

(1982) 08 GUJ CK 0009
In the Gujarat High Court

Kamlaben and Others

APPELLANT

Vs

Patel Gopaldas Venidas

RESPONDENT

Date of Decision : 16-08-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 100

Citation : (1982) GLH 967 : (1982) 2 GLR 760

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is an appeal by the original plaintiff of the Civil suit No. 125 of 1969 filed by him in the court of the Civil Judge (J.D.) Dholka, being a suit for injunction seeking to restrain the defendant from interfering with his possession, which he had allegedly acquired from the two predecessors-in-title as per the agreement of sale, Ex. 129 dated 28-3-69 followed by the regular sale deed. Ex. 130 dated 15-11-69, which was procured by the plaintiff after seeking permission from the competent authority under the provisions of the Bombay Prevention of Fragmentation and Holding Act, 1947, the permission being required because (be suit land, originally consisting of two survey numbers, was constituted a block and given block No. 498 as per the provisions of the said Act. The learned trial Judge dismissed the suit. So the original plaintiff had filed the Civil Appeal No. 40 of 1973 in the District Court at Ahmedabad (Rural) at Narol where the learned District Judge came to dismiss the same. The present second appeal u/s 100 of the Civil Procedure Code, therefore, had come to be filed by the original plaintiff, who died during the pendency of the second appeal and this appeal is being prosecuted by his heirs and legal representatives brought on the record as per the order passed by this Court in the Civil Application No. 657 of 1982.

2. The plaintiffs suit was essentially for a permanent injunction on the allegation that the suit field was owned and possessed by him as the successor-in-interest of Shantaben Mohanbhai and Laxmiben Mobanbhai who had firstly executed the

agreement of sale for the consideration of Rs. 10,501/- and on receiving Rs. 7,001 - in the first stage, had put him into possession on the very day of the agreement in past performance and that his title had come to be perfected as per the sale deed procured by him during the pendency of the suit, that is, on 15-11-69. The suit in question had come to be filed by the plaintiff on 21-7-69 on the allegation that the defendant had tried to disturb his possession and actual operations of cultivation, which he had started soon after his being put into possession pursuant to the agreement of sale. Ex. 129, dated 28-3-69.

3. The say of the defendant as reflected by his written statement, Ex. 18, and his additional written statement, Ex. 56, was that though the suit field belonged to said two ladies, Shantaben and Laxmiben, as the heirs of their father Mohanbhai, he being related to them, was cultivating the field "as their relative and as a permanent tenant" and as such he was in possession of the land and he was never thrown out of possession at any time and, therefore, there was no question of the plaintiffs being in possession or his having been threatened in the manner and at the time alleged.

4. Because of the various contentions raised by the defendant, the learned trial Judge had framed various issues at Ex. 59 and they are reproduced in paragraph 3 of the trial court's judgment. I reproduce them, because some of the arguments advanced before me by both the sides relate to those questions:

(1) Whether the plaintiff prove that he was entrusted the actual possession of (he suit filed on 28-3-69 by the owners as alleged;

(2) Whether the plaintiff was in actual possession of the suit filed on the date of the suit;

(3) Is it proved that the agreement to sell dated 28-3-69 and the sale deed dt. 15-11-69 are illegal, null and void as alleged by the deft? If so what is the effect?

(3A) Whether this Court has jurisdiction to decide issue No. 3;

(3B) Whether the deft is legally entitled to contend that he is a permanent tenant;

(4) Whether the deft is a permanent tenant of the suit field on the date of the suit;

(5) Whether this Court has jurisdiction to decide issue No. 4, if not what order?

(5A) Whether this Court has pecuniary jurisdiction to try this suit;

(6) Whether the mutation entries in the revenue record are illegal, void and not admissible in the evidence (the revenue entries pertain to the deletion of the name of the defendant as a de facto cultivator, because he was shown there as the member of the family of owners, namely, two sisters);

(7) Whether the defendant obstructs the plaintiffs possession over the field;

(8) Whether the plaintiff is entitled to get injunction as claimed;

5. The issues Nos. 3(A), 3(B) and 5(A) were heard as preliminary issues. The learned trial Judge held that the defendant was not legally entitled to contend that he is a permanent tenant. Obviously therefore, the issue No. 4 automatically fell through. The question of pecuniary jurisdiction now does not survive. The learned trial Judge, however, held that the plaintiff was not proved to have been actually put into possession on the day of the agreement of sale, as deposed to by the plaintiff, the two vendors, their mother Bai Pali and other witnesses, and that the defendant continued to be in possession as before, his possession having remained extended for a period of about 20 years. It was specifically contended before the learned trial Judge and also before the learned appellate Judge that the defendant's alleged possession could not be termed possession in the eyes of law, but it was only a physical occupation or custody of the property for and on behalf of the two predecessors-in-title of the plaintiff. The learned trial Judge in this connection observed as follows:

The question that, therefore, arises is what is/was the nature or character of the possession of the deft. In other words, whether his possession was merely that of a possession of a representative, or a servant or an agent (relative) or it was juridical....

The learned Judge then ultimately held as follows:

As stated above, in our case, the deft, was carrying on the agricultural operation on the suit field upon the permission of Bai Paliben and he was also in the exclusive possession of the suit field and so his possession is juridical one even though he may be a relative of the vendors. If this is so, in my opinion if he does not hand over the possession or if it is not proved that possession has been taken from him by the grant or of the licence, in that event a mere suit for the permanent injunction would not lie (vide paragraph 24 of the trial court's judgment).

6. Dealing with the question alternatively in paragraph 27 of his judgment, the learned trial Judge, however, held as follows:

It is true that after the sale, the defendant has no right to occupy the suit field, and if he gives threat of reentry on the suit field, his act would amount to an act of a trespasser and so the plaintiff would be entitled to the permanent injunction as prayed for.

This finding of course is recorded by him alternatively.

7. When the matter was before the learned appellate judge, the very questions had arisen for him. He had raised in paragraph 6 of his judgment, the following points for determination:

(1) Whether the trial court had failed to prove that actual possession of the suit field was given to him on 28-3-69;

- (2) Whether the trial court erred in holding that the plaintiff was not in actual possession of the suit field on the date of filing the suit;
- (3) Whether the trial court erred in holding that it had jurisdiction to decide issue No. 3 (regarding legality and validity of the two deeds, Exs. 129 and 130);
- (4) Whether the trial Court erred in holding that the said two deeds Exh. 129 and 130 dated 28-3-69 and 15-11-69 respectively, are not illegal and void;
- (5) Whether the trial Court erred in holding that it had pecuniary jurisdiction to try the suit;
- (6) Whether the trial Court erred in not giving directions regarding disposal of amounts lying in the Court.
- (7) Whether the trial Court erred in rejecting the plaintiff's application, Exh. 249:

As far as the points Nos. 3, 4 and 5 are concerned, they are held in favour of the original plaintiff and regarding point No. 6 it was conceded before me that directions were as a matter of fact given by the learned appellate Judge. However, on the points Nos. 1 and 2, the learned appellate Judge followed the line of reasoning adopted by the learned trial Judge and concluded that the defendant was not physically put out of the property and that the vendors had not physically put the plaintiff into the property and, therefore, the prayer for injunction could not be granted.

8. Mr. M.D. Pandya, the learned advocate for the appellant-original plaintiff was conscious of my limitations while dealing with a Second Appeal. It was conceded that ordinarily whether Mr. X is in possession of the property at a particular time is a question of fact, but Mr. Pandya urged that the courts below did not understand the concept of possession and he complained - and I would say rightly - that the courts below were labouring under the confusion created by them, because of not comprehending the thin but perceptible line of demarcation that exists between possession on one hand and occupation and custody on the other. Mr. Pandya, as I will show in the course of this judgment, rightly pointed out that the approach of the learned appellate Judge, who was the final court of facts, was coloured because of his having not visualised the well-known distinction between the two aforesaid terms.

9. Before I go to the examination of the question on hand, I would like to deal with the issue No. 3 as was originally before the learned trial Judge and for that purpose, certain historical aspect of this case is also to be kept in view. Mobanbhai was the father of the two daughters. Suit lands bearing S. Nos. 536/2 and 536/1 originally belonged to said Mohanbhai. On his death on 13-2-1942, the above suit lands came to devolve on his two young daughters, Shanta and Laxmi. Said Mohanlal admittedly was the father's sister's son of the defendant. In other words, he was the cousin of Mohanlal. On the demise of Mohanlal, he volunteered to get the lands cultivated for the two nieces of his, the vendors of this case and his cultivation admittedly started somewhere in 1950-51 and

admittedly went on upto 1967-68. According to the vendors, Shanta and Laxmi, in the year 1968-69, they had got the land cultivated through hired labour of one Juga Moti, though according to the defendant he had continued to cultivate the land even in that year 1968-69. As both the courts below have held that even in the year 1968-69, the defendant had factually cultivated the land, I shall proceed on that basis. As the name of the defendant was shown in the village Forms 7-12 as a de facto cultivator, proceedings u/s 32-G of the Bombay Tenancy Act had come to be initiated somewhat in 1960-61. In those proceedings, the defendant categorically stated that he was not the tenant on the land, but only as a member of family of his nieces, he assisted them in the cultivation of the lands and the result was that the defendant was shown as a cultivator in his capacity as the member of the family of two vendors and till some time prior to this dispute in the year 1969, his name was being shown as such in the column of the cultivator in that village form 7-12. Because of this earlier adjudication accepted by him and his not claiming any change of his character in the matter of cultivation ever since he started cultivation the defendant in his written statements, more than once, stated that he was in possession of the land "because he was cultivating the land as a member of the family and as a permanent tenant." These two obviously were contradictions in terms. The learned trial Judge, therefore, decided the issue No. 3(B) against him and held that he could not be both a cultivator as a member of the family and also a permanent tenant. As his character of being on the land continued to be of the same character right from 1950-51 and as he had pleaded that he was not the tenant and as in this pleadings of his, also there was implicit a finding by/constructive res judicata that he could not be a permanent tenant as well, the learned trial Judge held that it was not open to him to take up the contention that he was cultivating the land as a permanent tenant. This finding on issue No. 3(B) has been dealt with by the learned appellate Judge in paragraph 12 of his judgment and he observes as follows:

But Shri Shah (Advocate for the present respondent-defendant has not challenged in the course of this appeal the finding of the trial court on issue No. 3B that the deft is not legally entitled to contend that he is a permanent tenant and the conclusion arrived at by the trial court, viz. that the deft. was not a permanent tenant and he cultivated the suit field and was in possession as a family member of the vendors.

I have already shown above that the defendant could not take up an inconsistent stand in the written statement that he was cultivating the land as a member of the family of the vendors and also as a permanent tenant and so at the stage of the trial, he had to elect one of the two. Because of the earlier adjudication in the 32-G proceedings, which implicitly, but necessarily over-ruled his being a tenant at All, much less a permanent tenant, the learned trial Judge had held that it was not open to him to raise the question of his being a permanent tenant and only because of this that the defendant-respondent's advocate Mr. Shah at the time of the hearing of the appeal in the District Court was required to, and

had to, concede that it was not open to the defendant to raise the question of permanent tenancy. Had the point been pursued the matter would have been required to be referred to the tenancy court. It is perfectly open to a party to forego a particular contention and I take the above-quoted statement by Mr. S.D. Shah, the advocate for the respondent-defendant in the District Court, as foregoing, for good reasons, a question of fact. All this has become necessary for me to state here because at the fag-end of his submissions, Mr. S.M. Shah the learned advocate for the respondent-defendant, tried to raise this old bogey and urged that his concession in the District Court might have been there because the advocate must have been led to believe by the District Judge in the course of the arguments that on a factual aspect the appeal was sure to be dismissed and, therefore, Mr. Shah, on his own, might not have agitated that question. I do not think that this was a concession on a point of law or there was any such indirect lure held out. Whether to press a particular question of fact or not is not a question of law. Moreover, in the circumstances of the case, nothing else could have been done by Mr. Shah, as elaborated by me above.

10. From paragraph 16 onwards upto paragraph 25 of his judgment, the learned appellate Judge has dealt with the question of possession of the plaintiff pleaded by him. Mr. Shah reiterated quite often before me that the plaintiffs case as disclosed in the plaint was that he was physically put into possession of the land on 28-3-69 by the vendors after going to the site, that he had carried out some operations preliminary to the cultivation and that the defendant had tried to disturb his possession only on 17-7-69, necessitating the suit for injunction, that the suit was filed on 21-7-69. The whole approach of the learned appellate Judge has stood vitiated because of his misconception on a point of possession. In the course of the consideration of the evidence of the plaintiff, the learned appellate Judge could not lose sight of his belief that though the defendant was cultivating the land as a member of the family of the vendors, he was in possession of the land. In paragraph 20 of his judgment, the learned appellate Judge mentions that in the year 1968-69 Manek Juga could not have cultivated the field in question and the possession could not have been given to the plaintiff on 28-3-69 because the defendant and his witnesses deposed in favour of his version that the defendant was continuously in possession of the suit field and Manek Juga never cultivated it even for a year and that the defendant was in possession on the date of the suit and was not dispossessed till before the injunction in favour of the plaintiff. The said wrong conception of the learned appellate Judge is also betrayed by what he has observed in para 21 of his judgment. He says:

So far as the period previous to the filing of the suit is concerned, or at any rate upto the year 1967-68 is concerned, it is impossible to resist a conclusion that the defendant was in possession of the suit field. He was cultivating it throughout this long period of nearly 20 years. He used his plough and bullocks and there is no substance in the evidence of Bai Pali that she supplied the seeds. No argument is necessary to reject the version of the plaintiff and of his witnesses

that Bai Pali paid something in cash, or that she supplied the seeds or that she had any control over the field or was in possession of the field on behalf of her daughters. No amount of assertion by the plaintiffs witnesses that the defendant was a mere cultivator and not in possession can change the factual position, which apparently was that the defendant was in possession and was cultivating the field, carrying on all the operations of cultivation himself or through his servant. The circumstances of an inquiry u/s 32-G having been started and the circumstances of the name of the defendant earlier as Khedut, leave no doubt that the defendant was in possession of the cultivator.... But the evidence in the suit leaves no doubt whatsoever that actual physical possession of the suit field was with the defendant from the year 1950 onwards till 1967-68 at any rate. As seen from the evidence on behalf of the plaintiff, Bai Pali has to admit in cross-examination that she took possession from Natha Moti and gave it to the defendant, whereas Bai Laxmi in her cross-examination (vide paragraph 11 and 12) says that the defendant never gave possession directly to them and he gave possession five or six months after the Banakhat, though she tried to add that the defendant was not in possession and was simply ploughing the field. Therefore, I hold that so far as actual possession of the field is concerned, it was with the deft and he was not merely plugging it, as the witnesses try to say.

Then in paragraph 22, the learned Judge observed as follows:

Now the plaintiff or Bai Pali or any of the plaintiffs witnesses, does not attempt to say that at the end of the agricultural year 1967-68 and at the commencement of the year 1968-69 possession was taken from the defendant and handed over to Manek Juga. As seen above, the defendant had cultivated the field for more than 17 years.... In such circumstances, it is almost impossible to believe that the defendant voluntarily banded over possession of the field to Manek Juga or allowed Manek to cultivate the field or allowed Bai Pali to introduce Manek Juga on the field. This is apart from the fact that the plaintiff or Bai Pali has not come forward with any positive version or evidence of the defendant having walked out of the field to enable her to bring another person on the field.... Significantly in the plaint or in the Bankhat ex. 129, there was no mention of the suit field having been banded over by the defendant to Bai Pali and Manek Juga having cultivated it for one year (The learned Judge thinks that evidentiary material is also to be pleaded in the plaint).... The learned trial Judge," therefore, rightly disbelieved this witness and rejected the plaintiffs version of Manek Juga having cultivated the suit field for one year.

Then in paragraph 23 of his judgment, the learned appellate Judge is found to be labouring under same misconception. He says:"As the suggestion in cross-examination of the defendant is that he may not be present on the field when possession was given to the plaintiff on 28-3-69, it means that the defendant was in actual possession on that day (The learned Judge's approach is perverse here, because he tries to deduce admission from a suggestion in cross-examination, which suggestion was denied. A suggestion in cross-examination is

never the evidence and much less there can be an evidence in the form of admission because of a question put in the course of the cross-examination.

.... Apart from that, as discussed before, it is highly improbable that the defendant would hand over possession and it is also not the case of Bai Pali or the plaintiff that prior to possession being given to the plaintiff it was taken over from the defendant, whether voluntarily or involuntarily... but since the plaintiff wants to show that the vendors gave possession to him, it must also be shown that the vendors did have possession with them, to be able to transfer it to the plaintiff.

Ultimately at the end of paragraph 24, the learned appellate Judge observes as follow:

Therefore, on the question of actual possession the evidence on behalf of the defendant deserves to be accepted and it proves that till the date of suit and the date of injunction the defendant was in continuous actual and physical possession of the suit field.

11. If a servant is in charge of, say the house, of the real owner and continuously holds the key with him, say for 12 years or 20 years, the owner out of faith in him not caring to look after the property but leaving it to the exclusive care and custody of the servant, the latter by no stretch of imagination be termed to be in possession. He can be said to be in custody of the property for and on behalf of the owner. His alleged occupation is not associated with his right over the property in respect of its being dealt with. Roscoe Pound in his jurisprudence at page 04 has succinctly explained what possession in law is and what custody is, as distinguished from possession, as follows:

There is no mental element in custody. It is pure fact of actual physical control.... cases as to custody or possession by servants, employees, agents and bailees do not raise the question as to the nature or extent of the control constituting custody but turn on the nature of mental element of possession. The mental element (juristic possession) I prefer to define this element as the will of one who has physical control of an object to exercise that control for purposes of his own. But precise definition of this element of possession has been a matter of much dispute.

Without any fear of contradiction, it can be said as a simple but sound proposition of law that a servant's physical presence at the thing to be occupied or agent's so-called occupation or custody of the property of his principal is lacking in mental element required for possession. Custody is the term that normally should be used for an actual physical control without the mental element required for possession. If the only plea put forward or that could be legally put forward in the light of written statements of the defendant was that he was in possession as the member of the family and, therefore, in the context not at all as a tenant or as a licensee, his alleged possession was not possession in the eyes of law, but it was a mere custody or occupation of the property for

and on behalf of the true owners, namely, the two daughters of Mohanlal, who were none other than the daughters of one of his nearest cousin and who had in those days were volunteered to be rendered assistance as the tender aged members of the bereaved family. I reiterate that the only case put forward by the defendant throughout in the various paragraphs of his written statements, which I have perused, was that he was in possession of the land as a member of the family of the vendors and as a permanent tenant. As stated above, the plea of permanent tenancy was not open to be raised by him. So, the only defence that could be said to have been put up was that from 1950-51 till 1968-69 when the Banakhat came to be executed, he was there as the agent of the vendors, as a nominee of the vendors and, therefore, being there at the site and carrying on cultivation for and on behalf of the vendors. Under law, it was the possession of the vendors and not of the defendant.

12. Not that this legal position was not brought to the notice of the courts below. Paragraph 26 of the appellate Judgment shows that what has been referred to by me was specifically pointed out to the learned Judge but curiously enough in that paragraph, the learned appellate Judge again landed himself into the very confused state of thinking. The learned appellate Judge here again observes as follows:

In the present case, as discussed before, the defendant was the person cultivating the land entirely by himself and no part of agricultural operations was done by the vendors or by any other agent of theirs; the name of the defendant was also entered as the person cultivating, though he was described as a family member of the vendors and the defendant thus cultivated the land for about 20 years. These are incidents of possession and from these facts, it cannot be said that the defendant did not have physical control over the land or he did not have the custody of the land. So far as actual and physical control or custody of the land is concerned, no other person except the defendant can be said to have the same. With regard to the will to exercise this control for one's own purpose, the land and the learned commentator Roscoe Pound did not intend to say that a person having actual physical control over the object cannot be said to be exercising it for his own purpose over if the ultimate beneficiary is another person.

13. I would not comment on the above observation of the learned appellate Judge, except stating that all throughout the learned appellate Judge could not perceive the well-laid line of demarcation between the custody and occupation on one hand and possession on the other. For 20 years-may be 49 years or 50 years-if a man cultivates land not on his own and not for his own benefit, without having any control over the flow or movement possessory right from one hand to another, his custody remains a pure custody and can never ripen into possession. The only defence that was taken and that survived for consideration was that the defendant was till 1968-69, that is, by about March end of the year 1969, cultivating the land for and on behalf of the vendors. If he did so, as a member of the family of the vendors, his presence at the site, his carrying out of the

agricultural operations, were all acts of his for and on behalf of the vendors and he was merely an agent acting for and on behalf of his cousin's daughters, towards whom he had extended a helping hand all throughout except for the last moments, when he developed an evil eye on the land to the detriment of his so-called wards, the custodian of whose interest he professed to be for all this span of two decades.

14. Once it is held that the learned appellate Judge and incidentally also the learned trial Judge believed that the defendant was in possession, they naturally found that he was not dispossessed or put out of possession by any overt act either on his part or on the part of the vendors or their mother and, therefore, the plaintiff could not be put into possession. Because of this fixation in the minds of those Judges, they could not believe the say of the plaintiff, the two vendors and their mother Bai Pali, not to speak of other independent evidence, that on 28-3-69 the plaintiff was as a matter of fact put into physical possession of the Property. The field was all open in those days with no crops standing. At the end of March 1969, all conceivable agricultural operations would be over. For the delivery of such open piece of land, what was required by two vendors was to depute one of them and tell the plaintiff that he is put into possession of the land. It is more than sufficient act of transfer of possession. The learned appellate Judge tried to pick holes in the evidence of the plaintiff and a series of his witnesses because of his view that till the defendant was physically put out of the land, there could not be putting of the plaintiff into that place and because of this, whole approach to the problem of the plaintiffs evidence stood totally vitiated. I, therefore, find that it is open to me to reach my own conclusion on the basis of the evidence as it is there. When the two vendors, who were in possession in the eyes of law state that they had parted with possession, when the contemporaneous document. Ex. 129, agreement of sale itself says that the plaintiff was put into possession and when Bai Pali, the mother of the two vendors, also says that the plaintiff was put into possession, (here remained nothing to make the court of law to doubt or discredit that statement, but both the courts below and particularly the learned appellate Judge felt inclined to reject the evidence of the plaintiff and of other witness because of their firm belief that there could not be any possibility of the plaintiffs being put into possession, because the defendant was not put out of possession. As stated by me above, this was all an incorrect approach and so there was no finding of fact in the real sense of the term, which could be said to have been reached by the courts below. I reiterate that sitting in the Second Appeal u/s 100 of the Code, I cannot change a finding of fact, however, grossly erroneous I find it to be. I have to accept it as such, but this is one of those few cases where I find that a finding of fact has been proceeding on the gross misconception of law and such a finding of fact cannot be in strict sense of the term be termed as a finding of fact.

15. In the final bid to save the defendant's case, Mr. Shah tried to urge that though the defendant did not and could not raise the plea of tenancy, his cultivation of the land should be deemed to be of some new character. I asked

Mr. Shah to tell me what legal label could be attached to the so called cultivation of the plaintiff, which would not be that of a tenant, which would not be that of a mortgagee, which would not be that of a donee of a gift. Mr. Shah when confronted with this suggestion, stated that the defendant should be deemed to be cultivating the land as a partner of the vendors, of the plaintiff. This is a plea resting on averments of facts, which are non-existent in the present case. Mr. Shah's submission was that the learned trial Judge and the learned appellate Judge had approached the evidence of the plaintiff without in any manner being influenced by the defence version of the defendant. I have already shown above that it is not so. As a matter of fact, the Judges decide the matter after taking an overall view of the picture. My above noted quotations from the judgment of the learned appellate Judge amply bear out that the learned Appellate Judge did not examine the case of the plaintiff on its own merits, without in any way being influenced by what the defendant pleaded by way of his being in possession. I would say that the wrong conception of the defendant being in possession loomed large in the mind of the learned appellate Judge at every stage when he proceeded to examine the plaintiff's evidence.

16. Mr. Shah had also submitted that the suit for injunction did not lie, but a suit for possession should have been filed. Relying on the judgment of the Bombay High Court in the case of Bai Shirinbai Rahim Valimahomed v. Narayandas Karamchand 55 B.L.R. 481, I held that the proper suit in this set of circumstances is the one for an injunction. As a matter of fact, I have held that the plaintiff was in possession and, therefore he could be said to have been entitled to file a suit for injunction.

17. The result is that the second appeal is allowed. The judgments of the courts below are set aside, the plaintiff's suit is decreed and an injunction as prayed for by the plaintiff in the suit is hereby granted. The defendant shall pay the plaintiff's costs throughout.

18. At the request of Mr. Shah, the operation of this judgment is stayed for a period of eight weeks from today to enable the respondent-defendant to have further recourse in accordance with law.