

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 185 OF 2023

Khandu Bajaba Gawande
(since deceased through legal heirs)**APPLICANTS**
: VERSUS :

Deoram Bajaba Gawande
(since deceased through legal heirs) and Ors.**RESPONDENTS**

Mr. Rohit Joshi for the Applicants.

Mr. Vishwajit N. Sagare for the Respondents.

CORAM : SANDEEP V. MARNE, J.

JUDG. RESD. ON: 17 FEBRUARY 2026

JUDG. PRON. ON: 05 MARCH 2026

JUDGMENT :

1) Revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908 (**Code**) is invoked for assailing the judgment and order dated 9 December 2022 passed by the learned Judge, City Civil Court, Greater Bombay in S.C. Suit No. 3192/2012. The Suit is decreed directing the Applicants to restore possession of suit premises to the Plaintiffs and the Applicants are restrained from

dispossessing the Plaintiffs from the suit premises without following due process of law and from disturbing their possession.

2) The case of the Plaintiffs, as pleaded in the plaint, is that Plaintiff No.1 was working with Food Corporation of India Limited and he purchased two premises in the year 1972-73 viz. i) Unit No. 219/8559 for residential purposes and ii) Unit No. 198/7796 for dispensary purposes, both at Kannamwar Nagar No. II, Vikhroli East, Mumbai – 400083.

3) Plaintiff No.1 claims himself to be a doctor with qualification of Ayurved Vaidya Visharad and it is claimed that he commenced his dispensary from premises bearing No. 198/7796, which formed the ‘suit premises’. The Defendant is the brother of Plaintiff No.1 and according to Plaintiff No.1, Defendant was educated only upto 5th standard and was always maintained and looked after by Plaintiff No.1. According to Plaintiffs, the suit premises were purchased by Plaintiff No.1 in name of Defendant as per the family arrangement. However, Plaintiffs always possessed and occupied the same for running the dispensary of Plaintiff No.1. That all maintenance charges in respect of suit premises were always paid by the Plaintiffs. According to Plaintiffs, Plaintiff No. 2 completed his education in Ayurveda and started his practice from the suit premises. That Plaintiff No.2 got married to Plaintiff No.3, who is also a qualified doctor and started her practice from dispensary run in the suit premises.

4) Defendant filed Suit No. 2553/2006 in the City Civil Court seeking recovery of suit premises from the Plaintiffs. The Plaint in that suit was returned and the Defendant filed suit in the Small Causes Court being L.E. Suit No. 131/177/2009 seeking recovery of suit premises from Plaintiffs. According to the Plaintiffs, on 28 November 2011, they closed dispensary at about 9 pm and thereafter Defendant broke open lock between 10pm to 11pm and took forcible possession of the suit premises. Plaintiff No.1 approached the local police station to lodge a complaint on 29 November 2011, but the Complaint was not registered. On 30 November 2011, Plaintiffs approached the police station again without receiving any positive response. Plaintiffs addressed a written complaint for taking action against the Defendant in Criminal Writ Petition No. 3964 of 2011 in this Court.

5) In the above background, Plaintiffs filed Suit No. 1017/2012 in this Court under Section 6 of the Specific Relief Act, 1963 for restoration of possession of suit premises. The suit was filed on 9 April 2012 complaining about dispossession on 28 November 2011. Due to change in the pecuniary jurisdiction, the suit was transferred to the City Civil Court and was renumbered as S.C. Suit no. 3192 of 2012. The suit was resisted by Defendant by filing Written Statement claiming *inter alia* that Plaintiffs were not running the dispensary in the suit premises, and that one Cosmos Prime Projects Ltd (**Cosmos**) was found to be occupying the suit premises. Defendant contended that he accordingly amended the suit before the Small Causes Court by impleading Cosmos for securing possession of the suit premises. Defendant contended that on 3 October

2011, when he had approached the society to pay maintenance charges, there was neither any lock nor any signboard of the developer-Cosmos. Accordingly, the Defendant put lock on the suit premises on 3 October 2011. Defendant thereafter abandoned L.E. Suit no. 177 of 2019, since possession of the suit premises was with him. Defendant claimed ownership in respect of the suit premises. Defendant denied having dispossessed Plaintiffs from the suit premises contending that he had secured possession thereof on 3 October 2011 itself.

6) Based on the pleadings, Trial Court framed issues. Parties led evidence in support of their respective claims. During pendency of the suit, Defendant passed away, and his legal heirs were brought on record. After considering the documentary and oral evidence, the Trial Court has proceeded to decree the suit by Judgment and Order dated 9 December 2022 directing the legal heirs of the deceased Defendant to restore the possession of the suit premises to the Plaintiffs. The legal heirs of the deceased Defendant are restrained from dispossessing the Plaintiffs from the suit premises without following due procedure of law and are permanently restrained from disturbing their possession.

7) Aggrieved by judgment and order dated 9 December 2022, the Applicants, who are heirs of Defendant, have filed the present Revision Application. By order dated 10 January 2023, this Court stayed the impugned judgment and order, which protection continues to operate till date. During pendency of Application, Plaintiff No.1 has passed away and

his legal heirs are brought on record. By consent of learned counsel appearing for the parties, the Revision Application is taken up for hearing and final disposal. The learned counsel appearing for the Respondents has tendered certified copy of notes of evidence before the Trial Court.

8) Mr. Joshi, the learned counsel appearing for the Applicants submits that the Trial Court has erred in decreeing the suit filed by the Plaintiffs without even taking into consideration the defence of the Defendant that he secured possession of the suit premises from the developer and that the possession was never with the Plaintiffs. That the Trial Court has not recorded a definitive finding that Plaintiffs were in possession of the suit premises on the date of alleged dispossession of 28 November 2011. That no witness was examined by the Plaintiffs, who has deposed presence of Plaintiffs in the suit premises on 28 November 2011. That Plaintiffs were not conducting dispensary in the suit premises, possession of which was handed over to a builder, who had put his signboard at the suit premises. That Defendant accordingly had amended L.E. Suit No. 177/2009 pending before the Small Causes Court by filing amendment application on 25 February 2010 for addition of the developer as party defendant to the suit. That the amendment was granted on 25 March 2011. That though this case was specifically pleaded in written statement, and though evidence was led to prove averments in the written statement, the Trial Court has failed to take cognizance of the same. That, therefore, the findings recorded by Trial Court by ignoring the defence of the Defendant are patently perverse.

9) Mr. Joshi submits that Defendant is the owner and permitted his brother (Plaintiff No.1) to use the premises gratuitously. That the case involves regaining of possession of the premises owned by the Defendant when the same were found abandoned both by the Plaintiffs and developer. That it was incumbent for the Trial Court to conduct a factual enquiry as to whether Plaintiffs were in possession of the suit premises as on the date of alleged dispossession. That no such enquiry is conducted by the Trial Court and the Suit is decreed by recording cryptic findings by believing false story of Plaintiffs of dispossession on 28 November 2011. That Plaintiffs had lost possession of premises and handed it over to the developer well before 25 February 2010. That the suit was itself barred by limitation. That the Trial Court did not bother to frame the issue of limitation. That essential ingredients of Section 6 of Specific Relief Act are not complied with and the suit actually deserved dismissal. He would accordingly pray for setting aside the impugned judgment and order of the Trial Court.

10) The Civil Revision Application is opposed by Mr. Sagare, the learned counsel appearing for the Respondents. He would take me through deposition of witnesses. He would particularly highlight some of the admissions given by the deceased Defendant about Plaintiffs being in possession of suit premises. He would submit that instead of awaiting decision of L.E. Suit filed before the Small Causes Court, Defendant took law into his own hands and forcibly dispossessed the Plaintiffs. He would accordingly pray for dismissal of the Revision Application.

11) He would submit that the Trial Court has rightly decreed the suit after taking into consideration the evidence on record. That Trial Court has not committed any jurisdictional error for this Court to interfere in the impugned decree under Section 115 of the Code. That this Court cannot reappreciate the evidence in exercise of revisionary jurisdiction. That the findings by the Trial Court are well supported by the evidence on record. That Plaintiffs examined 8 witnesses to prove possession of the Plaintiffs, as well as the act of dispossession. That the issue of title is irrelevant while conducting enquiry under Section 6 of the Specific Relief Act. That the Trial Court has not believed the false story of Defendant of putting his lock on the suit premises after noticing the same were lying unlocked. That witnesses of the Plaintiffs have specifically deposed about the conduct of dispossession by the Plaintiffs from the suit premises. That thus the act of forcible dispossession without following due process of law is clearly proved in the present case. That since factum of possession of the Plaintiffs on 28 November 2011 and forcible dispossession without following due process of law are proved, passing of decree for restoration of possession was imminent. He would therefore submit that no interference is warranted in the impugned judgment and order of the Trial Court.

12) Rival contentions raised on behalf of the parties now fall for my consideration.

13) Plaintiffs instituted the suit under Section 6 of the Specific Relief Act. Section 6 of the Act provides for a summary remedy for

restoration of possession of property when a possessor is dispossessed without his consent or without following the due process of law. The remedy under Section 6 of the Act is both summary as well as special. The remedy is special on account of the fact that it creates few exceptions to the other common law remedy of recovery of possession. In Section 6 suit, it is not necessary for the plaintiff to prove his title. He need not even prove the legality of possession. He need not justify the act of his possession. All that the plaintiff needs to prove is 'settled possession'. Section 6 of the Specific Relief Act provides for shorter period of limitation of 6 months as opposed to much longer limitation period for filing suit for recovery of possession as prescribed in the Limitation Act, 1963. Thirdly, the principle of *res judicata* does not apply to the judgment and order passed in Section 6 suit as the defendant is not precluded from suing the plaintiff for recovery of possession even after plaintiff succeeds in securing a decree under Section 6 of the Specific Relief Act. Fourthly, Section 6 suit bars filing of appeal against an order or decree passed in the suit for restoration of possession. The remedy of review has also been barred. This is the reason why Section 6 suit becomes a special remedy to the plaintiff for seeking restoration of possession in departure to usual common law remedy of suing the defendant for recovery of possession.

14) Since remedy under Section 6 of the Specific Relief Act is special, the enquiry therein also needs to be summary. The court need not institute enquiry into title or nature of possession. All that needs to be examined by the Trial Court is (i) whether plaintiff was in possession of the suit premises on the date of the dispossession, ii) whether plaintiff is

dispossessed by defendant without his consent or without following the due process of law, and iii) whether dispossession has occurred within 6 months of the date of filing of the suit. It is only when all these 3 ingredients of Section 6 are satisfied, a decree for restoration of possession can be made. However, if one of the three ingredients is missing, the court has to necessarily dismiss the suit, in which case, the plaintiff can exercise common law remedy of recovering possession from the defendant as sub-section (4) of Section 6 does not bar any person from suing afresh based on title for recovery of possession. Section 6 of the Specific Relief Act provides thus:

6. Suit by person dispossessed of immovable property.—

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person through whom he has been in possession or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—

(a) after the expiry of six months from the date of dispossession;

or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

15) The limited scope of enquiry under Section 6 of Specific Relief Act has been dealt with by the Apex Court in ***ITC Ltd. vs. Adarsh Coop. Housing Society Ltd.***¹, in which the ratio of its previous judgment

¹ (2013) 10 SCC 169

in ***Sanjay Kumar Pandey and Ors. vs. Gulbahar Sheikh and Ors.***² has been taken into consideration and it has been held in paras-9 and 10 of the judgment 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 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***. In fact, para 4 of this Court's judgment passed in ***Sanjay Kumar Pandey*** 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

² (2004) 4 SCC 664

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) In *Ashapura Options Pvt. Ltd. and Ors. vs. Ashapura Developers and Ors.*³, this Court has held that settled and effective possession of a person without title would entitle him to protect his possession even against the true owner. However, the possession needs to be effective, undisturbed and to the knowledge of the owner. It has held that a casual act of possession does not have the effect of interrupting the possession of the rightful owner. This Court held that even a trespasser can be held to be in possession and can prevent the owner from taking over the possession. It is held that possession should contain the element of *animus possidendi*, i.e. intention to possess. After taking into consideration the ratio of the judgment in *ITC Ltd.* (supra), this Court held that upon satisfaction of twin requirements of i) being in possession of immovable property, and ii) being dispossessed within a period of 6 months of filing of the Suit without consent, the plaintiff can secure an

³ Interim Application (L) No. 14261 OF 2025 Decided on 16 October 2025

order of restoration of possession in Suit filed under Section 6 of the Specific Relief Act.

17) More recently, in *Jayashree Jaisingh Babar vs. Shirish Ramdas Sarode*⁴, this Court has once again dealt with the limited scope of enquiry under Section 6 of the Specific Relief Act and has held in para 10, 11, 12, 13, 14 as under:

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*.

⁴ 2026 SCC OnLine Bom 1205

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.

18) Keeping in mind the broad contours of the enquiry in the suit filed under Section 6 of the Specific Relief Act, I proceed to examine the manner in which the enquiry was conducted by the Trial Court while decreeing the suit.

19) It is Plaintiffs' case that Plaintiff No. 1 purchased the suit premises in the name of Defendant, who was less educated and who was being looked after by Plaintiff No.1. Plaintiffs claim that though the premises are purchased in name of the Defendant, the purchase was for purpose of conduct of dispensary. It is claimed that Plaintiff No.2 (son) also acquired education in medicine and started conducting his own dispensary in the suit property. It is further claimed that after marriage of Plaintiff No.2 with Plaintiff No.3, who is also a qualified doctor, the couple conducted the dispensary from the suit premises. Plaintiffs' pleaded case in the plaint in relation to the act of dispossession is as under:

8. The Plaintiffs state that on 28/11/2011 as usual the Plaintiffs closed the dispensary at about 9 p.m. and thereafter between 10 to 11 p.m. the Defendant broke open the lock of the suit premises and illegally took the forcible possession of the suit premises. The Plaintiffs came to know about the said fact on 29/11/2011, when the Plaintiffs as usual, went to open the dispensary. Immediately thereafter, the Plaintiff No.1 approached the local police station to lodge a complaint. However, the Plaintiff No.1 was made to sit the whole day and the police station did not register the FIR. Thereafter, on 30/11/2011, the Plaintiffs again approached the police station, but to no purpose. The Plaintiff No.1, therefore, gave a written complaint, which is annexed hereto and

marked Exhibit "O" and Exhibit "O-1" is the true translation of Exhibit "O" The Plaintiffs state that the Plaintiffs thereafter, time and again approached the local police station and requested the concern officer to take action against the Defendant, but to no purpose. The Plaintiffs, therefore filed Criminal Writ Petition bearing No. 3964 of 2011 before the Honourable High Court. The Plaintiffs crave leave to refer to and rely upon the papers and proceedings of the said Criminal Writ Petition when produced.

9. The Plaintiffs have been high-handedly and forcibly dispossessed from the suit premises on 28/11/2011. The Plaintiffs were in settled and lawful possession of the suit premises and have been wrongfully dispossessed.

20) Thus, the Plaintiffs claimed that on 28 November 2011, they shut the dispensary at 9 pm and Defendant broke open the lock between 10 and 11 pm and took over the possession thereof.

21) The Defendant resisted the case of Plaintiff. He claims ownership in respect of the suit property, and he appears to be the member of the cooperative society. Defendant claimed that he always possessed the suit premises, and that he permitted Plaintiff No.1 to occupy the suit premises for gratuitous purposes. There is no dispute to the position that Defendant filed L.E. Suit No. 177 of 2009 for recovery of possession of the suit premises from Plaintiffs before the Court of Small Causes. Defendant's pleaded case in the written statement is that in the week of October 2009, he noticed that the developer Om Sai Constructions had put signage board in the suit premises without permission from the society and had started making use of premises for commercial purposes. Thereafter, Defendant noticed that pamphlets were published and circulated by persons named Prakash Panchal, Prasad Kadam and Mahesh Patel of Cosmos Group having association with Om Sai Group mentioning the address of the suit

premises and calling upon other societies to go for redevelopment. Defendant accordingly alleged that there was a trespass committed on the suit premises by Cosmos. Accordingly, Defendant filed application for amendment of L.E. Suit No. 177/2009 on 25 February 2010 for impleadment of Cosmos as party defendant and for claiming possession from them. Defendant's pleaded case in this regard is as under:

....The Defendant states that in the week of October, 2009 he Defendant noticed that one builder by name Om Sal Construcion has put their board on the tenement No. 198 A-7796 of this Defendant and without any permission from the Bahujan Seva CHS Ltd, who, were the owners of the buliding No. 198A Kannamwar Nagar, had started making use of the premises of the Defendant for their commercial purpose. Thereafter it was also noticed that the pamphlets were published and circuted by three persons one Shi. Prakash Panchal, Prasad Kadam as Managers having their office at "Om Sai Group, 198A-7796, Ground Floor, Near Vikhroli Court, Mumbai- 400083 with one Mahesh Patel of Cosmos Group as Cosmos Construction business Associates with Om Sal Group writing to many Co-operative Housing Societies to contact them for redevelopment of Buildings. On top Of every page of this pamphlet, there was mentioned the name of the Cosmos Prime Projects Ltd. having office at Arihant Building, 2 and 4th Floor, Agyari Lane, Tembhi Naka, Thane (West). Thus the trespassers in the said premises being Cosmos Prime Products Ltd, through all three defendants in that L. E. Suit, the plaintiff therein filed an application for amendment of the plaint adding Cosmos Prime projects Ltd, having office at Tembhi Naka, Thane West and having Sub-office at 198-A 7796 Kannamwar Nagar as the fourth Defendant before the Hon'ble Judge presiding over Court Room No. 14, the Court of Small Causes at Bombay on 25th February, 2010.

After the service of the notice of the application one Mahesh Patel claiming himself as the Authorized representative of the proposed defendant No. 4 filed on 22nd Feb, 2011 the reply denying that the proposed Defendant No. 4 have paid any amount of Rs. 4,00,000/. to the Defendant No. 1 (Plaintiff No. 1 herein) and have entered into an agreement with Defendant No. 1 to 3 in that L.E. Suit and therefore Defendant No. 4not required to be evicted and required to be restrained by an order of temporary order of injunction from using the suit premises as the office and from parting with or from creating any third party interest in the suit premises. In the reply of Shri. Mahesh Patel for the Defendant No. 4,, therein it was also denied that the Defendant No. 4 is in possession or occupation of any part of the subject matter of the

suit premises. The Plaintiff no. 1 herein, in August, 2010 also filed an affidavit stating that proposed defendant No. 4 has no concern with the suit premises and the Cosmos Prime Project Ltd. are not trespassers in the suit premises and are not required to be added as a party to the suit. The Learned Lady Judge of the Court No. 14 of the Court of Small Causes, however allowed the amendment application. Accordingly on 25.03.2011 the plaint in L.E. Suit was duly amended and the copies of the amended plaint were served on first three Defendants in L. E. Suit No. 177 of 2009. It appears however that in December 2011 itself, the Cosmos Prime Project Ltd removed their:-,board and all the materials and shifted to Tagore Nagar, Vikhroli. Though several attempts were made to serve the Defendant No. 4, the Cosmos Prime Projects Ltd, they avoided throughout to receive the Court Notice of the amended plaint.

16. The Defendant states that in the first week of April 2011 on 6-04-2011, the plaintiff No. 1 herein attempted to put the Board of the Dispensary on the Tenement No. 7798 in building No. 198 A of Kannamwar Nagar, but within 4 days he removed it himself finding that the stay members were totally against him even in his entering the building No. 198 of the society. When the Defendant has approached the office of the society to pay the maintenance charges for October, 2011 on 3rd October, 2011, the Defendant noticed that there was and lock the door, no Board on the door and as such when he checked up to open the door, he noticed that there was no material of any sort in the tenement and as such this Defendant put his Godrej Lock No. 41124 of 7 levers, on his tenement door. Thereafter from 3 May 2011 this defendant abandoned the L. E.. Suit and stopped attending altogether L.E. Suit No. 177 of 2009 in Court Room No. 14 in the Court Small Causes as no defendant No. 4 therein Cosmos Prime Project Ltd. was coming nor any other defendant and the suit tenement was practically in the possession of this defendant where he used to go to pay the maintenance charges on 3-11-2011, 2-12-2011, 5-1-2012 and for further months to Siddhanta Sahakari Grihnirman Sanstha Maryadit. When the L. E. Suit No. 177 of 2009 was filed it was filed as a member of then Bahujanseva Co-operative Housing Society Ltd. having registration No. BOM/HSG/2206/69 having office at Sahakar Nagar No. 5, Building No. 10/194, Sahakar Nagar Road, Chembur, Mumbai 400071 and which then had four buildings, two buildings at Chembur and 'two buildings at Kannamwar Nagar including the building No. 198 at Kannamwar Nagar. The Bahujan Seva Co-operative Society Ltd. which had four buildings was bifurcated into 4 'different co-operative housing societies and for building No. 198 Kannamwar Nagar new co-operative society was formed as the Siddhanta Sahakari Grihniraman Sanstha Maryadit with new registration No. M.U.M/MHADB/HSG/ (T.C.)/12915/year 2010-2011. The Defendant states as the basis and title of the defendant's tenement No. 7796 in

building No. 198 Kannamwar Nagar in L. E. Suit No. 177 of 2009 had totally changed the L. E. Suit No. 177 of 2009 would have failed by reason of formal defect. That was the major reason of this defendant to abandon that L. E. Suit No. 177 of 2009, in Court Room No. 14 of the Court of Small Causes, at Mumbai.

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18. With reference to para 8 of the plaint it is not true or correct that on 28.11.2011 or any time prior thereto any dispensary was being run by any of the three plaintiffs. From October, 2009 by some false representations from the plaintiff No. 1 and some secret money deal with the plaintiff No. 1, one builder by name Om Sai Construction put their board outside the suit premises of this Defendant and under "address: Om Sai Group, 198 A, 7796, Ground floor, Kannamwar Nagar, No. 2, Vikhroli East, Near Vikhroli Court, Mumbai -400083. As pointed out in para 13 hereinabove, this defendant had to make an amendment application in L. E. Suit No. 177 of 2009 on 25th February, 2010 to join Cosmos Prime Projects Ltd. as a party to that suit. After going through affidavit of Plaintiff No. 1 herein, who was defendant No. I in L. E. Suit No. 177 of 2009 and after going through the affidavit in reply dated 22nd February, 2011 of Shri. Mahesh Patel as Authorised representative of proposed Defendant No. 4 and having heard arguments the Ld. Lady Judge of Court Room no. 14 of the Court of Small Causes, at Bombay allowed the amendment application allowing proposed Defendant No. 4 to be made a party to the suit as Defendant No. 4. When amended plaint amended on 25/03/2011 was sought to be served on Defendant No. 4, they avoided and ultimately in December, 2011, the fourth Defendant removed their name board put on the suit premises as "Om said Group, 198 A, 7710 Ground floor, Kannamwar Nagar 2, Vikhroli East, Near Vikhroli Court, Mumbai-400083. Thus when upto December, 2011 the builder Om Sai Group were in full occupation and use of the suit premises the whole story of the plaintiffs in para 8 of the plaint of breaking open the lock of the suit premises on 28/11/2011 appears totally baseless and false

22) This is how Defendant's pleaded case in written statement was that Cosmos had trespassed in the suit premises and that the said developer was occupying the suit premises and accordingly, Defendant was required to amend his suit filed in the Small Causes Court for seeking

recovery of possession from the developer. The Defendant led oral evidence in this regard by examining himself as a witness.

23) Thus, the Trial Court had two versions before it. Plaintiffs' version was that they locked premises on 28 November 2011 after which Defendant broke open his lock and put his own lock between 10 and 11pm. Other version was that of the Defendant that the Plaintiffs had long lost possession of suit premises and Cosmos had committed trespass and was in possession of suit premises well before February 2010 when he filed application for amendment in the L.E. Suit. Defendant claimed that when he visited society office to pay maintenance on 3 October 2011, he noticed that there was neither any lock nor any signage board on suit premises and accordingly locked the same.

24) In the light of the two diametrically opposite positions taken by the rival parties relating to act of securing possession by Defendant, it was necessary for the Trial Court to conduct factual enquiry and accept one out of the two rival stories. However, perusal of impugned judgment and order of Trial Court would indicate that it has failed to conduct this factual enquiry. The judgment and order of Trial Court is laconic, and it has accepted the Plaintiffs' version of forceable dispossession by the Defendant in following four paragraphs:

- 6 The filing of the suit before the Ld. Small Causes Court, Mumbai, is not in dispute. Likewise, the filing of the suit before the Court of City Civil, Mumbai, is concerned, the plaintiff has filed the certified copies of both the suits. It reveals from the pleadings of the defendant before the Ld. Small Causes Court that the defendant has claimed that the plaintiff No.1 being his brother is allowed to reside in the suit property as a

gratuitous licensee. Thus, thereby, the defendant has admitted the previous possession of the plaintiff in the suit property. The question remains how the possession of suit premises freceived to the defendant. The plaintiffs are claiming that the defendant has dispossessed them forcibly. Whereas, the defendant is claiming that having found the suit premises without lock, he put his lock to the suit premises. Thus, he got the possession of suit premises.

- 7 The rival parties have given much stress on the title. Both the plaintiffs and deceased defendant claiming the title to the suit property. However, it is being the suit on the basis of dispossession, the title has no rule for deciding this suit. The plaintiffs are required to prove their previous possession as well as dispossession without their consent and without following the due procedure of law. If this, two ingredients are established, the plaintiffs are entitled for the recovery of possession, upon filing of the suit within six months from the dispossession. The plaintiffs are claiming dispossession as on 28/11/2011/ The instant suit is filed on 09/04/2012, before the Hon'ble High Court, which was later on transferred to this Court. Thus, the suit is filed within six months from alleged date of dispossession.
- 8 **The possession of the plaintiffs and then the possession of the deceased defendant is not in dispute.** The deceased defendant had filed the suit for recovery of possession before the Ld. Small Causes Court and later on, he abandoned to prosecute the same. Thus, it is not the case of defendant that he received the possession by adopting due procedure of law or by consent of plaintiffs. **The only defence raised by the deceased defendant that he went to the society office of the building and found that the door of premises was opened he just put his lock there and thereby, he got the possession. Definitely, the way he claiming the receipt of possession is neither by adopting the due procedure of law nor with consent of plaintiffs.** In absence of such proof, I found substance in the contentions of plaintiffs. The contentions of plaintiffs are supported by the witnesses, who have corroborated with the contentions of plaintiffs. **Thus, I am of the view that the plaintiffs have established their dispossession from suit premises of without following due procedure of law and without their consent.**
- 9 The Ld. Counsel for the legal heirs of the deceased defendant has vehemently contended that the plaintiffs have no title to the suit property and he is relying on various documents relating to the title. The defendant may prove his title and may recover his possession by adopting the due procedure of law by filing appropriate proceeding. Once a person is inducted in possession of premises, only mode to

recover the possession from such person is with his consent or by adopting due procedure of law. In this case, the deceased defendant has neither adopted due procedure of law nor received the consent of dispossession from the plaintiffs. It is being the suit on the basis of dispossession u/s.6 of Specific Relief Act, the plaintiffs are succeeded to prove their previous possession and dispossession without consent and without following due procedure of law. Considering the above discussed position, I answer point No.1 and 2 in affirmative.

(emphasis added)

25) Perusal of above findings would indicate that the Trial Court has not even taken into consideration the defence of the Defendant. There is absolutely no discussion as to why the Trial Court has refused to accept the defence of the Defendant about having secured possession from a third party, i.e. Cosmos. The Trial Court has emphasised the requirement of Plaintiffs proving their possession as on the date of dispossession. However, the Trial Court has recorded an egregiously perverse finding that *“The possession of the plaintiffs and then the possession of the deceased defendant is not in dispute”*. This finding is contrary to pleadings and evidence on record. Defendant never admitted possession of the Plaintiffs as on the alleged date of dispossession of 28 November 2011. Defendant’s admission of Plaintiffs being put in possession as gratuitous licensee in the past is irrelevant. Plaintiffs needed to prove that they possessed the premises as on 28 November 2011 when the alleged act of dispossession occurred. Far from admitting Plaintiffs’ possession as on 28 November 2011, the Defendant had pleaded that Cosmos had committed a trespass in the suit premises well before February 2010 and that the suit premises were lying unlocked on 3 October 2011 when he locked the same. The finding of Defendant not disputing possession is thus recorded in total

ignorance of the averments in the written statement and evidence on record. The finding is thus patently perverse.

26) Though the Trial Court has laid emphasis on Defendant filing suit for recovery of possession before the Small Causes Court, it has ignored the position that the plaint in that suit was amended and the act of Cosmos being in possession of the suit premises was brought on record. Thus, the case does not involve an eventuality of Defendant taking law into his hands during pendency of suit for eviction before the Small Causes Court and dispossessing the Plaintiffs.

27) Mr. Sagare has also strenuously attempted to impress upon me that possession of Plaintiffs at a point of time prior to 28 November 2011 is proved. He has taken me through evidence of several witnesses examined by Plaintiffs to prove that they have seen Plaintiffs conducting dispensary in suit premises. However, what Mr. Sagare misses and the Trial Court has also missed is the point that Plaintiffs needs to prove possession 'on the date of dispossession', which in the present case is claimed by them to be 28 November 2011. Therefore, mere act of Defendant filing suit for recovery of possession from the Plaintiffs cannot be a reason to infer that on 28 November 2011, Plaintiffs must be in possession of the suit premises. This is particularly because Defendant came with a specific story that Cosmos had committed trespass and was possessing the premises.

28) Once the Trial Court was called upon to decide as to who was in possession on 28 November 2011 (Plaintiffs or Cosmos), the Trial Court was expected to conduct factual enquiry by evaluating the evidence on

record. The Trial Court has failed to discharge this primary responsibility and has erroneously assumed that Defendant never disputed Plaintiffs' possession of the suit premises. The Trial Court has conflated the issue of Plaintiffs' possession at the time of filing of L.E. Suit no 177 of 2009 with the concept of Plaintiffs being in possession on 28 November 2011. No doubt, Defendant admitted Plaintiffs' possession in the year 2009, which was apparent from filing of Suit for recovery of possession before the Small Causes Court. Defendant, however, took a stand that in the week of October 2009, he had noticed a developer putting his signage board on the premises and distribution of pamphlets bearing address of the suit premises by the developer. Defendant thereafter pleaded that Cosmos committed trespass in the suit premises and started occupying the same. Thus, mere filing of suit for recovery of possession by the Defendant in the Small Causes Court is not sufficient to infer that on 28 November 2011 as well, Plaintiffs must be in possession.

29) The evidence of eight witnesses examined on behalf of Plaintiffs again does not indicate Plaintiffs' possession on 28 November 2011. Apart from Plaintiff No.1, Plaintiffs examined Mr. Mahesh Shantaram Chavan, Pradeep Digambar Wani, Vasant Ghaina Kharat, Deepak Mahinder Trivedi, Sachin Dada Jadhav, Dinkar Sitaram Kadam and Dilip Raghavrao Pawar as their witnesses. However, none of the witnesses deposed that they visited the suit premises on any day in close proximity to 28 November 2011. Most of the witnesses deposed about 'gaining knowledge' about Defendant breaking open the lock on 29 November 2011, which is hearsay. None of the Plaintiffs' witnesses have deposed that they

personally saw Plaintiffs in possession or running dispensary on 28 November 2011. However, there is no direct evidence of Plaintiffs being in possession of the premises on 28 November 2011.

30) In any case, it was incumbent for the Trial Court to conduct factual enquiry about Plaintiffs' possession on 28 November 2011, which appears to have been skirted in the present case on account of erroneous presumption by the Trial Court that Defendant had admitted Plaintiffs' possession. All that Defendant admitted was that Plaintiffs were in possession of the suit premises on the date of filing of L.E. Suit. However, Defendant never admitted that Plaintiffs were in possession of the suit premises on 28 November 2011.

31) There is also a reason to believe the story of Defendant of Cosmos being in possession of suit premises. The plea of Cosmos being in possession of suit premises was not raised for the first time by the Defendant in the written statement. He filed application for amendment of Plaint in L.E. Suit 177/2009 on 25 February 2010 for impleadment of Cosmos. It cannot be that in February 2010, Defendant was clairvoyant enough to foresee a need to take the defence of Cosmos being in possession of suit premises. He could not envisage in February 2010 that two years later, Plaintiffs would file suit under Section 6 of the Specific Relief Act. It cannot be stated that the Defendant hatched a plan of claiming Cosmos' possession by amending the L.E. Suit in February 2010, then dispossessed Plaintiffs on 28 February 2011 and then raised the defence of Plaintiffs not being possession while defending the Section 6

Suit. In any case, no such finding is recorded by the Trial Court, which has completely ignored the defence of the Defendant.

32) Also of relevance is the fact that the Plaintiffs were fully aware of the position that the Defendant had applied for amendment of Plaintiff in L.E. Suit in February 2010 and had raised the plea of Cosmos being in possession of the suit premises. Therefore, something ought to have been pleaded in the plaint filed in Section 6 Suit about the said plea of the Defendant. The Plaintiffs however chose to raise a plain plea in Section 6 Suit that they were in possession of the suit premises on 28 November 2011 and that they were forcibly dispossessed by the Defendant. Further, taking note of Defendant's defence in the written statement about Cosmos' possession, Plaintiffs ought to have led evidence of some witness to dispel that theory. In Section 6 Suit, the burden to prove possession on the date of dispossession is strong for the plaintiff. Possession cannot be inferred in absence of a solid proof. Defendant came out with a story that Plaintiffs were in possession but handed over the same to a developer and the same was later taken over by Cosmos and that he recovered possession from Cosmos. Therefore, after noticing Defendant's stand about Cosmos' possession from the amendment application filed in February 2010, Plaintiffs were required to prove with credible evidence, of their own possession on 28 November 2011.

33) Thus, Defendant appears to be consistent with the position that Plaintiffs had lost possession of the suit premises and Cosmos was using the same. The Trial Court has not bothered to examine or decide this

defence of the Defendant of having secured possession from Cosmos. The fact that Defendant filed application for amendment in suit on 25 February 2010, i.e. 1 year and 9 months before alleged dispossession of the Plaintiffs forms sufficient material to infer that Plaintiffs were not in possession of suit premises on 28 November 2011. The Defendant had already started making efforts of securing possession of the suit premises from Cosmos. He claims to have secured possession when Cosmos left them unattended. Whether he indeed found suit premises unlocked on 3 October 2011 and whether his acts of putting lock on suit premises on 3 October 2011 was legal or otherwise is a part of second part of inquiry. The first part of the inquiry is about Plaintiffs' possession on date of alleged dispossession. In the present case, Plaintiffs have thoroughly failed to prove their possession as on 28 November 2011. Since the prime ingredient of Section 6 is not fulfilled, the Trial Court ought to have dismissed the suit. If Plaintiffs believe that they are entitled to possess the suit premises and that Defendant has illegally secured the same, it would be for the Plaintiffs to file a substantive suit for recovery of possession based on their claim of title. As of now, the Plaintiffs have failed to prove their possession of suit premises on the day the alleged dispossession took place. In that view of the matter, the summary relief of restoration of possession could not have been granted in favour of Plaintiffs in suit filed under Section 6 of the Specific Relief Act. The Trial Court has thus erred in decreeing the suit of the Plaintiffs.

34) The conspectus of above discussion is that the impugned judgment and order of the Trial Court is indefensible and liable to be set aside.

35) The Revision Application accordingly succeeds. The judgment and order dated 9 December 2022 passed by the Judge, City Civil Court, Greater Bombay in S.C. Suit No. 3192 of 2012 is set aside and the Suit is dismissed. The Civil Revision Application is accordingly allowed. However, considering the facts and circumstances of the case, there shall be no order as to costs.

[SANDEEP V. MARNE, J.]

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SAWANT
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