rs. 50,000/- to the petitioner-landlord towards the cost of litigation.

69. The Executing Court shall calculate the aforesaid amount payable by the respondent No. 3 within a period of two weeks from the date a certified copy of this judgment and order is placed before it by the petitioner and shall thereafter intimate the amount to respondent No. 3. Respondent No. 3 shall also appear before the Executing Court on 12th May, 2008 to ascertain the amount that he has to pay. The amount so calculated and intimated to respondent No. 3 together with the cost of Rs. 50,000/- shall be deposited by respondent No. 3 before the Executing Court within three months thereafter failing which the Executing Court shall intimate this fact to the District Magistrate, Chandausi who will proceed to recover the said amount from respondent No. 3 as arrears of land revenue, as expeditiously as is possible, and the amount so recovered shall be paid to the decree-holder forthwith.

70. This writ petition, therefore, succeeds and is allowed. The proceedings of Original Suit No. 98 of 1992 are quashed. Respondent No. 3 shall give vacant possession of the shop in dispute to the decree-holder within a period of two weeks from today failing which the District Magistrate, Chandausi shall put the landlord in possession of the shop in dispute within three days thereafter, if necessary, with the help of police force. Respondent No. 3 shall also deposit the amount calculated by the Executing Court in the manner stated above together with costs of Rs. 50,000/- within the aforesaid stipulated period of three months, failing which the amount shall be recovered as arrears of land revenue by the District Magistrate Chandausi, as expeditiously as is possible, and the amount so recovered shall be paid to the decree-holder forthwith.

WRIT PETITION No. 40551 of 1999

71. This writ petition arises from the application moved by the landlord u/s 18(3) of the Act. Since Writ Petition No. 17357 of 1993 has been allowed, this petition has become infructuous and is, accordingly, dismissed as having become infructuous.

WRIT PETITION No. 5894 of 2003

72. This writ petition has been filed for setting aside the orders passed on the release application filed by the petitioner-landlord u/s 16(1)(b) of the Act. Since Writ Petition No. 17357 of 1993 has been allowed, this petition has become infructuous and is, accordingly, dismissed as having become infructuous.