

(2015) 08 BOM CK 0210

In the Bombay High Court

Case No : Writ Petition No. 2333 of 2011

Vasant D. Dhamale and Others

APPELLANT

Vs

Narayan S. Paygude

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(g), 13(1)(l)
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 21, Order 41 Rule 27
Constitution of India, 1950 — Article 227
Maharashtra Rent Control Act, 1999 — Section 3(1)

Citation : (2015) 08 BOM CK 0210

Hon'ble Judges : M.S. Sonak, J

Bench : Single Bench

Advocate : S.S. Kanetkar h/f. Pallavi Dabholkar, for the Appellant; Uday Warunjikar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M.S. Sonak, J—Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2. This petition challenges the judgments and decrees dated 16 February 2002 and 23 December 2010 made by the Trial Court and the Appeal Court directing eviction of the petitioners (predecessor-in-title of the petitioners) on the following grounds contemplated by the Bombay Rents, Hotel and Lodging Houses Rates Control, 1947 Act (Rent Act).

"a] That the petitioners (tenant) have acquired an alternate residence [Section 13(1)(l) of the Rent Act];

b] That the premises are reasonably and bona fide required by the respondent(landlord) for occupation by himself and his family members [Section 13(1)(g) of the Rent Act]."

3. The landlord had let out to the predecessor-in-title of the tenant (tenant) House No. 608 ad-measuring about 100 sq.ft. at Ghorpadi Peth, Pune (suit premises). On 19 January 1998, the landlord entered into an agreement with the tenant for demolition of the suit premises, construction of new building thereon and allotment of new premises on ownership basis. It is the landlord's case that the tenant failed to honour the terms of agreement dated 19 January 1998 and vacate the suit premises. The tenant's wife through advocate purported to repudiate the agreement dated 19 January 1998, by stating that the tenant had entered into the same under the influence of the alcohol and that such agreement shall not bind upon her or the tenant Vasant. Upon knowledge that the tenant had acquired alternate residential premises, the landlord instituted Regular Civil Suit No. 482 of 1999 on 12 August 1999 seeking recovery of possession upon the aforesaid grounds contemplated by Sections 13(1)(l) and 13(1)(g) of the Rent Act. The Trial Court by judgment and decree dated 16 February 2002 decreed the suit on both grounds. By judgment and decree dated 23 December 2010, the Appeal Court has dismissed the appeal. Hence, present petition.

4. Mr. S.S. Kanetkar, learned counsel for the petitioners, made the following submissions in support of this petition:

"(a) That there is perversity in the findings of fact recorded by the two Courts;

(b) That the tenant, vide Deed of Assignment dated 2 March 2007, has already assigned the rights in the alternate premises in favour of his son Dilip Dhamale (petitioner No. 4). This assignment was in pursuance of the agreement entered into in the year 1994 and registered in the year 1998. This circumstance was sufficient to deny the landlord any decree under Section 13(1)(l) of the Rent Act.

(c) That the tenant, at no stage, had declined to honour the agreement dated 19 January 1998. That the tenant still ready and willing to honour the agreement dated 19 January 1998. The landlord had entered into similar agreements with two other tenants. This negates the ground of reasonable and bona fide requirement and in any case, the relief ought to have been moulded by the two Courts;

(d) The additional evidence adduced by the tenant in the context of acquisition of some premises by the children of landlord has been ignored. If this evidence were to be considered in its proper perspective, then the issue of reasonable and bona fide requirement would never have been answered in favour of the landlord. In any case, the issue of comparative hardship would have to be answered in favour of the tenant;

(e) That there is case made out to consider additional evidence in this petition as placed on record vide application dated 31 July 2015. This evidence completely eclipses the ground of reasonable and bona fide requirement;

(f) That it is obligatory for the Courts to take into consideration subsequent

events, particularly as the same establish that the landlord in no manner requires the suit premises for reasonable and bona fide purposes; and"

5. Mr. Uday Warunjikar, learned counsel for the respondent-landlord, submitted that in this case, the two Courts have recorded concurrent findings of fact. These findings are supported by the evidence on record. Accordingly, there is no warrant for interference under Article 227 of Constitution of India. The Deed of Assignment dated 2 March 2007 is only a self-serving document. On basis thereof, neither can accrued cause of action be defeated nor can a decree validly made on 16 February 2002, be rendered vulnerable. The so called "subsequent event", makes no dent whatsoever, much less, eclipses the reasonable and bona fide requirement of the landlord. The tenant and his legal representatives, on the basis of suppression of facts and false statements, have unduly delayed the proceedings to continue in possession of the suit premises for past 15 years. Accordingly, Mr. Warunjikar submitted that this petition be dismissed with exemplary costs.

6. The rival contentions now fall for my determination.

Acquisition of alternate residential premises (Section 13(1)(I) of the Rent Act)

7. The landlord, in the plaint at paragraph "9" had pleaded that the tenant, after the commencement of Rent Act, has acquired alternate residential premises, which is very well furnished and equipped for the tenant's residential user. In the evidence, the landlord has deposed that the alternate premises have been erected upon plot of land ad-measuring around 1700 sq.ft., bearing No. 302 at Koregaon Park, which is owned by the tenant. Upon being confronted with documentary evidence, the tenant in course of cross-examination, accepted this position, which in any case, was irrefutable. The two Courts have concurrently recorded the findings of fact on the aspect of acquisition of alternate residential accommodation by the tenant. The findings of fact are amply borne by the evidence, both documentary as well as oral. Except for reliance upon the Deed of Assignment dated 2 March 2007, by which the tenant has assigned his rights in the alternate premises to his own son, there is really no defence in the context of acquisition of alternate premises. Accordingly, there is absolutely no reason to interfere with the concurrent findings of fact recorded by the two Courts that the tenant, after the coming into force of the Rent Act has acquired alternate residential accommodation and rendered themselves liable for eviction from the suit premises under Section 13(1)(I) of the Rent Act.

8. The defence that the tenant, by Deed of Assignment dated 2 March 2007, has assigned his rights in the alternate accommodation in favour his son and this subsequent development renders the decree made by the Trial Court on 16 February 2002 vulnerable, is totally untenable. In the first place, the rights of the parties should be determined on the basis of date of institution of the suit. Thus, if the plaintiff has no cause of action on the date of filing of the suit, ordinarily, he will not be allowed to take advantage of the cause of action arising

subsequent to the filing of the suit. Conversely, no relief will normally be denied to the plaintiff by reason of any subsequent event if at the date of the institution of the suit, he has a substantive right to claim such relief. There is ample material on record, which establishes beyond doubt that on the date of institution of the suit, i.e., on 12 August 1999, the tenant had acquired alternate residential accommodation. Therefore, the cause of action as well as the right to seek eviction under Section 13(1)(l) of the Rent Act, which had accrued to the landlord, could not have been set at naught by the tenant, by relying upon the some self serving documents like Deed of Assignment dated 2 March 2007. Secondly, in the present case, the Trial Court had already decreed the suit for eviction on 16 February 2002. Five years after the decree of eviction and whilst the appeal against the same was pending, the tenant has purported to assign rights in the alternate residential accommodation in favour of his own son. Such self serving subsequent event, can hardly constitute a ground to reverse a decree of eviction validly made. If, such a subterfuge is to be permitted, then the parties may brazenly resort to creation or execution of documents, in order to defeat decrees made by the competent Courts upon legal and valid grounds. This is clearly impermissible.

9. Mr. Kanetkar, however, contended that the Deed of Assignment dated 2 March 2007 makes reference to agreement for assignment entered into in the year 1994 and registered in the year 1998. Even this circumstance, can make no difference to the matter. The agreement allegedly entered into in the year 1994 and registered in the year 1998, was not even referred to by the tenant in his written statement filed after the institution of the suit on 12 August 1999. In the course of evidence, particularly cross-examination, the tenant admitted to the acquisition of the alternate residential accommodation. However, there was not even a whisper about the alleged agreement of 1994 and its registration in the year 1998. In the application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC) made before the Appeal Court seeking leave to produce the Deed of Assignment on 2 March 2007, again, no leave was applied for to produce the agreement of 1994. After commencement of arguments in this petition on 29 July 2015, it is only alongwith application dated 31 July 2015 that an attempt is made to place on record the agreement dated 23 March 1994. There is really no case made out to admit the agreement dated 23 March 1994, at this stage. However, even if the same is admitted and taken into consideration, the conclusion concurrently recorded by the two Courts cannot be interfered with. There is ample material, both oral as well as the documentary, which establishes that the tenant had acquired alternate residential accommodation and the ground under Section 13(1)(l) of the Rent Act was made out. Even consideration of the agreement dated 23 March 1994 and the Deed of Assignment dated 2 March 2007 clearly establishes that on the date of institution of the suit, i.e., on 12 August 1999 as well as the date of the Trial Court's decree, i.e., on 16 February 2002, the tenant had acquired the alternate residential accommodation. Accordingly, there is no case whatsoever, made out

to interfere with the eviction order under Section 13(1)(I) of the Rent Act.

10. In case of Carona Ltd. (supra), on the date the tenancy was terminated, the tenant (public limited company) was having a paid-up share capital of rupees more than one crore. Under Clause (b) of Section 3(1) of the Maharashtra Rent Control Act, 1999, therefore, the provisions of the Act were not applicable to the suit premises. Subsequently, the tenant passed a resolution to reduce the paid-up share capital to less than rupees one crore. On basis of such subsequent development, the tenant urged that the protection of the Rent Act was available to it and no decree for eviction could be made otherwise than upon the grounds prescribed under the said Rent Act. The Apex Court, thwarted this attempt by observing that the date on which the tenancy was determined, the right in favour of the landlord was accrued. Such right could not have been set at naught by the tenant by unilateral act of passing of resolution to reduce paid-up share capital of the company. Once it is proved that the tenancy was legally terminated and the act would not apply to such premises, an unilateral act of tenant would not take away the accrued right in favour of the landlord. Unless compelled, a court of law would not interpret a provision which would frustrate the legislative intent and primary object underlying such provision.

11. Applying the principle in case of Carona Ltd. (supra) to the facts and circumstances of the this case, which are quite gross, it must be recorded that the tenant cannot defeat the right of the landlord as well as decree validly made by the competent Court under Section 13(1)(I) of the Rent Act on the basis of assignment of the alternate residential premises in favour of his own sons. In fact, such a subterfuge on behalf of the tenant is required to be viewed seriously and taken into consideration at the stage of determination of costs.

12. As noted earlier, in the course of cross-examination there was no denial on the part of the tenant with regard to the acquisition of the alternate residential premises. However, in response to paragraph "9" of the plaint, the tenant, in paragraph "10" of the written statement not only refused to admit the averments in paragraph "9" of the plaint, but further stated that the averments were false. In effect, therefore, the tenant not only suppressed the factum of acquisition of alternate residential premises, but further went on to make positive averments in the written statement filed on 28 January 2000 that the case of the landlord that the tenant had acquired alternate residential premises is false. On the basis of such patently false assertion, made with full knowledge about its falsity, the tenant, from the year 2000 onwards, has continued in possession of the suit premises.

13. In case of Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de Sequeria (Dead) through L. Rs., AIR 2012 SC 1727 : (2012) 3 SCALE 550 : (2012) 5 SCC 370 : (2012) AIRSCW 2162 : (2012) 2 Supreme 602 , the Apex Court has observed that the truth should be guiding star in judicial process. The truth alone has to be foundation of justice. The entire judicial system has been created only to discern and find out the real truth. This is the journey of

discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth. By reference to decision in case of Mohanlal Shamji Soni Vs. Union of India and another, AIR 1991 SC 1346 : (1991) CriLJ 1521 : (1991) 1 Crimes 818 : (1991) 33 ECC 18 : (1992) 61 ELT 521 : (1991) 3 JT 17 : (1991) 1 SCALE 401 : (1991) 1 SCC 271 Supp : (1991) 1 SCR 712 : (1991) 2 UJ 43 , the Apex Court observed that it is well accepted and settled principle that a Court must discharge its statutory functions - whether discretionary or obligatory - according to law in dispensing justice because it is the duty of a Court not only to do justice, but also to ensure that justice is being done. Finally, at paragraph "52", the Apex Court has observed that the truth is the foundation of justice. It must be the endeavour of all the judicial officers and Judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of the pleadings and documents in order to ascertain the truth.

14. In the present case, as noted earlier, the tenant, in his pleadings, has not only suppressed the factum of acquisition of alternate residential premises, but further averred on oath that the averments to this effect in paragraph "9" of the landlord's plaint are false. There is both documentary as well as oral evidence, which establishes beyond doubt that on the date the tenant filed written statement, i.e., on 28 January 2000, the tenant had acquired and was in the ownership and possession of alternate residential premises. The circumstance that the tenant seeks to place reliance upon Deed of Assignment dated 2 March 2007, in terms whereof, the alternate residential premises were purported to be assigned by the tenant in favour of his own son, by itself establishes that on 28 January 2000, the tenant, very much owned and possessed the alternate residential premises. Despite this, the tenant suppressed this fact and even stated that the averment to this effect made by the landlord's was false. On the basis of suppression and false averment, the tenant, required the Trial Court to cast issues, take evidence, before decree could be made on 16 February 2002. Thereafter, the tenant instituted an appeal, which was ultimately dismissed on 23 December 2010. The tenant and his legal representatives, have thus drawn utmost advantage of the delay in legal process, which they successfully derailed, by making truth a casualty, in their pleadings. The tenant, who has signed and verified the written statement on 28 January 2000 is not living. Accordingly, it would not be appropriate to consider ordering prosecution in order to maintain purity and sanctity of the judicial proceedings. However, this conduct is required to be taken into consideration in the matter of imposition of exemplary costs.

15. In case of Maria Margarida Sequeira Fernandes (supra), the Apex Court has expressed serious concern about the litigants raising false claims and false defences. At paragraphs "81" and "82", the Apex Court has observed that false claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating price of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous

litigants in the hope that other party will tire out and ultimately would settle with them by paying huge amount. This happens because of delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized. By reference to decision in case of Rameshwari Devi and Others Vs. Nirmala Devi and Others, (2011) 8 JT 90 : (2011) 3 RCR(Civil) 932 : (2011) 6 SCALE 677 : (2011) 8 SCC 249 : (2011) 8 SCR 992 : (2011) 5 UJ 2962 , the Apex Court has further observed that unless wrongdoers are denied profits from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive of uncalled for litigation. It is a matter of common experience that the Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. This problem can be solved or at least minimized if exemplary costs is imposed for instituting frivolous litigation. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

Reasonable and Bona fide Requirement (Section 13(1)(g) of the Rent Act)

16. On the aspect of reasonable and bona fide requirement, there are concurrent findings of fact recorded by the two Courts. The findings are well supported by the material on record. There is neither any perversity nor jurisdictional error, in the record of the same. Accordingly, no case is made out to interfere with such concurrent findings of fact, in the exercise of extraordinary jurisdiction and the Article 227 of the Constitution of India. In matters of interference with concurrent findings of fact, the law is fairly settled. In case of India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and Another, AIR 1978 SC 45 : (1977) 4 SCC 587 : (1978) 1 SCR 797 : (1977) 9 UJ 742 , the Apex Court has held that the power under Article 227 of the Constitution of India is one of judicial superintendence and cannot be exercised to upset conclusions of facts howsoever erroneous those may be. In the case of Babhutmal Raichand Oswal vs. Laxmibai R. Tarte and Another, AIR 1975 1297 (SC), the Apex Court has held that the High Court cannot, in guise of exercising jurisdiction under Article 227, convert itself into a Court of Appeal when the legislature has chosen not to confer a right of appeal and constituted the subordinate Court or Tribunals as final, on the issue of facts. In case of Ashok Kumar and Others Vs. Sita Ram, AIR 2001 SC 1692 : (2001) 5 JT 87 : (2001) 3 SCALE 443 : (2001) 4 SCC 478 : (2001) 3 SCR 101 : (2001) 2 UJ 1069 : (2001) AIRSCW 1749 : (2001) 3 Supreme 488 , the Apex Court has held that the High Court, in exercise of powers of judicial review, is not expected to interfere, unless the orders suffer from manifest error and if allowed to stand, would amount to perpetuation of grave injustice. Applying these principles, there is no case made out to interfere with the concurrent findings of fact on the aspect of reasonable and bona fide requirement.

17. Mr. Kanetkar, learned Counsel for petitioners, however, submitted that subsequent events are required to be taken note of. In this regard, Mr. Kanitkar placed reliance on decision of the Apex Court in the in case of Pasupuleti

Venkateswarlu Vs. The Motor and General Traders, AIR 1975 SC 1409 : (1975) 1 SCC 770 : (1975) 3 SCR 958 : (1975) 7 UJ 327 , to submit that the subsequent events need to be looked into and the ultimate relief moulded. Mr. Kanitkar contended that the landlord has obtained decree in respect of other premises and also entered into agreement for allotment of new premises to other tenants. Mr. Kanitkar also contended that the children of the landlord have, during the pendency of the proceedings, acquired alternate premises. All these matters, if considered, would completely eclipse the landlord's requirement or in any case, the landlord's requirement would remain neither reasonable nor bona fide.

18. As the landlord has succeeded in making out a ground under Section 13(1)(l) of the Rent Act, there is really no necessity for deciding whether the ground of reasonable and bona fide requirement under Section 13(1)(g) of the Rent Act stands eclipsed by subsequent events. However, at the persuasion of Mr. Kanitkar, even after the additional material is taken into consideration, it cannot be said that the reasonable and bona fide requirement of the landlord stands eclipsed. Mr. Warunjikar has made it clear that though decrees were obtained against some other tenants, no possession of the tenanted premises has till date been obtained. Same is the fate of agreements with some tenants as despite the agreements, the landlord has not obtained possession of the tenanted premises. In any case, it is hardly open to the tenant or his legal representatives to fall back upon the agreement dated 19 January 1998 and urge that the same be honoured at this stage or that the decrees of eviction be moulded at this stage. The material on record, does establish that the tenant's wife, through her Advocate, questioned the very authority of the tenant to enter into the agreement dated 19 January 1998 and further stated that such agreement will neither bind her nor her children. Because of this, from the year 1998 till date, the landlord could not secure possession of the suit premises. Now that two Courts have, after 15 years, concurrently ruled that the tenant and his legal representatives deserve to be evicted from the suit premises, there is no question of entertaining any plea that the agreement dated 19 January 1998 be revived or that the relief be moulded accordingly. The circumstance that the landlord's children have, in the meanwhile, obtained some alternate premises, is hardly sufficient to eclipse the landlord's reasonable and bona fide requirement qua the suit premises. The material on record suggests that even the legal representatives of the tenant have acquired several alternate premises and Mr. Warunjikar is right that the legal representatives' sole interest is to hold on to the suit premises, in fond hope of a windfall or commercial gain.

19. There is ample evidence on record which establishes that tenant was the owner of a plot admeasuring about 1700 sq.ft., where a building of about 3 floors has been constructed. The defence that the plot and the building have been assigned by the tenant to his son on 2 March 2007, besides being untenable, loses relevance consequent upon the demise of the original tenant and the plot as well as the building thereon devolving, inter alia, upon the tenant's son i.e. Petitioner No. 4. If, therefore, cautious cognizance is taken of the subsequent

events, no case is made out to interfere with the concurrent findings of fact on the aspect of reasonable and bona fide requirement.

20. Mr. Kanetkar, quite surprisingly, relied upon the decision in case of Tarachand Hassaram Shamdasani Vs. Shri Durgashankar G. Shroff and Others , to submit that where a landlord, in his plaint has suppressed the factum of other available premises, the requirement of such landlord can neither be reasonable nor bona fide. In the first place, it is not even the allegation of the tenant that on the date of institution of the suit, i.e., on 12 August 1999, the landlord or for that matter even his children had any premises other than those disclosed in the plaint. The ruling in Tarachand Shamdasani (supra) is, therefore, distinguishable. In any case, such a contention, hardly behoooves the tenant, who has not only suppressed the factum of acquisition of alternate premises, but further stated that the averments in the plaint in this regard were false. The Tarachand's principle, if at all should apply to the tenant than the landlord in the present case. Just as there is an obligation upon the landlord to be candid in his pleadings when it comes to seeking a decree on the ground of reasonable and bona fide requirement, equally, the tenant is also obliged to be candid and make disclosures which might assist the Court in determining the issue of reasonable and bona fide requirement and comparative hardships. Fairness, in such matters, is surely not a one way street.

21. Some reference is necessary to the application dated 31 July 2015 made by the petitioner in the midst of final hearing in this petition. On 29 July 2015, this matter was heard for some time and thereafter adjourned to 31 July 2015 at 3.00 p.m. under the caption "Part Heard". On the said date, the learned Counsel for Petitioners handed in unnumbered Civil Application dated 31 July 2015, seeking leave not merely to adduce additional evidence, but also leave to amend the original Written Statement filed on 28 January 2000 in response to the plaint instituted on 12 August 1999. A copy of this application was furnished to the learned Counsel for respondent-landlord only on 3 August 2015 at 12.48 p.m. Rather than delay the proceedings any further, Mr. Warunjikar, learned Counsel for respondent-landlord, applied for leave to proceed on the basis of denials. Mr. Warunjikar also applied for leave to produce certain documents which would establish that the petitioners themselves have acquired several premises during the pendency of the proceeding.

22. There is really no justification for permitting the petitioners to either adduce additional evidence or to seek amendment to the Written Statement which was filed 15 years ago. However, even if the additional evidence is taken into consideration, the same, at the highest, indicates that the children of the landlord have acquired some premises during the pendency of these proceedings. The landlord is very much alive and even if this aspect is considered, the same hardly eclipses the landlord's reasonable and bona fide requirement. There is an attempt to belatedly produce on record the agreement dated 23 March 1994 which is stated to be a precursor to the Deed of

Assignment dated 2 March 2007. This is clearly unfortunate. The existence of such agreement was suppressed in the Written Statement filed on 28 January 2000. The existence of such agreement was not even whispered in the course of cross-examination before the Trial Court made decree on 16 February 2002. Even in the application under Order 41 Rule 21 of the CPC made before the Appeal Court, no attempt was made to produce this agreement. In any case, this agreement only strengthens the landlord's case that on the date of institution of the suit and when the Trial Court made its decree on 16 February 2002, the tenant had acquired alternate residential premises. Therefore, even if cautious cognizance is taken of the material which the petitioners seek to produce at this belated stage, the same will make no dent upon the findings of fact concurrently recorded by the two Courts.

23. The conduct of the petitioners, leaves much to be desired. The petitioners, or for that matter their predecessor-in-title, not only suppressed facts but made positive false averments in the Written Statement in the context of acquisition of alternate residential premises. On basis of such suppression and false statements, the petitioners obtained utmost advantage. The litigation was unduly prolonged and the petitioners continued in possession of the suit premises in the interim. This petition was instituted in the year 2010. The petitioner i.e. the original tenant, expired on 8 January 2013. No timely steps were taken to bring on record the legal representatives. Civil Application No. 2309 of 2014 was taken out after delay of 473 days. Delay was condoned and leave was granted to bring legal representatives on record by order dated 28 January 2015. For almost about six months, no amendment was carried out to the cause-title due to which the petition could not come up for admission. Ultimately, at the instance of the landlord, the matter was taken up on 9 July 2015. The time limit for carrying out amendment to the cause-title was extended and the matter was directed to be placed for admission on 21 July 2015, subject to payment of costs of Rs. 5,000/-. On the motion of the petitioners, the direction for payment of costs was recalled on 13 July 2015. Despite clear directions, neither the petitioners nor their Advocate appeared in this Court on 21 July 2015. The matter was adjourned to 29 July 2015. On 29 July 2015, the matter was heard for some time and adjourned on 31 July 2015. On 31 July 2015, the petitioners filed application seeking leave to adduce additional evidence and even amend the Written Statement which was filed on 28 January 2000. The copy of this application was not immediately served upon the learned Counsel for respondent-landlord. The same was served only on 3 August 2015 at 12.48 p.m. Every attempt was made to delay the matter and on the said basis, to continue in possession of the suit premises. For this reason, together with the reasons set out in paragraphs 11, 14 and 15 of the Judgment and Order, it is only appropriate that this petition is dismissed with exemplary costs of Rs. 1,00,000/-.

24. Accordingly, following order is made:

"a) Rule is discharged;

- b) The petitioners to pay to the respondent-landlord costs assessed at Rs. 1,00,000/- (Rupees One Lac Only), within a period of four weeks from today;
- c) The Trial Court, in pursuance of the judgment and decree dated 16 February 2002, to make an enquiry into the mesne profit and pass an appropriate order in that regard, within a period of one year from the date of production of authenticated copy of this judgment and order;
- d) The parties to appear before the Trial Court on 2 September 2015 at 11.00 a.m. and produce an authenticated copy of this judgment and order."

25. At this stage, Ms Pallavi Dabholkar learned counsel for the petitioners requests for restraint upon the execution of eviction decrees, as the petitioners might want to take recourse against this judgment and order before the Apex Court. Subject to filing of usual undertaking in the Registry within a period of two weeks from today, there shall be restraint upon execution of eviction decrees for a period of eight weeks from today. Copy of the undertaking to be furnished to the learned counsel for the respondent before the same is filed in the Registry.

1 Carona Ltd. Vs. Parvathy Swaminathan and Sons, AIR 2008 SC 187 : (2007) 11 JT 484 : (2007) 11 SCALE 630 : (2007) 8 SCC 559 : (2007) 10 SCR 656 .