

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO. 190 OF 2022**

Jayashree Jaisingh Babar

.....APPLICANT

**: VERSUS :**

Shirish Ramdas Sarode

....RESPONDENT

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**Mr. Deepak M. Gupte**, for the Applicant.

**Mr. Girish Agrawal** with Ms. Chitra Darekar and Mr. Shubham Jangam,  
for the Respondent.

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**CORAM : SANDEEP V. MARNE, J.**

**JUDG. RESD. ON: 5 FEBRUARY 2026**

**JUDG. PRON. ON: 13 FEBRUARY 2026**

**JUDGMENT:**

1) Whether a developer can file a Suit under Section 6 of the Specific Relief Act, 1963 (**Specific Relief Act**) for recovery of possession of flat sold to a purchaser on the ground that full consideration therefor is not paid and the possession thereof is illegally obtained? Is the summary remedy under Section 6 of the Specific Relief Act intended for resolution of disputes between developer and flat purchaser relating to the purchase transaction and whether decree for restoration of possession under Section 6 can be passed against a flat purchaser, who has failed to pay full amount of consideration? These are the broad issues that arise for consideration in the instant Revision Application

filed by the flat purchaser, who faces decree for restoration of possession of flat to the developer.

2) The issues arise in the light of challenge mounted by the Applicant to the judgment and decree dated 14 March 2022 passed by the Joint Civil Judge, Senior Division, Pune decreeing the suit filed by the Plaintiff-Respondent under Section 6 of the Specific Relief Act, 1963 and directing Applicant-Defendant to restore possession of the suit property to the Plaintiff with further directions to pay the amount of compensation of Rs. 84,000/- per year from the date of dispossession till restoration of the possession. Aggrieved by the decree, the Applicant has filed the present Revision Application filed under Section 115 of the Code of Civil Procedure, 1908 (**Code**).

3) Respondent is a developer, who undertook construction of a building on land bearing Survey No.16/1/150 + 151 at Village-Katraj, Taluka-Haveli, District-Pune in pursuance of acquisition of development rights from the land owners. Applicant agreed to purchase flat No.4 in the building and accordingly, registered agreement for sale dated 25 August 2004 was executed between the Applicant and Respondent for purchase of flat no.4 on the first floor of the building - Manasi Apartment admeasuring 500 sq.ft. plus adjoining terrace of 40 sq.ft. for total consideration of Rs.3,55,000/- excluding expenses for stamp duty, registration and electric connection. The amount payable towards electricity connection was fixed at Rs.20,000/-. During currency of construction of the building, Applicant claims to have paid various

amounts to the Respondent. It appears that the Applicant availed loan from ICICI Bank for purchase of the flat and Respondent had granted NOC for creation of mortgage on the flat. Applicant claims that he had paid total amount of Rs. 4,23,000/- to the Respondent. However, there appears to be dispute between the parties about exact amount of consideration paid to the Respondent. It appears that on 10 December 2004, Respondent wrote to the Applicant communicating completion of construction of the building, issuance of Occupancy Certificate (OC) by Pune Municipal Corporation and fixation of electric meter and calling upon the Applicant to take possession of the flat. The letter also intimated that the amount of Rs. 36,000/- plus amount of Rs. 10,000/- for extra work was due and payable by the Applicant. On the contrary, it is the case of the Applicant that since she has paid full consideration towards purchase of the flat, she was put in possession thereof in the month of February, 2005.

4) It appears that the Applicant filed complaint before the District Consumer Redressal Forum, Pune on 18 November 2006 complaining about non-grant of possession of flat no.4. It is the case of the Respondent that the Agreement for Sale was terminated by notice dated 8 January 2007. Respondent claims that on 2 June 2009, he came to know that Applicant had illegally entered upon the flat without the consent of the Respondent and had started occupying the same. Respondent lodged a complaint on 2 June 2009 with the police. In the above background, Respondent-Plaintiff filed Special Civil Suit No. 1444/2009 in the Court of Civil Judge Senior Division, Pune on 27 August

2009 under Section 6 of the Specific Relief Act for restoration of possession of the flat, for injunction, for recovery of compensation of Rs.1,15,000/- and for recovery of mesne profits and future compensation. The suit was resisted by the Applicant by filing written statement. The suit was subsequently renumbered as Regular Civil Suit No. 1261 of 2012. By the impugned judgment and order dated 14 March 2022, the learned Trial Court has proceeded to decree the suit directing the Applicant to restore possession of the suit flat within 3 months. The Applicant is enjoined from creating any third-party rights in the suit flat. The Applicant is also directed to pay amount of compensation at the rate of Rs.84,000/- per year from the date of dispossession till the date of restoration of possession. The prayer for mesne profits is rejected. Aggrieved by the judgment and order dated 14 March 2022, the Applicant has filed the present Revision Application. On 7 June 2022, this Court recorded statement made on behalf of the Respondent about non-prosecution of the execution proceedings. The said arrangement has been continued from time to time and continues to operate till date.

5) Mr. Gupte, the learned counsel appearing for the Applicant submits that the Trial Court has erred in entertaining and deciding the suit under Section 6 of the Specific Relief Act involving the dispute relating to fructification of sale transaction of the flat. He takes me through the plaint in support of his contention that what was filed by the Respondent-Plaintiff was a composite suit before the Court of Civil Judge Senior Division, which was numbered as Special Civil Suit on account of composite relief sought for restoration of possession, injunction and

compensation. That the relief of compensation cannot be sought in a Section 6 suit. He would therefore submit that the suit ought to have been dismissed by the Trial Court at the outset and could not have been decided on merits. Relying on provisions of Section 6 of the Specific Relief Act, Mr. Gupte submits that in a summary suit, the enquiry under Section 6 of the Specific Relief Act is limited and the Court cannot decide issues relating to injunction and compensation. Taking me through the averments in the plaint, he submits that the suit travelled beyond the ambit of Section 6 of the Specific Relief Act as the Respondent raised grievances about non-payment of agreed consideration for purchase of the flat. He submits that the dispute between the parties essentially related to purchase transaction of the flat and the said dispute cannot be adjudicated in a Section 6 suit. He would therefore submit that the filing of the suit itself was faulty and the same could not have been entertained and decided by the Court. Mr. Gupte would further submit that there was no question of Respondent-Plaintiff being in settled possession of the suit flat as he is merely a developer and has constructed the flat in the building. The case therefore does not involve taking over of possession of the property of someone who is in settled possession. The dispute on the other hand is confined to validity of possession secured by the Applicant from the developer which issue is beyond the scope of Section 6 of the Specific Relief Act. He relies on judgment of this Court in **Hawabai Wd/o Suleman Haji Ahmed Oomar vs. Abdul Sattar Suleman Haji Ahmed Oomar and Anr.**<sup>1</sup> Mr. Gupte would pray for setting aside the impugned judgment and decree.

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1 1994 SCC OnLine Bom 482

6) The Revision Application is opposed by Mr. Agrawal, the learned counsel appearing on behalf of the Respondent, who submits that the findings recorded by the Trial Court with regard to possession of the Respondent and dispossession by the Applicant do not warrant interference in exercise of revisionary jurisdiction of this Court. He submits that the claim of the Applicant about delivery of possession of the flat is belied by her complaint before the Consumer Court in which she indicated her address of a different place and specifically sought possession of the flat. The Consumer Forum refused to grant relief of possession and instead granted the relief of refund of amount of Rs.3,43,643/- along with interest. That therefore forcible taking over of possession by the Applicant is clearly established. If the Applicant was delivered possession by the Respondent Developer, she would not have approached the Consumer Forum for possession. Mr. Agrawal further submits that the Trial Court has recorded a specific finding that the old meter in respect of the flat was removed on 26 September 2007 and that the new meter was installed only on 8 June 2009. That the Trial Court has held that between the year 2007 till 8 June 2009, there was no electricity connection to the flat. He submits that these are findings of facts recorded by the Trial Court after assessing evidence on record, which do not warrant any interference under the revisionary jurisdiction of this Court. That settled possession of Respondent in respect of the flat has been proved before the Trial Court and forcible dispossession has also been proved. He would therefore submit that all ingredients of Section 6 of the Specific Relief Act are fulfilled and therefore, the

impugned decree would squarely fit into the parameters of Section 6 of the Specific Relief Act.

7) Mr. Agrawal submits that the claim of the Applicant in the present Application about being put in possession of the flat is barred by *res judicata* since enquiry in that regard is already conducted by the Consumer Forum and a finding is recorded that possession was never granted and in fact, prayer for possession is rejected. In support, he relies on judgment of this Court in **Miraj Medical Centre Miraj vs. Sunil Tukaram Danane and Anr.**<sup>2</sup> and of the Calcutta High Court in **M/s. Kesoram Industries Limited vs. Allahabad Bank**<sup>3</sup>.

8) Mr. Agrawal further submits that grant of prayer of compensation is only for the purpose of making Applicant liable in respect of her illegal acts of forcible dispossession and that main nature of the suit is only for restoration of possession under Section 6 of the Specific Relief Act. He submits that in the event this Court arrives at the conclusion that prayer for compensation could not be sought or granted, this Court can sever that part of the decree but the part of the decree directing restoration of possession needs to be upheld. He submits that mere grant of an additional relief cannot be a ground for setting aside other relief lawfully granted by the Court. He would pray for dismissal of the Revision Application.

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2 AIROnline 2019 Bom 1100

3 AIR 2017 Calcutta 130

9) Rival contentions of the parties now fall for my consideration.

10) The fundamental issue that arises for consideration is whether the suit as framed by the Plaintiff-Respondent was maintainable under Section 6 of the Specific Relief Act. Section 6 provides for summary remedy to the person dispossessed of immovable property without his consent and without following due process of law. If dispossession occurs without consent and otherwise than by following the due process of law, the dispossessed person can file a suit under Section 6 of the Specific Relief Act to recover possession thereof. Such suit needs to be filed within a period of 6 months from the date of dispossession. The remedy under Section 6 of the Specific Relief Act is a special remedy aimed at merely restoring the *status quo ante* when dispossession occurs without following due process of law. The remedy is special and summary, and is different that the ordinary remedy of filing suit for recovery of possession, on account of four factors viz.-

- (i) Plaintiff need not prove his title or right to occupy the property.
- (ii) Special and shorter period of limitation of only six months is specified under Section 6.

- (iii) No appeal lies against the order or decree passed in a suit filed under Section 6. Even a review of such order or decree cannot be sought.
- (iv) A decree passed under Section 6 of Specific Relief Act does not operate as *res judicata* and person against whom the decree is passed can maintain a separate suit to establish his title to the property and to recover back the possession which is restored in favour of the Plaintiff under Section 6 suit.

**11)** Thus, Section 6 of the Specific Relief Act makes a departure from well-settled principles of (i) possession following title, (ii) period of limitation, (iii) right of filing appeal, and (iv) principle of *res judicata*. This is a reason why the remedy under Section 6 of the Specific Relief Act is a special and summary remedy aimed purely at restoring the possession as it stood before dispossession. Section 6 of the Act is aimed at ensuring that a party seeking possession follows due process of law. Any person who takes law in his own hands and dispossesses the possessor can be directed to restore the possession under Section 6 of Specific Relief Act. However, merely because the dispossessor is required to restore the possession, the same does not bar him from filing a substantive suit for recovery of possession.

**12)** Considering the fact that the remedy under Section 6 of the Specific Relief Act is a special remedy aimed at a definitive objective, the

enquiry in a suit filed under Section 6 has to be necessarily summary. Since the Court does not decide the issues of title or even the issue of right to retain possession, complicated questions of law or fact need not be decided in a Section 6 suit. The Court would conduct a summary enquiry only in respect of following three areas in Section 6 suit :

- (i) Whether Plaintiff was in possession at the time of dispossession;
- (ii) Whether dispossession has occurred within 6 months prior to filing of the suit; and
- (iii) Whether dispossession is after following due process of law or with the consent of the Plaintiff.

**13)** Therefore, while filing suit under Section 6 of the Specific Relief Act, the pleadings need not travel beyond the averments relating to Plaintiff's possession, the act of dispossession, date of dispossession and dispossession without following process of law or in absence of Plaintiff's consent. Plaintiff cannot mix any other grievances while filing suit under Section 6 of the Act. If in addition to the grievance of loss of possession, Plaintiff wants to pursue any other right or relief, he has to necessarily file a substantive suit, as grant of any additional remedy would be beyond the ambit of Section 6 of Specific Relief Act. To paraphrase, no other relief than restoration of possession can be sought in a Section 6 suit. The moment additional relief is sought in the suit, the same would travel beyond the ambit of Section 6 of the Specific Relief Act.

14) Addition of any other prayer in Section 6 suit over and above the prayer for restoration of possession would necessarily change the nature of enquiry. The summary enquiry contemplated under Section 6 of the Specific Relief Act cannot be conducted in respect of other prayer than the prayer for restoration of possession. A composite inquiry viz. summary inquiry into dispossession and detailed inquiry for other reliefs cannot be conducted in Section 6 Suit. Therefore, Plaintiff filing suit under Section 6 of the Specific Relief Act needs to confine his/her grievance only in respect of dispossession and nothing more. The moment Plaintiff desires any additional relief, the suit would necessarily fall outside the ambit of Section 6 of the Act.

15) Keeping in mind the above broad contours of suit under Section 6 of the Specific Relief Act, I proceed to examine the plaint filed by the Plaintiff-Respondent in the present case. The suit was initially filed in the Court of Civil Judge Senior Division and the same was numbered as Special Civil Suit. Plaintiff had titled the suit as '*suit u/s 6 of the specific relief act for possession, compensation and injunction*'. Thus, the suit filed by the Plaintiff was not only for restoration of possession but the same was also for compensation and injunction. This is further clear from prayers in the plaint which read thus:

- a) Suit of the plaintiff may kindly be decreed with cost.
- b) The Defendant may kindly be directed to restore possession of the suit flat with the Plaintiff.
- c) The Defendant may kindly be restrained by an order of prohibitory injunction from creating third party interest.
- d) Temporary and ad interim injunction in terms of prayer (b) and (c) above may kindly be granted till the decision of the suit.

- (e) The Defendant may kindly be directed to pay compensation of Rs. 1,15,000/- has mentioned in para 14 to 16 above.
- (f) The defendant may kindly be directed to pay mesne profit and future compensation till the Defendant actually handover possession of the suit flat to the plaintiff.
- (g) Any other order in the interest if justice may kindly be passed.

16) Thus, in addition to seeking restoration of possession, Plaintiff also sought injunction from creating third party rights in the suit flat. He also sought prayer for payment of compensation of Rs. 1,15,000/- as well as direction for payment of mesne profits and future compensation.

17) In paras-14 to 16 of the plaint, the averments setting out particulars of prayer for compensation were pleaded as under:

14) The Plaintiff most respectfully submits that the Defendant without any legal right and consent of the Plaintiff has forcefully dispossessed the plaintiff and gained possession of the said flat by unlawful means and has remained over the same. Therefore, the Defendant is liable to pay compensation for illegal use of the said flat to the Plaintiff, which **Plaintiff quantifies at Rs.5,000/- per month which is the prevailing rent in the said area.** The Defendant shall pay the said compensation till the ` receives the possession of the said flat from the Defendant.

15) **The Plaintiff most respectfully submits that the said illegal act of the Defendant has caused great and tremendous mental agony to the Plaintiff.** The Plaintiff is required to go to the police station repeatedly and waste his valuable time which he could have spend for doing his business and earning money. **So also the goodwill of the plaintiff in the market, his flat purchasers, suppliers etc. has been hampered due to the said illegal and high handed act of the Defendant.** The Defendant is therefore liable to compensate the plaintiff for the said loss which Plaintiff quantifies at Rs.1,00,000/- at present.

16) The particulars of monitory claim of the plaintiff is as under:

Rs.1,00,000/- Being compensation as mentioned in Para 15

above.

Rs. 15,000/-

Being the amount of compensation for the illegal use of the said flat since last 3 months before filing of this suit @ Rs.5,000/- p.m as mentioned in Para 14 above.

Rs. 1,15,000/-

Total claim.

*(emphasis added)*

**18)** Plaintiff thus sought recovery of compensation for mental agony. He also complained for loss of goodwill. This is how he claimed compensation/damages of Rs. 1,00,000/-. He also sought compensation of Rs. 15000/- for illegal occupation of flat for 3 months beings the prevailing market rent at that time.

**19)** In my view, seeking of prayers for injunction from creating third party rights, for compensation for mental torture/loss of goodwill, and for future compensation clearly threw the suit outside the ambit of Section 6 of the Specific Relief Act. Under Section 6 of the Specific Relief Act, the Court cannot adjudicate the prayer for injunction from creation of third-party rights in the flat. That prayer for injunction touches upon the issue of title and hinges upon Plaintiff's claim that the transaction of purchase of flat did not fructify and was terminated and that therefore the Defendant did not acquire title in the flat, which would be sold to a third person. This is how the prayer for injunction from creating third-party rights was sought. Section 6 Court can also not adjudicate the claim for compensation for mental torture/agony or for loss of goodwill. Similarly, the Court entertaining suit under Section 6 cannot adjudicate the claim for future compensation. In my view therefore, the suit filed by

the Plaintiff clearly traveled beyond the provisions of Section 6 of the Specific Relief Act.

20) Even on perusal of the pleadings in the plaint, there is no doubt to the position that the Plaintiff sought to espouse his grouse that the transaction of purchase of flat remained unfructified and that non-payment of full agreed consideration resulted in cancellation of the transaction. This is clear from the following pleadings in the plaint:

3) On or about 05.08.2004 the Defendant approached 1 the Plaintiff and proposed to purchase a suit flat. After due negotiations the Defendant agreed to purchase the said flat for the cost of Rs.4,10,000/- including consideration, MSEB Meter charges, Stamp Duty and Registration. It is relevant to note at this stage that most of the construction work of the said building was over by that time and therefore payment of agreed cost in time was the essence of contract. The Plaintiff therefore executed statutory agreement in favour of Defendant dated 25.08.2004 which is registered in the office of Sub Registrar Haveli No. 9 Pune at Sr. No. 5292 on 25.08.2004. As mentioned in the said agreement the Plaintiff had agreed to handover possession of the said flat to the Defendant on or before 30.11.2004 upon receipt of the said entire cost from the Defendant. Thus the possession was to be handed over only after receipt of entire cost.

4) The Plaintiff most respectfully submits that he had completed the entire construction work of the said flat before the date on which possession was to be handed over to the Defendant and time and again requested the Defendant to take possession of the said flat by paying the entire cost. However under bone pretext or the other the Defendant avoided taking possession of the said flat by paying all the cost. Thus the possession could not be handed over to the Defendant.

5) Thereafter though the plaintiff waited for more than reasonable period, the **Defendant did not pay the entire cost** and take possession of the said flat. The Plaintiff was compelled to issue notice through his Advocate Shri. S.V. Kshirsagar dated 08.01.2007 **and terminated the said agreement for sale of said flat dated 25.08.2004 entered with the Defendant.** The Defendant received the said notice but failed to reply. **Therefore the Defendant has no right even of purchase of the said flat.**

*(emphasis added)*

21) Thus, Plaintiff's prayer for seeking recovery of possession was also based on his act of termination of Agreement for Sale vide notice dated 8 January 2007. It therefore cannot be contended that the suit was for restoration of possession simplicitor. The suit was premised on an assertion that the sale transaction did not fructify and that the Agreement for Sale was terminated. Plaintiff accordingly asserted that Defendant did not have the right of possessing the flat on account of non-payment of entire amount of consideration. It therefore cannot be contended that this was a suit simply complaining of Defendant-Applicant dispossessing Plaintiff's settled possession of the suit flat.

22) The very fact that the Plaintiff raised averments relating to non-payment of entire amount of consideration in respect of the flat meant that he desired an enquiry into the said aspect. Not surprisingly, Defendant joined issues with the Plaintiff on the aspect of non-payment of consideration and raised detailed pleadings in her written statement as to how the entire amount of consideration was paid in respect of the flat. For the sake of brevity, the contents of para-6 to 8 of the written statement are not reproduced, but perusal of the same gives a detailed account of Defendant's version of full amount of consideration in respect of the flat. In fact, Mr. Agrawal has placed before me a compilation in which copy of letter dated 6 January 2005 sent by the Respondent to the Applicant is appended. The said letter dated 6 January 2005 reads thus :

प्रति,  
सौ. जयश्री जे. बाबर  
बिबवेवाडी पुणे

विषय - फ्लॉट नं. ४ मानसी अपार्टमेंट चे चेक पेमेंट बाबत

मोहोदय,

आपण मि बांधत असलेल्या मानसी अपार्टमेंट मध्ये फ्लॅट नं. ४ बुक केलेला आहे. सदरच्या फ्लॅटपोटी आपण मला रु १५,०००/- व रु २०,०००/- चे दोन चेक बँक ऑफ महाराष्ट्र, स्वारगेट शाखा दिलेले होते. सदरच्या चेकवर कोणत्याही प्रकारची तारीख टाकलेली नव्हती. **सदरचे चेक हे माझे मोटरसायकलचे डिकीत ठेवलेले असता मोटरसायकलसहित चोरीस गेलेले आहेत.** तरी आपणास विनंती आहे कि आपण त्वरित आपले बँकेत लेखी पत्राद्वारे वरील चेक चोरीस गेलेले असल्याचे कळवून त्या पात्रांची झेरॉक्स प्रत आणून द्यावी. अन्यथा वरील चेकचा गैरवापर होण्याची शक्यता आहे व तसे झाल्यास त्यात माझी कोणतीही जबाबदारी नाही याची नोंद घ्यावी.

कळावे.

*(emphasis added)*

23) Plaintiff thus claimed that he lost the cheques given by the Defendant towards consideration and were not encashed. Thus, parties are at serious dispute about payment of entire consideration of the flat. Plaintiff and Defendant clearly joined issues in respect of this aspect which entailed factual enquiry in the suit. Plaintiff committed the mistake of raising pleadings relating to non-payment of consideration and termination of Agreement for Sale which resulted in Defendant raising averments relating to payment of full consideration. The Trial Court also participated in the mistake committed by the parties and has conducted factual enquiry about payment of full consideration in respect of the flat. This is clear from following findings by the Trial Court in the impugned judgment :

33. The defendant has received notice on the address of Sainagar, Upper Supper Kondhwa Road, Bibvewadi, Pune. The plaintiff has also lodged compliant in the police station. The defendant has no knowledge about the rent of the suit flat. The defendant has stated that the monthly rent may be Rs. 7,000/- or Rs. 8,000/-. She has not produced the cheque book. There is no any document to show that the defendant has paid cash of Rs. 35,000/- to the plaintiff for registration of Sale Deed. The defendant has denied the suggestion that she has not paid the remaining amount of consideration of Rs. 11,400/-, electricity installation charges Rs. 20,000/- and registration charges Rs. 35,000/-.

35. The plaintiff has examined total 4 witnesses to prove his claim. The bank witness specifically told that two cheques no. 469087 and 469081 were not presented for clearance. Two cheques have been issued by the defendant. The defendant has not produced any documentary evidence to prove that above cheques have been presented for clearance and the plaintiff has got the cash from encashment. There is no reference of above two cheques in the saving account of the defendant. The electric meter no. 160240710614 was in the name of the defendant. The electric bill bears date of 12.01.2013.

41. In the present matter, there is no any document to show that she has paid total amount of Rs. 4,10,000/- to the plaintiff. The plaintiff has also given notice to the defendant on 08.01.2007 and terminated the agreement dated 25.08.2004 due to non payment of necessary charges by the defendant. It means, the agreement of development has been cancelled. As per the judgment of the Consumer Forum, Pune, the complaint filed by the defendant is partly allowed. The defendant has right to recover the amount of Rs. 3,43,643/- from the plaintiff with interest @ 9% per annum from 01.08.2004.

24) Thus, the Trial Court has also traveled beyond the scope of enquiry, which ought to have been conducted under Section 6 of the Specific Relief Act and has decided the suit as if it is an substantive suit for recovery of possession. It has adjudicated upon issue relating to payment of full consideration and termination of Agreement for Sale. This was clearly beyond the scope of enquiry under Section 6 of the Act.

25) The Trial Court has also gone ahead and awarded compensation at the rate of Rs.84,000/- per annum from the date of dispossession till restoration of possession. It has also injuncted the Applicant-Defendant from creating third party rights in respect of the suit flat. The quantum of compensation is adjudicated by the Trial Court by taking into consideration the monthly rent payable in respect of the suit flat. The enquiry in this regard is in para-44 of the judgment which reads thus:

44. The plaintiff is also entitled for permanent injunction against the defendant. It comes on the record that the monthly rent of the suit property is approximately Rs. 7,000/- to Rs. 8,000/- per month. It is admitted by the defendant. The defendant is in possession of the suit property since 02.06.2009. The possession of the defendant is illegal and unauthorized, therefore, the plaintiff is entitled for compensation @ Rs. 7,000/- per month from 02.06.2009 till the actual date of possession, when it will be delivered by the defendant to the plaintiff. The plaintiff is entitled for compensation of Rs. 84,000/- per year from 02.06.2009 till actual possession will be delivered by the defendant.

26) Adjudication of prayers for injunction creating third party rights and for compensation is beyond the scope of Section 6 of the Specific Relief Act. The impugned judgment and order is thus unsustainable and liable to be set aside.

27) Even otherwise, it is difficult to hold that disputes relating to possession of a flat by the purchaser with the developer can be adjudicated under Section 6 of the Specific Relief Act. The provision is aimed at merely discouraging recovery of possession without following due process of law. The provision is aimed at ensuring that the person desiring recovery of possession sets law into motion, files a suit and thereafter recovers the possession. It discourages taking law into the hands by dispossessing the possessor unlawfully. Therefore, *sine qua non* for maintaining a suit under Section 6 of the Act is that the Plaintiff must be in some sort of settled possession of the property in question. The provision is not for settling the disputes between the developer and flat purchaser relating to possession. If the transaction of sale is not complete and/or there are disputes relating to termination of agreement for sale and flat purchaser claims possession, the remedy for developer is

not to file a suit under Section 6 of the Specific Relief Act. This is because the nature of enquiry in such circumstances can never be summary. The Court adjudicating the disputes over possession relating to flat sold by developer is bound to conduct enquiry into the nature of transaction between the parties which enquiry is not envisaged under Section 6 of the Specific Relief Act.

28) In the present case, dispute is over non-payment of insignificant amount of Rs. 36,000 + Rs. 10,000, which the Respondent demanded from Applicant vide letter dated 10 December 2004. The letter reads thus:

Date: 10-12-2004

प्रती,  
सौ. जयश्री जे बाबर  
स. नं 659/5, साई नगर  
पुणे-३७

विषय : फ्लॅट नं 4, मानसी अपार्टमेंट ताबा घेणेबाबत

मोहोदय,

आपण मी बांधत असलेल्या मानसी अपार्टमेंट, कात्रज येथे फ्लॅट नं 4. बुक केलेला आहे. सदरच्या फ्लॅटचे काम पुर्ण झालेलं आहे. सदरच्या फ्लॅटचे M.S.E.B. मीटरही लावलेले असून, पुणे म. न.पा कडून पुर्णत्वाचा दाखला ही मिळालेला आहे. तरी आपणास विनंती आहे कि आपल्या फ्लॅटचे काम तपासून पाहून आपण आपल्या फ्लॅटचा ताबा घ्यावा. तसेच सदरच्या फ्लॅटपोटी आपणाकडून येणे रक्कम रु. 36,000/- (रुपये छत्तीस हजार फक्त) व एकट्रा वर्कचे रु 10,000/- (रुपये दहा हजार फक्त) त्वरित द्यावे ही विनंती.

कळावे

sd/-

सोबत

1) म.न.पा. पुर्णत्वाचा दाखला

29) Under the Agreement for Sale, the agreed amount of consideration was Rs. 3,55,000/-. According to the Plaintiff, the total amount payable including all expenses was Rs. 4,10,000/-. Therefore, even if the story of Plaintiff is to be believed, it is an admitted position that Applicant-Defendant paid Rs. 3,74,000 to the Plaintiff, which represents over 90% payment. Applicant-Defendant is a lady who is residing in the flat for the last 17 long years even by going by Plaintiff's theory of taking possession on 2 June 2009. Considering this position, in my view, grant of relief of restoration of possession of the suit flat to the developer in Section 6 suit was unwarranted.

30) Also, it is difficult to hold that a developer constructing a building is in 'possession' of flat for the purpose of initiation of proceedings under Section 6 of the Specific Relief Act. In **Ashapura Options Pvt. Ltd. and Ors. vs. Ashapura Developers and Ors.**<sup>4</sup>, this Court has discussed the concept of 'possession' relating to Suit under Section 6 of Specific Relief Act. Referring to the judgments of the Apex Court in **Ramegodwda dead through LR's vs. M. Varadappa Naidu dead through LR's and Anr.**<sup>5</sup>, **Poona Ram Versus. Moti Ram(dead) through legal heirs**<sup>6</sup>, and **Maria Margarida Sequeira Fernandes V. Erasmo Jack de Sequeira**<sup>7</sup> this Court had held in paras-17 to 22 as under:

17) The two most illustrative authorities on the concept of possession are **Rame Gowda** (supra) and **Poona Ram** (supra). No doubt, the judgments arise out of dispute between parties regarding possession in suits based on title.

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4 Interim Application (L) No. 14261 of 2025 decided on 16 October 2025

5 (2004) 1 SCC 769

6 (2019) 11 SCC 309

7 (2012) 5 SCC 370

However, the Apex Court has discussed the principles as to when a person can be said to be in possession of immovable property and what his rights are. In **Rame Gowda**, it is held in paras-8 and 9 as under:

8. **It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser.** A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. **If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force.** In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram v. Delhi Admn.* (AIR 1968 SC 702), *Puran Singh v. State of Punjab* ((1975) 4 SCC 518) and *Ram Rattan v. State of U.P.* ((1977) 1 SCC 188). The authorities need not be multiplied. In *Munshi Ram* case it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and

acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh* case the Court clarified that it is difficult to lay down any hard-and-fast rule as to when the possession of a trespasser can mature into settled possession. **The "settled possession" must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser.** The phrase "settled possession" does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a d straitjacket. **An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession.** The Court laid down the following tests which may be adopted as a working rule for determining the attributes of "settled possession":

(i) that the trespasser must be in actual physical possession of the e property over a sufficiently long period;

(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of *animus possidendi*. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner;and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy the crop grown by the trespasser and take forcible possession.

*(emphasis and underlining added)*

18) In *Poona Ram* (supra) the principles are reiterated, and it is held in para-15 as under:

15. The crux of the matter is that a person who asserts possessory title over a particular property will have to show that he is under settled or

established possession of the said property. But merely stray or intermittent acts of trespass do not give such a right against the true owner. Settled possession means such possession over the property which has existed for a sufficiently long period of time, and has been acquiesced to by the true owner. A casual act of possession does not have the effect of interrupting the possession of the rightful owner. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. Settled possession must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. There cannot be a straitjacket formula to determine settled possession. Occupation of a property by a person as an agent of a servant acting at the instance of the owner will not amount to actual legal possession. The possession should contain an element of animus possidendi. The nature of possession of the trespasser is to be decided based on the facts and circumstances of each case.

19) In *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira* the Apex Court has summarized the principles with regard to claims of possession by a gratuitous occupier as under:

97. Principles of law which emerge in this case are crystallised as under:

- (1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.
- (2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.
- (3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.
- (4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.
- (5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

20) Similarly, in *Behram Tejani* (supra), it is held that a person holding the premises gratuitously or in a capacity as a caretaker or servant does not acquire any right or interest in the property and even long possession of the property is of no consequence. It is held in para-14 as under:

**14. Thus, a person holding the premises gratuitously or in the capacity as a caretaker or a servant would not acquire any right or interest in the property and even long possession in that capacity would be of no legal consequences.** In the circumstances, the City Civil Court was right and justified in rejecting the prayer for interim injunction and that decision ought not to have been set aside by the High Court. We, therefore, allow the appeal, set aside the judgment under appeal and restore the order dated 29-4-2013 passed by the Bombay City Civil Court in Notice of Motion No. 344 of 2013 in Suit No. 408 of 2013.

21) In *A. Shanmugam*, (supra) the Apex Court has held in paras-43.6 and 43.7 as under:

**43.6 The watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession.** The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, the courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same.

**43.7** The watchman, caretaker or agent holds the property of the principal only on behalf of the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.

*(emphasis added)*

22) Thus, settled and effective possession of a person without title would entitle him to protect his possession even as against the true owner. The possession needs to be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner. A casual act of possession does not have the effect of interrupting the possession of the rightful owner. Even a trespasser can be in a settled possession and can prevent the owner from taking over possession except in accordance with procedure prescribed in law. The possession should contain an element of *animus possidendi* i.e. intention to possess. Occupation

of property by a caretaker, servant or agent, even for a long time, would not elevate him to the status of a possessor as such person holds possession on behalf of his principal or employer.

31) Thus, for the purpose of Section 6 of the Specific Relief Act, the possession must contain an element of *animus possidendi* i.e., intention to possess. This Court held that occupation of a property by a caretaker, servant or agent, even for long time would not elevate him to the status of possessor. Possession needs to be effective and undisputed.

32) In *Ashapura Options* (supra), this Court also discussed the limited scope of enquiry under Section 6 of the Specific Relief Act by referring to the judgment of the Apex Court in *ITC Ltd. vs. Adarsh Coop. Housing Society Ltd.*<sup>8</sup> and held in paras-15 and 16 as under:

15) For deciding Suit filed under Section 6 of the Act, the limited inquiry that needs to be conducted is about possession of suit property by Plaintiff and whether the Plaintiff has been dispossessed 6 months prior to filing of the Suit. In *ITC Ltd. v. Adarsh Coop. Housing Society Ltd.*, the Apex Court has discussed the limited scope of inquiry in Section 6 Suit. The Court had held as under:

9. Section 6 of the Specific Relief Act, 1963 under which provision of law the suit in question was filed by the respondent-plaintiff is in pari materia with Section 9 of the 1877 Act. A bare reading of the provisions contained in Section 6 of the 1963 Act would go to show that a person who has been illegally dispossessed of his immovable property may himself or through any person claiming through him recover such possession by filing a suit. In such a suit, the entitlement of the plaintiff to recover possession of property from which he claims to have been illegally dispossessed has to be adjudicated independently of the question of title that may be set up by the defendant in such a suit. In fact, in a suit under Section 6, the only question that has to be determined by the Court is: whether the plaintiff was in possession of the disputed property and he had been illegally dispossessed therefrom on any date within six months prior to the filing of the suit? This is

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8 (2013) 10 SCC 169

because Section 6(2) prescribes a period of six months from the date of dispossession as the outer limit for filing of a suit. As the question of possession and illegal dispossession therefrom is the only issue germane to a suit under Section 6, a proceeding thereunder, naturally, would partake the character of a summary proceeding against which the remedy by way of appeal or review has been specifically excluded by sub-section (3) of Section 6. Sub-section (4) also makes it clear that an unsuccessful litigant in a suit under Section 6 would have the option of filing a fresh suit for recovery of possession on the basis of title, if any.

10. In fact, the above view has found expression in several pronouncements of this Court of which reference may be made to the decisions in *Lallu Yeshwant Singh v. Rao Jagdish Singh* [AIR 1968 SC 620] , *Krishna Ram Mahale v. Shobha Venkat Rao* [(1989) 4 SCC 131] and *Sanjay Kumar Pandey v. Gulbahar Sheikh* [(2004) 4 SCC 664] . In fact, para 4 of this Court's judgment passed in *Sanjay Kumar Pandey* [(2004) 4 SCC 664] may be a useful reiteration of the law in this regard. The same is, therefore, extracted hereinbelow: (SCC p. 665)

“4. A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under Section 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Sub-section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out within the well-settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code.”

16) Upon satisfaction of twin requirements of (i) being in possession of immovable property and (ii) being dispossessed within a period of 6 months before filing of the Suit without consent, the Plaintiff in a Section 6 Suit can secure an order of restoration of possession.

33) The scope of enquiry under Section 6 of the Specific Relief Act has also been discussed by this Court in **Kumar Goraknath Shinde vs. Wider Church Ministries and Ors.**<sup>9</sup> in which it is held in para-7 as under :

7 In order to establish a claim under Section 6 of the Specific Relief Act, 1963 three things are required to be established:

- i) that the Plaintiff No.1 trust was in possession of the suit property;
- ii) it has been dispossessed without the consent of the Plaintiffs and otherwise than in due course of law;
- iii) the suit for recovery of possession is filed within a period of six months from the date of alleged dispossession.

It is not in dispute that the dispossession alleged is on 13.2.2010 and suit is filed on 11.8.2010 i/e within a period of limitation. Such finding is also recorded by the trial Court and not challenged by the Petitioner-Defendant. In respect of other two aspects, if the findings of facts recorded by the trial Court are based upon relevant material on record, no interference can be made in exercise of revisional jurisdiction, in the absence of any jurisdictional error.

34) In **Mohd. Mehtab Khan & Ors. vs. Khushnuma Ibrahim & Ors.**<sup>10</sup>, the Apex Court has dealt with contours of enquiry under Section 6 of the Specific Relief Act and it is held in para-12 of the judgment as under:

12. A proceeding under Section 6 of the Specific Relief Act, 1963 is intended to be a summary proceeding the object of which is to afford an immediate remedy to an aggrieved party to reclaim possession of which he may have been unjustly denied by an illegal act of dispossession. Questions of title or better rights of possession does not arise for adjudication in a suit under Section 6 where the only issue required to be decided is as to whether the plaintiff was in possession at any Page 13 time six months prior to the date of filing of the suit. The legislative concern underlying Section 6 of the SR Act is to provide a quick remedy in cases of illegal dispossession so as to discourage litigants from seeking remedies outside the arena of law. The same is evident from the provisions of Section 6(3) which bars the remedy of an appeal or even a review against a decree passed in such a suit.

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9 2013(5) ALL MR 754

10 2013 ALL SCR 814

35) In my view, looking at the objective of Section 6 of the Specific Relief Act, it is difficult to countenance a situation where the developer is permitted to seek recovery of possession from the flat-purchaser on the ground that he is forcibly dispossessed without following process of law. This is yet another ground why the suit filed by the Respondent-Plaintiff was not maintainable under Section 6 of the Specific Relief Act.

36) Mr. Agrawal has emphasized on Applicant approaching Consumer Forum for seeking possession of the suit flat and it is contended that her claim of grant of possession by the Respondent-Developer in February 2005 is belied by the prayer made in the complaint dated 18 November 2006. This would form relevant factor for deciding the merits of the dispute relating to possession. However, when the suit filed by the Respondent-Developer was not maintainable under Section 6 of the Specific Relief Act, it is not necessary to go into the merits of the dispute about possession. Since there is a jurisdictional error committed by the Trial Court in entertaining the suit, which was *ex facie* not maintainable, there is no question of this Court considering the merits of contention of parties relating to possession. Mr. Agrawal's reliance on judgment in *Miraj Medical* and *Kesoram Industries Limited* (*supra*) is also inapposite since both the judgments deal with permissibility to record findings by Civil Court contrary to the ones recorded by the Consumer Disputes Forum/Commission and application of principle of *res judicata*. In the present case, there is no question of applicability of principles of *res judicata*. The order passed by the Consumer Forum may

have reflection on defence of Applicant in the suit. However, when the suit itself was not maintainable, it is not necessary to consider the merits of the defence of the Applicant.

37) Considering the overall conspectus of the case, I am of the view that there is gross error in exercise of jurisdiction by the Trial Court while entertaining and deciding the suit filed by the Respondent-Plaintiff. The suit clearly traveled beyond the scope of Section 6 of the Specific Relief Act. The suit involves disputed questions of payment of full amount of consideration for purchase of flat and whether possession of the flat by the Applicant is legal or otherwise. Respondent-Plaintiff did seek some enquiry into the title by seeking injunction against the Applicant-Defendant from creating third party rights in the suit flat. His prayer for compensation for mental agony and loss of goodwill could not have been adjudicated in the suit filed under Section 6 of the Specific Relief Act. In my view therefore, the impugned judgment and order suffers from serious jurisdictional error and cannot be sustained. The impugned judgment and order dated 14 March 2022 is thus indefensible and liable to be set aside. By setting aside the impugned judgment and order, the Respondent-Developer would not be rendered remediless. It would be for him to institute a substantive suit and get all his claims adjudicated therein.

38) The Revision Application accordingly succeeds, and I proceed to pass the following order:

- (i) Judgment and order dated 14 March 2022 passed by the Joint Civil Judge Senior Division, Pune in Regular Civil Suit No. 1261 of 2012 is set aside.
- (ii) Consequently, Regular Civil Suit No. 1261 of 2012 is dismissed.
- (iii) Dismissal of Regular Civil Suit No. 1261 of 2012 shall not come in the way of Respondent filing a substantive suit for recovery of possession of the suit flat based on title.

**39)** With the above directions, the Civil Revision Application is **allowed and disposed of**. Considering the facts and circumstances of the case, there shall be no order as to costs.

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**[SANDEEP V. MARNE, J.]**