IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2451 OF 2023

1. Ashok Sitaram Sonawane
2. Smt. Lata Ashok Sonawane ...Petitioners

Versus

1. Percy Burjor Sarkari
2. Kumari Shera Burzor Sarkari
3. Smt. Rita Dentas
4. Smt. Hema D. Valecha
5. Pratap Hundaraja Asrani
6. Harish Kumar Panjwani
7. Rajesh Badrilal Darshana
8. Prakash, full name not disclosed
9. Nirmal, full name not disclosed
10. Saddan, full name not disclosed ...Respondents

SANTOSH SUBHASH KULKARNI

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Mr. Kaustubh Thipsay, a/w Prasad Nagargoje, for the Petitioners.
Mr. V. K. Gupta, for the Respondents.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 1st AUGUST, 2025
PRONOUNCED ON: 19th AUGUST, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. The petitioners – obstructionists take exception to a judgment and order dated 31st January, 2023 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Ex. Appeal No.222 of 2021, whereby the appeal preferred by the

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petitioners against a judgment and order dated 30th September, 2021 passed by the trial court came to be dismissed.

3. By the said order dated 30th September, 2021, the Executing Court has made the Obstructionist Notice No.474 of 2010, taken out by respondent Nos.1 and 2 – plaintiffs, absolute and directed the removal of obstruction to the execution of the decree passed in RAE&R Suit No.126/328/1989 caused by the petitioners – obstructionists.

4. The background facts necessary for the determination of this petition can be stated in brief as under:

4.1 Respondent Nos.1 and 2 – plaintiffs claim to be the landlords in respect of the premises bearing Room No.6, second floor, situated at 4th Marine street, Dhobi Talao, Mumbai, ("the demised premises"). The plaintiffs instituted a suit for recovery of possession of the demised premises. The said suit came to be decreed *ex parte* on 3rd September, 1992.

4.2 As Harish Kumar Panjwani caused obstruction to the execution of the decree, the plaintiffs took out the Obstructionist Notice No.17 of 2001. The said notice was made absolute by a judgment and order dated 15th March, 2003. The

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plaintiffs filed Execution Application No.158 of 2010. A possession warrant came to be issued on 26th April, 2010.

4.3 On 3rd May, 2010, the second set of obstructionists, comprising the petitioners – obstructionist Nos.5 and 6, caused obstruction to the execution of the decree for possession. The obstructionist Nos.1 to 4 claimed to be in possession of the demised premises through obstructionist Nos.5 and 6 – the petitioners.

4.4 Thus, the plaintiffs took out second Obstructionist Notice No.474 of 2010 to remove the obstruction caused by the second set of obstructionists. It was, *inter alia,* asserted that the second set of obstructionists had no independent right, title and interest in the demised premises. Therefore, they deserve to be removed from the demised premises.

4.5 Later on the plaintiffs claimed that the obstructionist Nos.1 to 4 were no longer in the occupation of the demised premises and, thus, the obstructionist notice qua obstructionist Nos.1 to 4 came to be disposed as withdrawn.

4.6 Obstructionist Nos.5 and 6 filed their written statement. Obstructionist Nos.5 and 6 claimed to be in exclusive use, occupation and possession of the demised premises in their own

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independent right. Obstructionist No.6 was stated to be a tenant in respect of the demised premises, who was put in possession thereof pursuant to a registered tenancy agreement dated 9th November, 2006 executed by Kurban Husein M. Pardawala, the landlord of the demised premises. Kurban Husein M. Pardawala had purchased the property including the demised premises, under a Deed of Conveyance dated 9th July 2002, in the capacity of the owner of the demised premises, Kurban Husein M. Pardawala had executed the registered tenancy agreement in favour of the Obstructionist No.6. Consequently, the Obstructionist Nos.5 and 6 were not bound by the *ex parte* decree passed in RAE&R Suit No.126/328 of 1989, and the plaintiffs were not entitled to recover the possession of the demised premises from the obstructionist Nos.5 and 6.

4.7 Though the plaintiffs filed an affidavit-in-rejoinder and contested the claim of the obstructionists, yet, the plaintiffs did not adduce any evidence. Obstructionist No.5 examined himself. The plaintiffs, however, did not cross-examine the obstructionist No.5 (DW1). Obstructionist Nos.5 and 6 also placed documents on record.

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4.8 By a judgment and order dated 30th September, 2021, the Executing Court was persuaded to make the obstructionist notice absolute holding that the alleged conveyance executed by Burjor Sarkari, the Constituted Attorney of the plaintiffs in favour of Kurban Husein M. Pardawala dated 9th July, 2002 was of no significance as it was not registered on account of the non-appearance of the executant Burjor Sarkari to admit the execution of the Sale Deed. As the basic instrument, on the strength of which the lessor of the obstructionist No.6 had allegedly acquired title and interest in the demised premises, did not convey the title to the subject property, the execution of the subsequent tenancy agreement in favour of obstructionist No.6 was of no avail. It also appeared that obstructionist No.5 was also a tenant of another room i.e. Room No.2 in the said building. Thus, taking undue advantage of the situation, the obstructionist had put hindrances in the execution of the decree.

4.9 Being aggrieved, the petitioners preferred an appeal before the Appellate Bench. By the impugned judgment and order, the Appellate Bench declined to interfere with the order passed by the Executing Court and concurred with the Executing Court that the appellants/obstructionist Nos.5 and 6 failed to

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establish their independent right, title and interest in the demised premises and, therefore, the decree passed in RAE&R Suit No126/328 of 1989 would also bind the obstructionists.

5. Being further aggrieved, the petitioners have invoked the writ jurisdiction.

6. I have heard Mr. Kaustubh Thipsay, the learned Counsel for the petitioners, and Mr. V. K. Gupta, the learned Counsel for the respondents.

7. Mr. Thipsay, the learned Counsel for the petitioners, canvassed multi-fold submissions on behalf of the petitioners. Firstly, it was incontrovertible that the petitioners were in possession of the demised premises. The very Obstructionist Notice No.474 of 2010 indicates that the petitioners were in actual possession of the demised premises. The possession of the petitioners was referable to a lawful registered tenancy agreement. Therefore, the courts below were in error in holding that the petitioners had no independent right and interest in the demised premises.

8. Secondly, Mr. Thipsay would urge, the execution of the Deed of Conveyance by Burjor Sarkari, the father and constituted attorney of plaintiff Nos.1 and 2, as such, is not in

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dispute. The evidence of obstructionist No.5 with regard to the said Deed of Conveyance went untraversed. In this backdrop the courts below were in error in not appreciating the consequences that emanated from the due execution of conveyance in favour of Kurban Husein M. Pardawala. The mere fact that the Registrar declined to register the Deed of Conveyance as the executant did not appear to admit the execution of the instrument, according to Mr. Thipsay, does not dilute the underlying transaction of sale between the plaintiffs and Kurban Husein M. Pardawala.

9. Lastly, Mr. Thipsay would submit the Executing Court was required to adjudicate all the questions including the question of title over the demised premises under Order XXI Rule 97 read with Rule 101 of the Code. The Executing Court as well as the Appellate Court misdirected themselves in not adjudicating the issue of title over the demised premises and non-suiting the obstructionists on the ground that the Deed of Conveyance was not registered.

10. In order to lend support to aforesaid submissions, Mr. Thipsay placed reliance on a judgment of a learned Single Judge of this Court in the case of ***Sameer Dattatraya Deshpande and***

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othes vs. Kishor Shamrao Jadhav[1]**,** wherein it was enunciated that Rule 101 of Order XXI enjoins the Executing Court while determining an application under Rule 97 or Rule 99 of Order XXI to determine all questions including questions relating to right, title and interest in the subject property arising between the parties and relevant to the adjudication of such application.

11. In opposition to this, Mr. Gupta, the learned Counsel for respondent Nos.1 and 2, supported the impugned orders. It was submitted that the endeavour of Kurban Husein M. Pardawala to join himself in another suit, being RAE&R Suit No.760/1288/2001, instituted by the plaintiffs against one Dayashankar Khanna, was repelled by the Court of Small Causes by a judgment and order dated 26th September, 2007. Thus, the obstructionists, who claim through the said Kurban Husein M. Pardawala, cannot have a better right. In any event, since no legal and valid title vested in Kurban Husein M. Pardawala, he could not have conveyed a better title to the obstructionist No.6. Consequently, the claim of tenancy through Kurban Husein M. Pardawala is wholly untenable. Therefore, the courts below were within their rights in making the

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1 (2023) 1 Mah LJ 244.

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obstructionist notice absolute and directing petitioners to remove the obstruction, submitted Mr. Gupta.

12. Before adverting to appreciate the aforesaid rival submissions, in the backdrop of the narrow controversy that arises for consideration in this petition, few uncontroverted facts deserve to be kept in view. Firstly, the facts that a decree of eviction came to be passed in RAE&R Suit No.126/328 of 1989 on 3rd September 1992 and it attained finality are not in dispute. Secondly, the obstructionists indisputably claim through Kurban Husein M. Pardawala who, in turn, claimed to have acquired the demised premises under a Deed of Conveyance dated 9th July, 2002 purportedly executed by Burjor Sarkari; the father and Constituted Attorney of plaintiff Nos.1 and 2. Thirdly, it is incontestible that the said Deed of Conveyance dated 9th July, 2002 is not registered; though by and large, the factum of execution of the Deed of Conveyance can be said to be not much in dispute. Moreover, the plaintiffs have instituted a suit before the High Court questioning the legality and validity of the said Deed of Conveyance. Fourthly, Kurban Husein M. Pardawala has purportedly executed a registered tenancy agreement dated 9th November, 2006 in favour of obstructionist No.6. Fifthly, the obstructionist No.5 is a tenant in respect of Room No.2 in the

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said building. Lastly and incontrovertibly, the obstructionist Nos.5 and 6 are in possession of the demised premises. The controversy between the parties revolves around the question as to whether obstructionist Nos.5 and 6 are in possession of the demised premises in their own right?

13. Under the scheme of the Civil Procedure Code, 1908 ("the Code") as subsumed under Order XXI Rule 97 to Rule 104 under the heading, "Resistance to delivery of possession to decree-holder or purchaser", a complete machinery is laid down to resolve all disputes in relation to the execution of the decree for possession, in cases where resistance is offered to the execution of a decree for possession. Once the resistance is offered to the execution of decree for possession, the decree-holder is enjoined to resort to the procedure prescribed under Order XXI Rule 97. The resistance can be offered by a person, who is a complete stranger to the decree. If such obstruction is caused, by a person who is in possession of the subject property, he cannot be asked to first surrender the possession of the property and then raise objection to the executability of the decree against him. This warrants a proceeding under Order XXI Rule 97 of the Code either at instance of the decree-holder,

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or the person in possession of the subject property or for that matter a person claiming under the judgment debtor.

14. The provisions contained in succeeding Rules to which reference is made under sub-rule (2) of Rule 97 of Order XXI constitute, in a sense, a complete Code for resolving all the disputes. A person, who claims to be dispossessed unlawfully, though the decree for possession did not bind him, may also make an application to the Court complaining of such dispossession. Rule 100 of Order XXI empowers the Court to direct that such person be put in possession of the property or pass such order as in the circumstances of the case the Court may deem fit. Under Rule 103 when an application is adjudicated upon under Rule 98 or Rule 100 the said order shall have the same force as if it were a decree.

15. Rule 101 is of material significance. It provides that all questions including question relating to right, title and interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives and relevant to the adjudication of the application shall be determined by the Court dealing with the application and not by a separate suit. The latter part of Rule 101 gives an overriding effect to the said provision by prescribing that for the purpose of

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determination of the application under Rule 97 or Rule 99 the Court shall notwithstanding anything to the contrary contained in any other law for the time being in force, shall be deemed to have jurisdiction to decide such question.

16. In the case of ***Brahmdevo Chaudhary vs. Rishikesh Prasad Jaiswal and another***[2]**,** the Supreme Court after an analysis of the relevant provisions contained in Order XXI culled out legal position as under:

> "9. In short the aforesaid statutory provisions of Order XXI lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order XXI Rule 97 sub-rule (1) and he cannot bypass such obstruction and insist on re- issuance of warrant for possession under Order XXI Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order XXI Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the Executing Court it is difficult to appreciate how the Executing Court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order XXI Rule 99 CPC and pray for restoration of possession. …."

17. In the case of ***Shreenath and another vs. Rajesh and others***[3]**,** the Supreme Court reiterated the legal position as under:

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2 (1997) 3 Supreme Court Cases 694.

3 (1998) 4 Supreme Court Cases 543.

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"10. Under sub-clause 1 order 21, Rule 35, the Executing Court delivers actual physical possession of the disputed property to the decree-holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. The significant words are by removing any person bound by he decree. Order 21, Rule 36 conceives of immovable property when in occupancy of a tenant or other person not bound by the decree, the Court delivers possession by fixing a copy of the warrant in some conspicuous place of the said property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, the substance of the decree in regard to the property. In other words, the decree-holder gets the symbolic possession. Order 21, rule 97 conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by " any person". this may be either by the person bound by the decree, claiming title through judgment debtor or claiming independent right of his own including tenant not party to the suit or even a stranger. A decree holder, in such case, may make an application to the Executing Court complaining such resistance, for delivery of possession of the property. Sub-clause (2) after 1976 substitution empowers the executing Courts when such claim is made to proceed to adjudicate upon the applicants claim in accordance with provisions contained hereinafter. This refers to Order 21, Rule 101 (As amended by 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21, Rule 97 or Rule 99 shall be determined by the Court and not by a separate suit, By the amendment, one has not to go for a fresh suit but all matter pertaining to that property even if obstructed by a stranger is adjudicated and finality given even in the executing proceedings. We find the expression "any person" under sub-clause (1) is used deliberately for widening the scope of power so that the Executing court could adjudicate the claim made in any such application under order 21, Rule 97. Thus by the use of the words 'any person' it includes all persons resisting the delivery of possession, claiming right in the property even those not bound by the decree, includes tenants or other persons claiming right on their own including a stranger.

11. So, under order 21, Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the Executing Court. A party is not thrown out to relegate itself to the long drawn out arduous procedure of a fresh suit. This is to salvage the possible hardship both to the decree-holder and other person claiming title on their own right to get it adjudicated in the very execution proceedings. We find that Order 21 Rule 35 deals with cases of delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and by removing any person in possession who is bound by a decree, while under Order 21 Rule 36 only symbolic possession is given where tenant is in

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> actual possession. Order 21 Rule 97 as aforesaid, conceives of cases where delivery of possession to decree-holder or purchaser is resisted by any person. 'Any person', as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including stranger."
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> (emphasis supplied)

18. In the light of the aforesaid position in law, the submission of Mr. Thipsay that the Executing Court was enjoined to determine the question of title over the demised premises appears legally impeccable. Rule 101 of Order XXI empowers the Executing Court to determination all questions including the question relating to right, title or interest in the property and for that purpose vests the Executing Court with the jurisdiction to determine such question notwithstanding anything to the contrary in any other law. In the case at hand, the obstructionists were apparently claiming through Kurban Husein M. Pardawala, who asserted title over the demised premises on the strength of the Deed of Conveyance executed by Burjor Sarkaria. The question of title thus did arise for consideration and became relevant, for determining the justifiability of the obstruction to the execution of the decree.

19. In the case of ***Sameer Singh and another vs. Abdul Rab and others***[4]**,** the Supreme Court after a survey of the previous precedents enunciated that, the Executing Court had the

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4 (2015) 1 Supreme Court Cases 379.

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Authority to adjudicate all questions pertaining to right, title or interest in property arising between the parties. It also includes a claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property. The self-contained Code enjoins the Executing Court to adjudicate the lis and the purpose of the conferment of the power is to avoid multiplicity of the proceedings.

20. Could it be urged that, in the facts of the case at hand, the courts below have declined to adjudicate the question of right, title or interest in the demised premises? Upon perusal of the impugned orders it becomes evident that the courts have proceeded on the premise that the edifice of the obstruction by the petitioners rests on the Deed of Conveyance dated 9th July, 2002 purportedly executed in favour of Kurban Husein M. Pardawala; their lessor, by the constituted attorney of the plaintiffs. The Courts have noted that the said Deed of Conveyance is not registered and, therefore, Kurban Husein M. Pardawala could not have granted tenancy rights in the demised premises to obstructionist Nos.5 and 6. The admitted position that the said deed is not registered principally weighed with the courts below.

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21. The thrust of the submission of Mr. Thipsay was that the said Deed of Conveyance still holds the field and has not been declared to be void or illegal by any Court and the suit instituted by the plaintiffs seeking a declaration qua the Deed of Conveyance is subjudice before the High Court. In these circumstances, the obstructionist Nos.5 and 6 who claimed through the purchaser under the said Deed of Conveyance could not have been non-suited.

22. The consequences that entail non-registration of the Deed of Conveyance in a case where the executant does not admit the execution of the deed before the Registrar, and the action that is warranted by a party aggrieved by such refusal to admit the execution of the Deed of Conveyance before the Registrar, are required to be appreciated.

23. A reference to few of the provisions of the Registration Act, 1908 would be advantageous. Section 34(3) of the Registration Act, 1908 reads as under:

> **"Section 34(3) The registering officer shall thereupon—**
>
> (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;
>
> (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

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(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear."

24. Sections 73, 74, 75, 76 and 77 of the Registration Act, 1908 read as under:

"**73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.—**

(1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorised as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

74. Procedure of Registrar on such application.—

In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire.—

(a) whether the document has been executed;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. Order by Registrar to register and procedure thereon.—

(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

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(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witness, and compel them to give evidence, as if he were a Civil Court and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908 (5 of 1908).

76. Order of refusal by Registrar.—

(1) Every Registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75, shall make an order of refusal and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

77. Suit in case of order of refusal by Registrar.—

(1) Where the Registrar refuses to order the document to be registered, under section 72 or a decree section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, *mutatis mutandis*, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the documents shall be receivable in evidence in such suit.

25. Under the provisions of Section 73 of the Registration Act, 1908 when a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed denies its execution, any person claiming under such

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document may within 30 days of making of the order of refusal apply to the Registrar, to whom the Sub-Registrar is subordinate, in order to establish his right to have the document registered. Thereupon, under Section 74 of the Act, 1908, the Registrar shall inquire whether the document has been executed and whether the other requirements of the law for the time being in force have been complied with by the person seeking the registration of such document. Section 75 empowers the Registrar to pass appropriate orders including to register the document, where the Registrar finds that the document has been executed and the other requirements have been complied with. In the event the Registrar refuses to order the document to be registered, any person claiming under such document may within 30 days after the order of refusal, institute in the Civil Court a suit for a decree directing the document to be registered in such office if it be duly presented for registration within 30 days after the passing of such decree.

26. The aforesaid fasciculus of the provisions contained in the Registration Act, 1908 provide remedies to a person claiming under a document which the executant unjustifiably declined to admit, by approaching the Authorities under the Registration Act, 1908. However, this is not the only and, at any rate,

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complete remedy to a person aggrieved by the unjustified denial of the execution of instrument. The aggrieved person has the remedy of instituting a suit for the specific performance of the underlying contract and seek a direction for registration of such instrument.

27. In the case of ***Kalavakurti Venkata Subbaiah vs. Bala Gurappagari Guruvi Reddy***[5]***,*** the Supreme Court noted the divergence in the views of the High Court where the execution of the document as such is not in contest and a suit for a direction to register such document is instituted. One view was that, in such a situation the plaintiff has a complete remedy under the Registration Act, 1908 and he cannot seek specific performance of the agreement once the document has been executed and yet not registered. The other view was that, if for any reason it becomes impossible to obtain a registration under Section 77 of the Registration Act, 1908, the vendee is entitled to bring a suit for specific performance of the agreement to sell the property in his favour. The Supreme Court resolved the cleavage in the judicial opinion as under:

> "10. The difference of opinion amongst the various High Courts on this aspect of the matter is that Section 77 of the Act is a complete code in itself providing for the enforcement of a right to get a document registered by filing a civil suit which but

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5 (1999) 7 Supreme Court Cases 114.

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for the special provision of that Section could not be maintainable. Several difficulties have been considered in these decisions, such as, when the time has expired since the date of the execution of the document whether there could be a decree to direct the Sub-Registrar to register the document. On the other hand, it has also been noticed that an agreement for transfer of property implies a contract not only to execute the deed of transfer but also to appear before the registering officer and to admit execution thereby facilitating the registration of the document wherever it is compulsory. The provisions of the Specific Relief Act and the Registration Act may to a certain extent cover the same field but so that one will not supersede the other. Where the stage indicated in Section 77 of the Act has reached and no other relief except a direction for registration of the document is really asked for, Section 77 of the Act may be an exclusive remedy. However, in other cases it has no application, inasmuch as a suit for specific performance is of wider amplitude and is primarily one for enforcement of a contract and other consequential or further relief. If a party is seeking not merely the registration of a sale deed, but also recovery of possession and mesne profits or damages, a suit under Section 77 of the Act is not adequate remedy.

11. The analysis of the provisions of Section 77 of the Act made by us above would indicate that it would apply only if a matter is pertaining to registration of a document and not for a comprehensive suit as in the present case where the relief prayed for is directing the defendant to register the sale deed dated July 2, 1979 in favour of the plaintiff in respect of the plaint schedule property and if he so fails to get a registration in favour of the plaintiff for permanent injunction or in the alternative for delivery of possession of the plaint schedule mentioned property. The document has not been presented by the respondent to the Sub-Registrar at all for registration although the sale deed is stated to have been executed by the appellant as he refuses to cooperate with him in that regard. Therefore, various stages contemplated under Section 77 of the Act have not arisen in the present case at all. We do not think, in such a case when the vendor declines to appear before the Sub- Registrar, the situation contemplated under Section 77 of the Act would arise. It is only on presentation of a document the other circumstances would arise. ……"

(emphasis supplied)

28. The aforesaid enuciation of law would indicate that resort to the provisions contained in Section 77 of the Registration Act, 1908 would depend upon the stage at which it is sought to be invoked, and the nature of the relief claimed in the suit. If a suit

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is required to be instituted for reliefs other than a mere direction for registration of the deed in question, then a comprehensive suit would be required to be instituted by invoking the provisions contained in the Specific Relief Act. On the contrary, where the instrument has been tendered for registration and at that stage the executant denies the execution and nothing further is required to be done, except registration of the instrument to convey and perfect the title in favour of the vendee, a suit under Section 77 of the Registration Act, 1908 may suffice.

29. In the light of the aforesaid position in law, readverting to the facts of the case, it is imperative to note that though the Deed of Conveyance was purportedly executed on 9th July, 2002 and the execution of the said deed was denied by the executant when it was lodged for registration and a suit has also been instituted by the plaintiffs assailing the legality and validity of the said deed, it does not seem that either Kurban Husein M. Pardawala or any person claiming under him instituted a suit either for direction for registration under Section 77 or for specific performance of underlying contract. In the absence of such a suit, the submission of Mr. Thipsay that mere denial of execution of the sale deed does not erode the underlying

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contract does not merit countenance. If Kurban Husein M. Pardawala or any of his representatives or assigns intended to infuse life into the said sale deed, it was incumbent upon them to either invoke the provisions contained in the Registration Act, 1908 or institute a comprehensive suit for specific performance of the said contract and seek reliefs, which were necessary in the circumstances of the case.

30. The aforesaid being the position in law, the courts below were justified in drawing an inference that an unregistered Deed of Conveyance would not confer title on Kurban Husein M. Pardawala and, resultantly, no interest in the demised premises could be transferred in favour of the obstructionist No.5 by executing the registered tenancy agreement. The courts below have rightly applied the principle that Kurban Husein M. Pardawala could not have conveyed a better title than he possessed. The fact that obstructionist No.5 is a tenant in respect of another room i.e. Room No.2 in the same building where the demised premises is situated; which thus provided an opportunity to obstructionist Nos.5 and 6 to establish possession over the demised premises, also deserved to be taken into account. Once the tenancy agreement is eschewed from consideration, for being not referable to a lawful title, the

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possession of obstructionist Nos.5 and 6 over the demised premises cannot be said to be in their own independent right. Consequently, the obstruction by obstructionist Nos.5 and 6 to the execution of the decree for possession cannot be sustained.

31. For the foregoing reasons, the challenge to the impugned orders fails. Resultantly, the petition deserves to be dismissed.

32. Hence, the following order:

: O R D E R :

(i) The petition stands dismissed.

(ii) Rule discharged.

No costs.

[N. J. JAMADAR, J.]

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