

(2000) 10 BOM CK 0004
In the Bombay High Court
Case No : Suit No. 3955 of 1997

Vasanji Ramji Dharoda alias Shah

APPELLANT

Vs

Harish Rajaram Rajeshwari and Others

RESPONDENT

Date of Decision : 04-10-2000

Acts Referred:

Maharashtra Housing and Area Development Act, 1976 — Section 176
Specific Relief Act, 1963 — Section 6

Citation : (2001) 2 BomCR 378

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : F.D. Sikandar, instructed by M.K. Khatri, for the Appellant;
Madhubala Kajale, Sandeep Padwal and P.L. Mahadik for defendant No. 1, S.V. Mhatre, for defendant No. 2, for the Respondent

Final Decision : Dismissed

Judgement

D.G. Deshpande, J.—Plaintiff-Vasanji Shah has filed this suit u/s 6 of the Specific Relief Act for putting him in possession of Room No. 34 of Jaya Terrace, Dadar, Mumbai, from the defendant No. 1. Plaintiff has also claimed damages at the rate of Rs. 200/- per day from 1-9-1997 and sought declaration that letter dated 1-9-1997 of the defendant No. 3 Maharashtra Housing and Area Development Board (hereinafter referred to as "MHADA") is illegal and against the provisions of law and liable to be quashed and set aside.

Following are the facts of the plaintiff's case as alleged in the plaint.

2. Prior to 1971 Jaya Terrace was owned by Bank of India, who were also the landlords. However, one Adi Rustomji Avari who was tenant of Room Nos. 30 and 34 acquired the said building from Bank of India by registered Deed of Assignment dated 7-10-1971 and became owner thereof. The building consisted of ground plus three floors where 18 shops were on the ground floor and 45 residential premises in the building.

3. According to the plaintiff the suit premises i.e. Room No. 34 was in use and occupation of Dhanji Avari, the brother of A.R. Avari. Room No. 32 was opposite to room 34 and was separated by common passage and Room No. 32 was occupied by father of defendant No. 1 and their family members. Further, according to him even though A.R. Avari purchased the Jaya Terrace in October, 1971, A.R. Avari was tenant of Room No. 34 till 31-12-1990.

4. According to the plaintiff he became the tenant of Room No. 34 in January 1991 from A.R. Avari. However, on 23-11-1991 plaintiff purchased Jaya Terrace from A.R. Avari under a Deed of Assignment. Purchase was in the name of plaintiff Vasanji Ramji Shah i.e. his HUF which comprises of his wife, sons and daughters and therefore the plaintiff became the owner of Jaya Terrace. However, plaintiff continued to be the tenant of Room No. 34 even thereafter.

5. In the meantime Jaya Terrace being an old building was in dilapidated condition, therefore firstly MHADA decided to reconstruct it. The tenants challenged the decision of MHADA in the High Court. The tenants therefore formed an Association of the residents and occupants of Jaya Terrace, and for that Association A.R. Avari and defendant No. 4 Madhusudan Shripad Linge took initiative and played an important role. Defendant No. 4-Linge from time to time issued circulars to the tenants, held their meetings and he was thereafter appointed as NOC holder by the MHADA for carrying out the repairs. Defendant No. 4 Linge collected repair charges from the tenants including the plaintiff and the repair work was undertaken phasewise in the building.

6. According to the plaintiff, the defendant No. 1 or his father had no concern with Room No. 34 and were never in possession of the Room No. 34. But it was the plaintiff who was using Room No. 34 as tenant and also as owner of building Jaya Terrace. The plaintiff was however paying rent to himself i.e. to the HUF, of which he was the Head.

7. It is the case of the plaintiff that since the building was reconstructed phasewise and that defendant No. 4-Linge was fully in charge of the building, defendant No. 4-Linge put him in possession of Room No. 34 after it was fully repaired but before electricity, water and other connections were installed in the said room. The possession in this manner was given to the plaintiff in December, 1996, because the plaintiff was the recognised occupant of Room No. 34 and he has also paid Rs. 35,000/- towards his contribution of the repair charges for the said room. According to the plaintiff however defendant No. 1 started dispute about plaintiff's possession of Room No. 34, made representations to MHADA and MHADA in collusion with the defendant No. 1 and in total disregard to the plaintiff's right, title and claim regarding Room No. 34, asked defendant No. 1 to take possession of Room No. 34 on 1-9-1997 and thereupon the defendant No. 1 forcibly took possession of Room No. 34 by breaking open the lock of the plaintiff and by removing the articles of the plaintiff and therefore the plaintiff has filed this suit u/s 6 of the Specific Relief Act for getting back the possession and other reliefs, as stated above. The plaintiff has denied any concern of the defendant

No. 1 or his father with Room No. 34 at any time in the past. According to the plaintiff forcible dispossession is an illegal act committed by defendant No. 1 high handedly and in collusion with the defendant Nos. 2, 3 and 5, and in the absence of any right of defendant No. 1 to Room No. 34. Other incidental issues have also been raised by the plaintiff in this regard but his case in short is as above.

8. The claim and contention of the plaintiff regarding Room No. 34 is totally and completely denied by defendant No. 1, who is the contesting defendant. Defendant No. 2 is MHADA, defendant No. 3 Executive Engineer of MHADA and defendant No. 5 Chairman of MHADA were joined regarding the relief of declaration as per prayer clause (c) of the plaint. Defendant No. 4 Linge was joined because he was the NOC holder of Jaya Terrace from MHADA. Defendant No. 4 by his written statement supported the case of the plaintiff and he also allowed himself to be examined as witness No. 2 for the plaintiff.

9. So far as defendant No. 1 is concerned, it was contended by him in the written statement that claim of the plaintiff regarding Room No. 34 was totally false, that Linge defendant No. 4 in collusion with the plaintiff, and that both of them had fabricated documents to support the case of the plaintiff. According to defendant No. 1 he has been in occupation of Room No. 34 as a tenant since November, 1970 and in the family arrangement Room No. 34 came to be transferred in favour of defendant No. 1 where they were residing till vacation notice was served upon defendant No. 1 by MHADA for the purpose of carrying out extensive repairs of the building, and till then the defendant No. 1 was transferred to the transit camp. According to defendant No. 1 he has voluminous documents to support his right, title and interest including possession of Room No. 34 and even though the MHADA has accepted defendant No. 1 as tenant and occupant of Room No. 34, had issued vacation notice and put the defendant No. 1 in transit camp. Linge defendant No. 4 who was right from the beginning was hand in glove with the plaintiff refused to recognise defendant No. 1 as tenant of Room No. 34, did not accept defendant No. 1's contribution of Rs. 35,000/- towards repairs and thereafter defendant No. 1 moved MHADA and Mr. Madhu Chauhan defendant No. 5 who held a meeting of the defendant No. 1, the plaintiff, Linge defendant No. 4 and other officers and passed an order putting the defendant No. 1 in possession of Room No. 34. Therefore, according to the defendant No. 1 he has been placed in possession of Room No. 34 rightly by MHADA and since Linge defendant No. 4 had no right to put the plaintiff in possession, and since the plaintiff was never placed in possession by Linge in August 1996, as alleged by the plaintiff and supported by Linge defendant No. 1, there was no question of dispossessing the plaintiff from Room No. 34 and therefore entire case of the plaintiff is false on all counts.

10. Defendant No. 4 i.e. Linge filed his written statement, as stated above supported the case of the plaintiff fully and completely. MHADA i.e. defendant Nos. 2, 3 and 5 filed their written statement separately on 2-7-1998 and contended that initially vacation notice was issued in the name of Rajaram

Rajeshwari for Room Nos. 32 and 34. Subsequently this notice was cancelled and two separate vacation notices were issued for Raja Ram Rajeshwari for Room No. 32 and for his son Harish R. Rajeshwari (defendant No. 1) for Room No. 34. Then two separate transit rooms were allotted to the notice holders. NOC for carrying out structural repairs was issued in favour of A.R. Avari and Linge, and since Linge refused to acknowledge defendant No. 1 as tenant of Room No. 34 and since officers of the MHADA found that defendant No. 1's case was genuine and justified and supported by documents, an order for putting defendant No. 1 in possession of Room No. 34 was passed. In other words, MHADA i.e. defendant Nos. 2, 3 and 5 have refused, rejected and denied the entire claim and contention of the plaintiff and that of Linge defendant No. 4.

11. On the basis of the above pleadings, my predecessor framed following issues:

(1) Whether the plaintiff proves that in December 1996 the plaintiff was put in possession of the suit premises by defendant No. 4 as alleged in paragraph No. 23 of the Plaint?

(2) Whether the plaintiff proves that on 31st August, 1977 the defendant No. 1 broke open the lock and removed the plaintiff's article and dispossessed the plaintiff from the suit premises without due process of law as alleged in paragraph Nos. 21, 27, 31 & 33 of the plaint?

(3) Whether the plaintiff proves that he is entitled to the suit premises as alleged in the plaint?

(4) Whether the plaintiff is entitled to mesne profit of Rs. 200/- per day from 1st September, 1997 till the suit premises is handed over to the plaintiff?

(5) Whether the plaintiff is entitled for declaration that letter dated 1st September, 1997 being Exh. 2 of the defendant No. 3 is bad, illegal and is against the provision of law and liable to be quashed?

(6) Whether the defendant No. 1 proves that the suit is liable to be dismissed for want of jurisdiction as alleged in paragraph 2 of the written statement?

(7) Whether the defendant No. 1 proves that the suit as filed by the plaintiff is misconceived, bad in law and not maintainable as alleged in paragraph No. 1 of the written statement?

(8) Whether the defendant No. 1 proves that in December 1996 the defendant No. 4 has handed over the possession of the suit premises as alleged in paragraph No. 8 of the written statement?

(9) What relief?

12. Thereafter evidence of the parties was recorded by me in which plaintiff examined himself as P.W. 1, defendant No. 4 Linge was examined as witness for plaintiff i.e. P.W. 2. Defendant No. 1 examined his brother Ashok Rajaram Rajeshwari as D.W. 1. No witness was examined by MHADA. Nor Linge-defendant

No. 4 separately examined himself because he had already appeared as a witness for the plaintiff.

13. After the evidence was over, I heard Mr. Mahadik for defendant No. 1 at length, and also Ms. Sikandar for plaintiff at length, Counsel for MHADA was also heard.

14. It was contended by Mr. Mahadik for defendant No. 1 that since this was a suit u/s 6 of the Specific Relief Act, the question of title was irrelevant. He also contended that in order to succeed in such a suit it was necessary for the plaintiff to prove that he was in possession of the premises and that he was dispossessed by the defendant Nos. 2, 3 & 5 without due process of law. Mr. Mahadik also contended that relief of declaration sought by the plaintiff in prayer clause (c) of the plaint regarding order dated 1-9-1997 of MHADA putting defendant No. 1 in possession could not be challenged in the suit because suit was of a summary nature u/s 6 of the Specific Relief Act. The plaintiff was not entitled to relief of possession, firstly, because alternative remedy of filing an appeal against the said order of MHADA was available but was not resorted to by the plaintiff, secondly if the defendant No. 1 was placed in possession pursuant to the orders of MHADA then it could not be said that the plaintiff was dispossessed without due process of law, and on that count also the plaintiff was liable to be non-suited.

15. Mr. Mahadik further criticised and condemned the conduct of the plaintiff and Linge-defendant No. 4 in fabricating and concocting this case and creating documentary evidence in that regard. He contended that the case of the plaintiff that even though Avari was the owner of the Jaya Terrace he was also the tenant of Room No. 34 and he was paying rent to himself for Room No. 34, was a bogus claim and so also the claim of the plaintiff that even though he became the owner of the Jaya Terrace he was paying rent for himself was a bogus claim. Mr. Mahadik also contended that excepting the documents in the form of rent receipts issued by Avari to himself in respect of Room No. 34 (even though Avari was owner of the building) the rent receipts produced by the plaintiff in respect of Room No. 34 regarding payment of rent by him to himself as owner, there was no document with the plaintiff to show that he was ever in possession of Room No. 34. He contended that Linge (P.W. 2) helped the plaintiff in concocting the case and fabricating documents and also acted illegally in placing the plaintiff in possession of Room No. 34 even before the construction work was completed in all respects and that too without disregarding the rights and interest of the defendant No. 1. He contended that Linge (defendant No. 4) as NOC holder knew from the beginning that MHADA has served vacation notice upon defendant No. 1 and had provided transit accommodation to defendant No. 1 regarding Room No. 34 and as such it was highly illegal on the part of the plaintiff and Linge-defendant No. 4 to contend that the plaintiff could be placed in possession of Room No. 34.

16. Mr. Mahadik contended that if the tenant purchase the property then his

rights of tenancy get merged into the rights of ownership and if that is so, the contention of the plaintiff that A.R. Avari was tenant and landlord at one and same time or that plaintiff was landlord and tenant of room No. 34 at one and same time was completely illegal and ridiculous. He also contended that nowhere under the conditions of NOC granted to Linge-defendant No. 4 or Avari by MHADA, Avari was ever empowered or authorised by MHADA to place the tenants in possession, and therefore claim and contention of the plaintiff and supported by Linge-defendant No. 4 that the Linge placed plaintiff in possession is devoid of any substance and is totally illegal and invented for falsely claiming Room No. 34.

17. Mr. Mahadik also submitted that contention of the plaintiff that he purchased the Jaya Terrace in the name of HUF, of which he himself was the member, karta and of which his wife and children were members was against the provisions of Hindu Law. According to Mr. Mahadik HUF could not be a creation of an agreement but it was a creation of the provisions of Hindu Law. According to Mr. Mahadik a single individual could not form HUF by including his wife and children and therefore plaintiff's claim in that regard being devoid of merit was liable to be out right rejected. Mr. Mahadik pointed out number of contradictions and falsity in the evidence of plaintiff and Linge-defendant No. 4 (P.W. 2) regarding their claim of possession of room No. 34 and regarding their challenge to the case of defendant No. 1. He also pointed out that Linge-defendant No. 4 was asked by MHADA to hand over possession of room No. 34 to defendant No. 1 but by crossing the limits of powers vested in him as NOC holder Linge challenged the decision of MHADA by giving reply through Advocate to the said notice only for the purpose of supporting the case of the plaintiff and this required the Court to take serious action against the plaintiff and Linge-defendant No. 4 for fabricating false evidence and documents.

18. Mr. Mahadik contended that defendant No. 1 had voluminous record with him to show that he was occupying Room No. 34 right from 1980 and all this documentary evidence could not be challenged by the plaintiff at all. He also contended that defendant Nos. 2, 3 & 5 i.e. MHADA were fully satisfied about the right of the defendant No. 1 in respect of Room No. 34 and therefore MHADA was perfectly justified in putting defendant No. 1 in possession of Room No. 34. Mr. Mahadik also contended that by fabricating false documents and making false claim in respect of Room No. 34, the plaintiff has put the defendant No. 1 under tremendous pressure and tension because even though defendant No. 1 was legitimately entitled to Room No. 34, defendant No. 1 had to act as agent of the Receiver and pay royalty to the Receiver which was initially Rs. 3,000/- per month and which was subsequently reduced to Rs. 500/-. Mr. Mahadik contended that attempts of persons like plaintiff and Linge-defendant No. 4 to make false and vexatious claim in respect of immovable property of others were required to be curbed and strenuously dealt with. He therefore urged that Court should not only dismiss the suit but saddle cost of Rs. 50,000/- on plaintiff for making false and vexatious claim. He also urged that both the plaintiff and Linge-defendant No. 4 were liable to be prosecuted for perjury or for creating false claim.

19. Ms. Madhubala Kajale Counsel appearing for MHADA contended that there was no collusion between MHADA and defendant No. 1. She also contended that the order dated 1-9-1997 passed by MHADA and which was challenged by the plaintiff as per prayer clause (c) was an appealable order and the appeal lie to the Competent Authority u/s 70 of MHADA Act. She therefore contended that since the plaintiff has not challenged the vacation notice served upon defendant No. 1, plaintiff had no right to challenge the order of MHADA asking defendant No. 1 or placing defendant No. 1 in possession of Room No. 3. She contended that no suit of the plaintiff could lie against MHADA for decisions taken by MHADA in discharge of their statutory duties. She also contended that meeting dated 1-9-1997 between Officials of MHADA, defendant No. 1 or his representative, plaintiff and Linge defendant No. 4 was properly held, but in that meeting plaintiff could not produce any document pertaining to room No. 34 and since vacation notice was served upon defendant No. 1, MHADA was under legal obligation to put the defendant No. 1 in possession. She therefore supported the submissions made by Mr. Mahadik for defendant No. 1.

20. As against this, it was contended by Ms. Sikandar that there was nothing unusual or unnatural in A.R. Avari acting or representing as tenant and owner of Room No. 34. Similarly nor was anything unnatural in plaintiff claiming ownership of Room No. 34 (along with entire building Jaya Terrace) and also tenancy of Room No. 34 simultaneously. She therefore contended that the receipts produced by the plaintiff in that regard about payment of rent to himself from one capacity to another capacity could not be disregarded on that count.

21. According to Ms. Sikandar even if it is accepted for the sake of argument that Linge-defendant No. 4 had no right to put plaintiff in possession, and the plaintiff was put in possession illegally by Linge, even then the defendant No. 1 had no right to dispossess the plaintiff and plaintiff was entitled to get back the possession in view of the judgment of Supreme Court reported in 1989(3) Bom.C.R. 364 Krishan Ram Mahale (dead) by his Lrs. v. Mrs. Shobha Venkat Rao.

22. So far as the claim and contention of the plaintiff is concerned, Ms. Sikandar contended that the plaintiff had proved that A.R. Avari was in possession initially of Room No. 34 and thereafter the plaintiff was in possession of room No. 34 till the building was taken for repairs by MHADA. She also contended that Linge-defendant No. 4 who has taken initiative in getting the building repaired issued circulars from time to time, those circulars were served upon the occupants of the building Jaya Terrace and all those documents clearly prove the case of the plaintiff in respect of Room No. 34. She contended that Room No. 34 was actually and physically being used by brother of A.R. Avari but since Room No. 34 and room No. 32 were on the same floor and were separated by a passage, the defendant No. 1 or his father taking advantage of the proximity of these two rooms and taking advantage of their acquaintance with the brother of A.R. Avari fabricated documents to show their possession of Room No. 34 and therefore according to her all the documents of the defendant No. 1 including the ration

card, pass book, insurance policy, voters list, vacation notice, etc. were liable to be rejected and discarded.

23. Ms. Sikandar also contended that once MHADA appointed Linge-defendant No. 4 as NOC holder, Linge got all the rights regarding the building Jaya Terrace, and since Linge knew from his personal knowledge that plaintiff was the tenant of Room No. 34 then there was no illegality committed by Linge in placing the plaintiff in possession of Room No. 34. Regarding the state of the building and the stages of repairs, Ms. Sikandar contended that the plaintiff and Linge had proved that the building was constructed phasewise and therefore even though Room No. 34 was not having electricity connection, water connection and other facilities, Linge did not commit anything wrong in placing the plaintiff in possession of Room No. 34 since because the plaintiff had no objection in taking possession of Room No. 34 on "as is where is basis".

24. She contended that even defendant No. 1 was claiming to be in possession of room No. 34 from 1970 to 1979 defendant No. 1 had no single document with him in that regard, and that the insurance policy, passport and ration card were fabricated by the defendant No. 1 in anticipation of the dispute. Ms. Sikandar also contended that MHADA and its officers acted in collusion with defendant No. 1 in total disregard to the rights of the plaintiff regarding Room No. 34. According to her, MHADA acted swiftly and quickly in favour of defendant No. 1 because for the first time on 25-8-1997 complaint was lodged by defendant No. 1 to MHADA and within one week thereafter MHADA passed an impugned order dated 1-9-1997 to put the defendant No. 1 in possession of Room No. 34. She also contended that in the meeting held by MHADA the plaintiff was not permitted to produce any document, that the documents of the defendant No. 1 were not shown to the plaintiff and thus the order of MHADA putting the defendant No. 1 in possession is totally and completely illegal. She however repeatedly stressed that even if possession of the plaintiff is illegal, the Court is bound to restore possession to him in view of the Supreme Court judgment, referred to above.

25. In view of the aforesaid submissions of the Counsel for the plaintiff and the defendants, now it is necessary to scrutinize the evidence oral as well as documentary and give findings and decide the case.

26. Therefore I will proceed issuewise:

(1) Whether the plaintiff proves that in December 1996 the plaintiff was put in possession of the suit premises by defendant No. 4 as alleged in paragraph No. 23 of the plaint?

(2) Whether the plaintiff proves that on 31st August, 1997 the defendant No. 1 broke open the lock and removed the plaintiff's article and dispossessed the plaintiff from the suit premises without due process of law as alleged in paragraph Nos. 21, 27, 31 & 33 of the plaint?

(3) Whether the plaintiff proves that he is entitled to the suit premises as alleged in the plaint?

(4) Whether the plaintiff is entitled to mesne profit of Rs. 200/- per day from 1st September, 1997 till the suit premises is handed over to the plaintiff?

(5) Whether the plaintiff is entitled for declaration that letter dated 1st September, 1997 being Exh. 2 of the defendant No. 3 is bad illegal and is against the provisions of law and liable to be quashed?

(6) Whether the defendant No. 1 proves that the suit is liable to be dismissed for want of jurisdiction as alleged in paragraph 2 of the written statement?

(7) Whether the defendant No. 1 proves that the suit as filed by the plaintiff is misconceived, bad in law and not maintainable as alleged in paragraph No. 1 of the written statement?

(8) Whether the defendant No. 1 proves that in December 1996 the defendant No. 4 has handed over the possession of the suit premises as alleged in paragraph No. 8 of the written statement?

(9) What relief?

My findings on the issues are as under:

Issue No. 1: Negative.

Issue No. 2: Negative.

Issue No. 3: Negative.

Issue No. 4: Negative.

Issue No. 5: Not pressed by the plaintiff.

Issue No. 6: Negative.

Issue No. 7: Affirmative.

Issue No. 8: Affirmative.

Issue No. 9: As per the final order.

27. Since Issue No. 7 is regarding the maintainability of the suit and since Mr. Mahadik strongly urged that suit be dismissed as being not maintainable and even supported by Counsel for MHADA and since the Counsel for the plaintiff also tried to meet the objection, it is necessary to consider this issue first.

28. It is true that suit of the plaintiff is basically a suit u/s 6 of the Specific Relief Act because it is based on the alleged forcible dispossession of the plaintiff by the defendant No. 1 on 1-9-1997. However, in addition to the aforesaid claim of possession the plaintiff has also claimed in prayer (c) as:

"That this Hon"ble Court be pleased to declare that letter dated 1st September,

1997 being Exhibit Z-1 hereto of defendant No. 3 is bad, illegal and against the provision of law and liable to be quashed and set aside."

29. The said letter is part of the plaint as Exhibit Z-1. It is a letter of MHADA to Harish Raghu Rajaram Rajeshwari with copy to many others including Linge NOC holder. Since the said letter is short, it is reproduced as below:

"Sir,

The Hon'ble Chairman, M.H.R. & R. Board, Mumbai heard all the parties connected with the above case on 1-9-1997, and decided that you are the occupant of Room No. 34 in the above building. You are requested to re-occupy Room No. 34 in the above building, as structural repairs have been completed by the N.O.C. holder, and vacate Transit Tenement of the Board allotted to you by the Board at Borivali. As N.O.C. holder refused to accept cheque amounting to Rs. 35,000/- in the meeting held on 1-9-97, you are requested to give indemnity bond on stamp paper of Rs. 100/- stating that you would pay Rs. 35,000/- to the N.O.C. holder towards your share of repairs as and when N.O.C. holder demand the same."

30. Mr. Mahadik contended that prayer (c) of the plaint is in respect of very same letter and it is that this letter be declared as illegal and against the provisions of law and is liable to be quashed and set aside. According to Mr. Mahadik the plaintiff cannot get such a relief in the suit because this is suit u/s 6 of the Specific Relief Act and is a summary suit, and secondly because if at all the plaintiff was aggrieved by this letter which is an order in itself, the remedy that was available to the plaintiff was to file appeal to the competent authority under the MHADA Act, 1976 and u/s 177 no suit was maintainable against MHADA.

31. Section 177 of MHADA Act is as under:

"Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction in respect of any matter which the authority or the Tribunal is empowered by or under this Act to determine"

Admittedly it was within the competence of MHADA to allot Room No. 34 to defendant No. 1 because MHADA has taken the building for repairs, MHADA has served eviction notice on defendant No. 1, MHADA had provided alternate accommodation to the defendant No. 1 in the transit camp and therefore in continuation of the things done, the impugned order dated 1-9-1997 came to be passed by MHADA and therefore the act of putting the defendant No. 1 in possession of Room No. 34 or asking him to occupy the said room is an act done under the MHADA Act, 1976 and in view of the prohibition laid down by section 177 and bar of jurisdiction, the suit is not maintainable.

32. Counsel for MHADA also strongly supported this submission of Mr. Mahadik. Thereafter, Counsel for the plaintiff conceded to this legal position and she contended that she will not be pressing any relief under prayer (c) and she would be giving up that relief. I have accepted her statement or contention in that

regard and as such no finding in favour of the plaintiff regarding prayer (c) of the plaint is required to be given.

33. However, consequent upon the plaintiff withdrawing prayer (c) from the plaint, Mr. Mahadik contended and was supported by Counsel for MHADA that if prayer (c) is withdrawn from the plaint then the suit even as it is has to be dismissed because admittedly then possession of defendant No. 1 of Room No. 34 from 31-8-1997 or 1-9-1997 becomes possession and in due process of law and in view of the provisions of section 6 of the Specific Relief Act, the plaintiff cannot get any relief.

34. There is considerable force in this submission made by Mr. Mahadik on one hand to dismiss the suit on that count, particularly when according to the Counsel for the plaintiff even if plaintiff's possession is illegal, the same has to be restored if he proves the factum of possession and since in this case plaintiff has alleged and tried to prove that he was placed in possession by Linge in January 1997 the evidence and pleadings of the plaintiff are required to be scrutinised. However, it is necessary to clarify at this stage that since the plaintiff has withdrawn prayer (c) then it has to be held that there is no challenge of the plaintiff to the order of MHADA dated 1-9-1997.

35. The claim and contention of the plaintiff is that A.R. Avari was the owner and also the tenant of Room No. 34. Plaintiff became owner i.e. HUF of the plaintiff became owner and plaintiff continued to be tenant of Room No. 34. Plaintiff has produced rent receipts. All the rent receipts in that regard i.e. his payment of rent of Room No. 34 to his own HUF family and payment of rent by A.R. Avari to himself. At the outset it has to be said that all these documents are bogus and totally illegal. Nothing was shown by Counsel for the plaintiff in support that the owner can at the same time be tenant of the said property. Neither any legal provision was shown nor any authority was cited, I am therefore unable to accept that A.R. Avari could be the owner of the property but at the same time he is also tenant of Room No. 34 paying rent to himself in other capacity and receiving rent from himself in the other capacity. Similarly contention of the plaintiff that his HUF was owner of Jaya Terrace but he was tenant of Room No. 34 cannot be accepted. All the receipts in that regard are required to be rejected along with the oral evidence of the plaintiff.

36. The plaintiff has therefore tried to prove that building was reconstructed or repaired phasewise and he was placed in possession by Linge in December 1996. If is an admitted position that plaintiff has certain shops in the premises as well as more than fifteen accommodations in the building and according to him he was using this Room No. 34 for the purpose of his business and keeping sundry articles. He is relying for proving his possession from December, 1996, in particular on the letter of Linge and the evidence of Linge P.W. 2. It is pertinent to note that Linge placed the plaintiff in possession in December 1996, Linge did not obtain any receipt from the plaintiff. There is therefore no documentary evidence coming forth from the plaintiff to show that he was placed in possession

by Linge in December, 1996 and particularly any document exchanged or executed between the plaintiff and Linge at the time of giving and taking possession of Room No. 34.

37. Plaintiff has however relied upon Exhibits P-6, P-7 and P-8, which are letters and correspondence of August 1997. Exhibit P-6 is written by the Executive Engineer of MHADA on 26-8-1997 addressed by Linge and Avari with a request to accept Rs. 35,000/- from defendant No. 1 and hand over quiet, vacant and peaceful possession to defendant No. 1 within two days. Exhibit P-7 is a notice given by P.W. 2 Linge-NOC holder of MHADA wherein he has challenged the authority of MHADA in giving any such permission as per letter Exhibit P-6 and reiterating therein that he has already placed the plaintiff in possession of room No. 34. Exhibit P-8 consisting of intimation of the notice that was conveyed by MHADA on 1-9-1997 and the decision taken in the said meeting.

38. Mr. Mahdik for defendant No. 1 strongly condemned and criticised the conduct of P.W. 2 Linge in challenging the authority of MHADA by his reply through Advocate Exhibit P-7 and also contending that he had placed the plaintiff in possession of Room No. 34. Mr. Mahdik contended that NOC holder had no business and authority to place a tenant in possession and had no right to fight against MHADA which was the statutory authority and from whom Linge got powers to act as NOC holder. I have no hesitation in accepting the submission made by Mr. Mahdik in this regard. The whole conduct of Linge and the plaintiff in the suit as well as in the evidence is highly suspicious. Admittedly, in December 1996 construction of the building or repairs thereto were not complete. Plaintiff himself admitted that there was no electricity and water in December 1996 and only one person of Room No. 44 was staying in the building and this fact is also admitted by Linge and therefore if this is so there was no reason for the plaintiff to take possession of Room No. 34 from Linge nor any reason for Linge to hand over possession to the plaintiff while construction was incomplete and it was still going on.

39. Plaintiff has relied upon Exhibit P-9 letter dated 1-7-1997 by Linge to the Executive Engineer to place on record that the plaintiff was placed in possession of Room No. 34. This letter is in two pages and on the second page Linge has signed. It is reflected that about 22 persons were placed in possession on 1-7-1997 or prior thereto. Out of these 27 persons 15 tenements or rooms are of plaintiff. This document is treated to be concocted and false document because if according to the plaintiff the building was constructed phasewise and tenants or occupants were placed in possession as soon as the phase was complete then there is no evidence nor any background for the plaintiff to contend that before 1-7-1997 he was placed in possession or his HUF was placed in possession of as many as 15 rooms at a stretch. It is altogether different that plaintiff has also failed to prove that the building was constructed phasewise. Apart from his oral evidence or the evidence of Linge not a single document in the form of map, construction report, builders report is on record to show that the building was

constructed phase wise .A photograph was tried to be tendered by the plaintiff but it does not prove anything at all.

40. It is also pertinent to note that even though plaintiff obtained possession from Linge in December 1996, the first written intimation from Linge to MHADA comes as per Exhibit P-9 in July 1997 i.e. after about 7 months. If Linge was loyal and honest in his job as NOC holder and then he was expected to seek permission of MHADA in placing the plaintiff in possession of Room No. 34 and then obtain receipt from the plaintiff in that regard and then intimate MHADA regarding compliance. There is absolutely nothing with the plaintiff to prove all these circumstances.

41. The most important thing that goes against the plaintiff in this case is that it was defendant No. 1 who was served vacation notice by MHADA regarding Room No. 34, it was defendant No. 1 who was given transit accommodation in lieu of Room No. 34 and therefore as rightly argued by Counsel for MHADA it was legal and statutory obligation of MHADA to hand over Room No. 34 to defendant No. 1. If at all the plaintiff was the tenant of Room No. 34 then there is no explanation from the plaintiff why MHADA did not give him vacation notice, did not provide him alternate transit accommodation.

42. This particular aspect of the defendants case was tried to be attacked and challenged by Counsel for the plaintiff on the ground the vacation notice which was given by MHADA to defendant No. 1 as per Exhibit D-11. Ms. Sikandar pointed out that as per the note on Exhibit D-11 there was one vacation notice issued previously vide T.D. letter No. 1076 dated 14-4-1982 which was cancelled and since this notice is not produced by MHADA it should be inferred that it was not issued to defendant No. 1 but the earlier notice was issued to the plaintiff.

43. This argument has to be rejected outright, firstly because it is not at all the case of the plaintiff that MHADA had ever sent a vacation notice to the plaintiff. Secondly, in the written statement MHADA has clarified its position very clearly, and in para 3 it is stated that initially one vacation notice in the name of Rajaram Rajeshwari for Room Nos. 32 and 34 vide No. 1076 dated 14-4-1982 was sent but subsequently it was cancelled on 18-6-1984 and two separate notices were issued for Rajaram Rajeshwari for Room No. 32 and Harish R. Rajeshwari for Room No. 34 vide notice No. 2210 dated 19-6-1985 (which is Exhibit D-11). It will therefore be clear from the pleadings of MHADA that no such inference in respect of the cancelled notice can be drawn as contended by Ms. Sikandar that the cancelled notice was issued to plaintiff.

44. Apart from Exhibit D-11 defendant No. 1 relied upon number of documents including passport of his brother, ration card, voters list, insurance policy etc. All these documents have been proved and in all those documents address of defendant No. 1 is shown as Room No. 34. This evidence is very strong and clinching against the plaintiff and no explanation could be given by Counsel for plaintiff. She meekly tried to contend all these documents were fabricated by

defendant No. 1. It is pertinent to note that the dispute between the plaintiff and the defendants started in August 1997 whereas all those documents are very old and at the time of those documents there was no dispute between the plaintiff and the defendant No. 1. If the documents were created while the dispute was pending then something could have turned in favour of the plaintiff but when the documents are of a period where there was no dispute whatsoever between the plaintiff and defendant No. 1 then the documents are required to be accepted as most natural documents. These documents of the defendants therefore totally falsify the case of the plaintiff not only regarding previous possession of the plaintiff of Room No. 34 from the date of his purchase but also subsequent possession.

45. The case of the plaintiff u/s 6 of Specific Relief Act lingers on the fact of his prior possession on the date of alleged dispossession. As stated by me earlier the plaintiff has relied upon the conduct and evidence of Linge and the aforesaid letters being Exhibits P-6, P-7, P-8 and P-11. I have no hesitation to hold that Linge gone out of way in favouring and supporting the plaintiff because Linge as NOC holder knew that MHADA has issued vacation notice to defendant No. 1 regarding Room No. 34 and that MHADA had allotted transit accommodation to defendant No. 1 in lieu of Room No. 34. Therefore it was obligatory on the part of Linge who was acting as NOC holder to think twice, not only twice but hundred times before placing the plaintiff in possession of room No. 34 or before helping plaintiff in his design to grab Room No. 34.

46. So far as actual user of room No. 34 after December 1996 is concerned, plaintiff tried to contend through his evidence that after obtaining possession from Linge he kept his fans, sofas, chairs, cupboards and textile in the suit premises and he also locked the said room. There is no corroborating evidence at all to this submission of the plaintiff. Not a single witness is examined regarding getting possession in December 1996 or regarding use of Room No. 34 from December 1996 to the alleged date of dispossession. It has come on record that plaintiff owns and has in his possession more than 15-20 tenements in the building, there is no explanation why on earth he wanted Room No. 34 and what he was doing with Room No. 34. Even regarding his earlier possession of Room No. 34 he has no correspondence received on the address of room No. 34, no ration card, no documents, no electricity bill, no business licence, no telephone bills. He has tried to contend that he was dispossessed by defendant No. 1 on 31-8-1994 at 10 p.m. then he went to the police station to lodge report. His articles were thrown in the waranda or passage by defendant No. 1 and he took the photograph of the articles. Police did not take cognizance of his complaint and asked him to file a civil suit. The entire case of the plaintiff regarding being placed in possession of Room No. 34 in December 1996 and dispossessed on 31-8-1997 is false, bogus and concocted with a view to grab Room No. 34 from defendant No. 1. His report to the police station on 31-8-1997 does not prove anything at all and that cannot be used to give a finding in favour of the plaintiff regarding his possession of Room No. 34. Plaintiff tried to prove possession of

Avani of room No. 34 with the help and support of Linge by getting produced certain circulars issued by Linge to tenants. These circulars were issued because the building was to be repaired, tenants were to be consulted and contacted and steps were required to be taken into and funds collected. According to plaintiff and Linge it was Avani who signed all the circulars as occupant of Room No. 34 and that this part proves possession of Avani and consequently possession of the plaintiff. Firstly, in my opinion, those circulars have no bearing in the case because according to the plaintiff he surrendered possession of Room No. 34 through Linge NOC holder to MHADA for the purpose of repairs. Admittedly while the repairs were going on plaintiff was not in possession and then he was placed in possession in December 1996 and dispossessed in August 1997. It is not the case of the plaintiff that right from date of purchase in 1991 he continued to be in possession of Room No. 34 and was in possession upto 31-8-1997 and then he was dispossessed. Therefore, whether Avani was in possession of Room No. 34 prior to the plaintiff's purchasing property from him is of no consequence. I have already held and observed that case of the plaintiff that Avani was owner as well as tenant of Room No. 34 and plaintiff was owner and tenant of Room No. 34 is an imaginary, unacceptable and having no legal force behind it, therefore even if for the sake of argument it is accepted that in some of the circulars Avani has signed for Room No. 34 it does not support the case of the plaintiff at all and does not take anywhere for the benefit of the plaintiff. One more piece of evidence was tried to be pressed into service by Ms. Sikandar. According to her fact of plaintiff in possession of room No. 34 getting support from a vital document, namely payment of Rs. 35,000/- by plaintiff towards the repair charges of Room No. 34. This receipt is Exhibit P-5. It is dated 23-8-1996. According to Ms. Sikandar not only the plaintiff but Linge also supported the case of the plaintiff by Exhibit P-5 and therefore plaintiff's case should be believed.

47. I am not at all convinced by this argument nor by the said receipt produced by the plaintiff because admittedly repair work was going on since 1993 as admitted by the plaintiff and at that time stay order was given by the Bombay Municipal Corporation. The plaintiff was admittedly owner of the property and he was required to make his contribution to the repairs when the repair started or when Linge was holding meetings after meeting for that purpose, namely, for collecting contribution from the tenants. If this was done then payment of Rs. 35,000/- for Room No. 34 should have been much before 1989 and at any rate no wherein 1996 as is reflected by receipt which is dated 23-8-1996. Plaintiff claim possession in December 1996 and the receipt is of 23-8-1996. No documentary evidence was produced by Linge nor any counter foil of receipt nor the book from which this receipt was issued, to show that he accepted the payment on that particular day in usual course of business and as coming from the plaintiff on that particular date. It is a solitary receipt without any supporting document.

48. It is pertinent to note that this receipt is a stamped receipt and on the stamp there is signature of plaintiff himself as Secretary. Therefore, as rightly argued by

Mr. Mahadik plaintiff has made the so called payment to himself and got his own receipt and obtained counter signature of Linge thereupon. In the circumstances therefore it has to be held that this is a bogus document concocted by Linge and plaintiff to support the case of the plaintiff. There is no explanation from the plaintiff why he did not pay his contribution of Rs. 35,000/- from 1988 till 1996 and why he paid it at the last stage i.e. before the so called alleged repossession to him of Room No. 34.

49. Counsel for the plaintiff also tried to press reliance upon Exhibit P-4 a certified copy of the Sale Deed between plaintiff on one hand and A.R. Avari on the other hand dated 23-11-1991 to prove that name of the plaintiff is shown as occupant of room No. 34. Since I have rejected the claim of the plaintiff that he could be owner as well as tenant of same premises, this document does not at all support the plaintiff's case. The falsity of the case of the plaintiff is on the contrary strengthened by this document Exhibit P-4, because as against Room No. 32 also plaintiff has shown his name in the schedule or annexure appended with sale deed. In fact there cannot be any dispute and there is no dispute that defendant No. 1 was in occupation of Room No. 32 since beginning because Linge has admitted in his evidence that in the circulars issued by him Rajaram Rajeshwari has signed for Room No. 32, Rajaram Rajeshwari admittedly the father of defendant No. 1 so also Ashok Rajaram brother of defendant No. 1. In para 3 of plaint plaintiff has admitted that before A.R. Avari purchased the building one Engineer was a tenant of room No. 32 but the room was occupied by father of defendant No. 1 and his family members. If this is so then the entry in the annexure of the sale deed against Room No. 32 showing plaintiff's name as occupant is false and bogus entry.

50. One such document which is the creation of plaintiff in his design to grab Room No. 34 is Exhibit P-11 which is a notice given by A.R. Avari to all the tenants of the building to accept the plaintiff VasANJI Shah as owner and pay rent to him and this notice is addressed to plaintiff also as tenant of Room No. 34. If the plaintiff had become the owner as alleged by him of the entire Jaya Terrace, there was no necessity at all for A.R. Avari to serve a notice upon the plaintiff to pay rent of room No. 34 to plaintiff himself. Plaintiff also relied upon Exhibit P-12 which is a letter written by him to A.R. Avari and Linge, there is no date on this letter but it is in the form of a receipt or acknowledgement of plaintiff receiving possession of Room No. 34 from Linge. For all the reasons stated above this is also a bogus, false and concocted document.

51. Considering therefore all aspects of the matter it has to be held that plaintiff failed to prove that he was placed in possession of Room No. 34 by Linge defendant No. 4. Consequently, it has to be held that case of the plaintiff regarding dispossession is also false. However, the falsity of this case is also proved by other circumstances and documents.

52. It is proved by defendant No. 1 that when Linge P.W. 2 refused to take Rs. 35,000/- from him. He made representation to MHADA and MHADA sent a letter

to Linge to accept Rs. 35,000/-, which he refused and to the contrary sent a reply notice to the Advocate challenging the authority of MHADA. Thereafter, a meeting was held in the office of MHADA where Chairman Madhu Chavan and other officers were present. According to defendant No. 1 he showed all his documents to the officer of MHADA whereas plaintiff could not and did not produce any document and therefore order to place the defendant No. 1 in possession was passed.

53. This order is challenged by the plaintiff on the ground that the documents which the defendant No. 1 had submitted were not shown to him during this meeting and the order passed in favour of defendant No. 1 in collusion. The case of the plaintiff in this regard is falsified firstly because even before this Court plaintiff could not produce any document regarding his possession of Room No. 34 excepting the so-called concocted and fabricated rent receipts issued by landlord to himself as a tenant. On the other hand defendant No. 1 has produced strong documentary evidence to prove his possession of Room No. 34. Apart from this, plaintiff admitted in his cross-examination that in the said meeting his Advocate was also present as also Advocate of defendant No. 1. If that was so and if officers of MHADA passed a certain order without considering the documents of the plaintiff or in collusion with defendant No. 1 then it was expected that the plaintiff or his Advocate sent a stern and strenuously worded notice to officers of MHADA about their joining hands with defendant No. 1. However, there is nothing on record in that regard. It cannot therefore be said that the order of MHADA asking defendant No. 1 to take possession is illegal and the same order has to be taken as it is and this Court cannot consider the legality and otherwise of the said order. The only remedy available to the plaintiff was to challenge the order before competent authority by filing appeal. In this suit he had made a prayer in that regard, but as discussed above, that prayer was given up during argument by his Advocate.

54. Apart from this, whole conduct of the plaintiff, his documents as against the conduct of defendant No. 1 and his documents clearly go to show that MHADA was perfectly justified in placing defendant No. 1 in possession of Room No. 34.

55. In the background of these facts taking of possession by defendant No. 1 cannot for any reason be regarded as an illegal act. The defendant No. 1 is therefore lawfully in possession pursuant to the orders of MHADA. He has not dispossessed the plaintiff, because the plaintiff has failed to establish his possession, as a result the suit of the plaintiff is liable to be dismissed.

56. The defendant No. 1 therefore succeeds in proving that the suit of the plaintiff is misconceived and bad in law.

57. While concluding his argument Mr. Mahadik Counsel for defendant No. 1 repeatedly urged that this is a case where there is blatant misuse of judicial process by the plaintiff in concocting the false case, in fabricating documents and laying a false claim on the suit property with active help from P.W. 2 Linge

defendant No. 4. He therefore contended that both the plaintiff and defendant No. 1 be prosecuted for perjury and for civil offence under I.P.C. for fabricating evidence to make a false claim etc. In addition, or in the alternate he also contended that heavy costs to the tune of Rs. 50,000/- be saddled upon the plaintiff. Because of the false claim of the plaintiff the defendant No. 1 is put to great mental tension and other strains and even though defendant No. 1 was legitimately and legally entitled to possession of room No. 34 from MHADA he had to face this suit, face the notice of motion of the plaintiff for appointment of Receiver and pay royalty to the Receiver which was initially Rs. 3,000/- but later on reduced to Rs. 500/- per month. Therefore this is a case according to Mr. Mahadik where defendant No. 1 had in order to protect his own interest and property has to face a false claim of the plaintiff, for which compensation and heavy compensation was the only remedy, apart from dismissal of the suit and prosecution of the plaintiff.

58. As against this, Counsel for the plaintiff submitted that there is nothing on record to show that claim of the plaintiff is false or that he has concocted false case to grab the property or that he has led the evidence with the active help of Linge defendant No. 4.

59. I have already held that claim and contention of the plaintiff regarding room No. 34 is false and that he has tried to grab the property of defendant No. 1 by seeking active help of Linge defendant No. 4. However, it will be open to the defendant No. 1 to prosecute the plaintiff separately. So far as the costs, and compensatory costs are concerned, this is a fit case to award cost for making a false and vexatious claim. Unfortunately section 35-A of C.P.C. restricts the amount of cost that can be saddled by the Court at Rs. 3,000/-. Mr. Mahadik tried to seek assistance of a Notification which empowers the Court to impose cost of Rs. 50,000/-. However, he could not produce the said notification, therefore, there is no alternate but to award the cost within the prescribed limit. I, therefore, pass the following order:

ORDER

Suit of the plaintiff is dismissed with costs to be paid separately to the defendant No. 1 and MHADA. In addition, plaintiff to pay costs of Rs. 3,000/- to the defendant No. 1 u/s 35-A of the C.P.C.

Court Receiver stands discharged without passing accounts. Possession of the defendant No. 1 over Room No. 34 is confirmed and whatever amount the defendant No. 1 has deposited with the Court Receiver will be returned to the defendant No. 1. Court Receiver to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

Certified copy expedited.

After this order was pronounced Counsel for the plaintiff prayed that Court Receiver be continued for a period of four weeks in order to enable the plaintiff to

file appeal. Counsel for the defendant No. 1 opposed this prayer and alternatively submitted that defendant No. 1 may not be required to pay royalty to the Court Receiver.

In view of this submission, Court Receiver to continue for four weeks today. However, defendant No. 1 will not be under any obligation to pay anything to the Court Receiver.