

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.10893 OF 2013**

**Dalpatbhai N Mistry : Petitioner.  
Versus  
Kanaiyalal Purshottamdas Shah and ors : Respondents.**

**WITH  
WRIT PETITION NO.10894 OF 2013**

**Akshay C Desai : Petitioner.  
Versus  
Kanaiyalal Purshottamdas Shah and ors : Respondents.**

**WITH  
WRIT PETITION NO.10895 OF 2013**

**Inderpreet Kaur Anand : Petitioner.  
Versus  
Kanaiyalal Purshottamdas Shah and ors : Respondents.**

**WITH  
WRIT PETITION NO.10896 OF 2013**

**Rajan R Save : Petitioner.  
Versus  
Kanaiyalal Purshottamdas Shah and ors : Respondents.**

**WITH  
WRIT PETITION NO.10897 OF 2013**

**Mukund S Parmar : Petitioner.  
Versus  
Kanaiyalal Purshottamdas Shah and ors : Respondents.**

**Mr. G S Godbole i/by Mr. Sanjiv A Sawant, Mr. Ketan Joshi and Mr. H V  
Kode for the Petitioners in all the Writ Petitions.  
Mr. Satyam Vaishnav with Ms.Nupur Mukherji, Mr. Jayesh Vyas and Mr.  
Anil Chavan i/by Mr. Vipul Shukla for the Respondent Nos. 1 to 10 in all  
the Writ Petitions.  
Mr. N A Bandodkar, II Assistant Court Receiver present in Court.**

**CORAM : R. M. SAVANT, J.**  
**DATE : 29<sup>th</sup> November 2013**

**P.C.**

1           The above Writ Petitions take exception to the identical orders dated 21/10/2013 passed by the learned Judge of the City Civil Court, Greater Bombay by which order the Chamber Summonses filed by the Petitioners above named (being Chamber Summons Nos. 2090, 2087, 2089, 2088 and 2091 of 2013) for being granted complete inspection of the documents referred to by the Respondent Nos.1 to 10 i.e. the original Plaintiffs came to be rejected.

2           The Petitioners in the above Writ Petitions are the obstructionists in so far as execution of the decree dated 15/4/1997 is concerned. The obstructionists have filed the Chamber Summonses invoking Order XXI Rule 97 of the Code of Civil Procedure for obstruction of the execution of the said decree which is one for possession. In the said Chamber Summonses the Respondents/original Plaintiffs have filed their reply in which reply they have adverted to the antecedent facts as also the litigation which took place between the Respondent Nos. 1 to 10 i.e. the original Plaintiffs and the Respondent No.12 i.e. the original Defendant No.2 one Tara Mannu Mishra, to the suit in question. Upon receipt of the said reply of the Respondent Nos.1 to 10 in the

said Chamber Summonses, the obstructionists through their advocates gave notice calling upon the Respondent Nos.1 to 10 to give inspection. It appears that thereafter correspondence ensued between the two advocates i.e. the advocate for the obstructionists and the advocate for the Respondent Nos.1 to 10. Ultimately inspection was given of some of the documents. The Chamber Summonses have been filed, as indicated above, on the ground that complete inspection was not given, and that if the Respondent Nos. 1 to 10 are seeking to rely upon the said documents, as and by way of fair opportunity, the obstructionists should be granted complete inspection. The Chamber Summonses filed for complete inspection were replied to on behalf of the Respondent Nos.1 to 10. The learned Judge of the City Civil Court has rejected them by the identical orders dated 21/10/2013.

3           Before advertng to the grounds on which the Chamber Summonses filed by the obstructionists have been rejected it would be apposite to advert to the litigation leading up to the decree in question which is put in question and the litigation post the decree. The suit in question filed by the Respondent Nos. 1 to 10 herein came to be decreed on 15/4/1997 and the Defendant No.2 was directed to hand over possession. The Defendant No.2 filed a Notice of Motion for setting aside the said decree on the ground that same being an exparte decree. The said Notice of Motion came to be dismissed by the City Civil Court against which an Appeal from Order came to be filed in

this Court. The Defendant No.2 filed RAD Suit No.421 of 1971 in the year 1971 against the Plaintiffs for a declaration of tenancy which came to be decreed on 12/10/1984 against which the Plaintiffs preferred an Appeal No.822 of 1984 which Appeal came to be allowed by the two Judges bench of the Small Causes Court by the judgment and Order dated 4/10/1996 and the decree came to be set aside and the suit filed by the Defendant No.2 was dismissed. Thereafter the Defendant No.2 preferred Writ Petition being No.5680 of 1998 in this Court which Writ Petition was heard along with the Appeal from Order which was filed against the dismissal of the Motion being Appeal from Order No.600 of 2000. Both the Writ Petition and the Appeal from Order were dismissed by a learned Single Judge of this Court by the order dated 10.1.2013, against which the Defendant No.2 preferred SLPs in the Apex Court. The said SLPs were dismissed by the Apex Court by order dated 12/4/2013. Hence the aforesaid facts disclose that the challenge to the decree dated 15/4/1997 has failed and the decree has become final and binding.

4           Now coming to the ground on which the Chamber Summonses were rejected. The gist of the reasoning of the Trial Court is based on the antecedent facts which have been adverted to herein above. The Trial Court was of the view that the inquiry in the instant case i.e. the Chamber Summonses filed under Order XXI Rule 97 of the Code of Civil Procedure are restricted to only whether the Applicants i.e. the Petitioners herein have an

independent right. The Trial Court has observed that in so far as the documents are concerned, most of the documents relate to various proceedings i.e. suits and appeals between the Plaintiffs and the Defendant No.2 and that the obstructionists could obtain the certified copies of the same. The Trial Court further observed that since some partial inspection was given in the meeting held on 21/9/2013, no further direction is necessary. As indicated above, it is the said orders dated 21/10/2013 which are impugned in the present Petitions.

5           The documents which are referred to in the affidavit in reply of the Respondent Nos.1 to 10 of which inspection has been sought are culled out in the annexure to the affidavit in rejoinder filed by the obstructionists. As rightly observed by the Trial Court most of the documents are the proceedings and the orders passed by various Courts. I have gone through the list of the documents which have been culled out. The obstructionists have in the table, mentioned as to the documents of which copies have been provided and as to in respect of which the copies have not been provided. Having gone through the list and having considered the nature of the documents, in my view, the documents which would be relevant for the purpose of consideration of the applications of the obstructionists under Order XXI Rule 97 of the Code of Civil Procedure can be said to have been furnished to the obstructionists.

6           The learned counsel appearing on behalf of the Petitioners would seek to rely upon the pronouncement of the Apex Court in the case of *Shreenath and anr. v/s. Rajesh and ors* reported in *(1998) 4 SCC 543* and the judgment of a learned Single Judge of this Court in the case of *Kishan alias Krishnakant, Ranchhoddas Kapadia & anr v/s. Lalji Dharmdas Kapadia & ors.* reported in *1982(1) Bom. C.R. 478* which are the expositions of the Apex Court and this Court on the scope of the enquiry under Order XXI Rule 97 of the Code of Civil Procedure. There can be no gain saying of the fact that the enquiry under Order XXI Rule 97 of the Code of Civil Procedure is a full-fledged inquiry after the amendment of the Code of Civil Procedure in the year 1976. However, the said full-fledged inquiry is limited to the issue which arises for consideration before the Executing Court in the applications filed under Order XXI Rule 97 of the Code of Civil Procedure. In the said context the Judgment of the Apex Court cited by Shri Vaishanva in the case of *Silverline forum Pvt. Ltd v/s. Rajiv Trust and anr* reported in *(1998) 3 SCC 723* can be gainfully referred to. The Apex Court has observed that the Executing Court is obliged to determine only such questions as may be arising between the parties and that such questions must be relevant to the adjudication of the complaint of the obstructionists. In my view therefore in the guise of seeking an inquiry under Order XXI Rule 97 of the Code of Civil Procedure it is not open for the obstructionists to raise such issues which are not germane to the said inquiry. The obstructionists as can be seen have sought

the document of conveyance of the Plaintiffs. How that document is relevant in so far as their applications under Order XXI Rule 97 of the Code of Civil Procedure begs an answer.

7           It is required to be noted that the obstructionists have come with a case that they are the tenants of the Defendant No.2, in respect of which case their pleadings are there on record. It is further required to be noted that the obstructionists (except the Petitioner in Writ Petition No.10896 of 2013) all filed RAD Suits in the Small Causes Court wherein they had averred that a tenancy was created in their favour by the Defendant No.2 between the period of 1993 and 1997. Hence prima facie the case of the obstructionists is that they are claiming through the Defendant No.2 who, is already faced with a decree of eviction which is put into execution. The scope of the inquiry therefore in the Chamber Summonses filed by the obstructionists would be limited, as to whether the obstructionists establish any independent right. In my view, though the Trial Court seems to have erroneously made some stray observations bordering on the merits of the applications under Order XXI Rule 97 of the Code of Civil Procedure, this Court therefore deems it fit to issue a clarification in respect of the said observations in the latter part of this order. This Court after going through the list of documents and after taking into consideration the documents which have been furnished to the obstructionists during the course of inspection, has come to a conclusion that the relevant

documents have in fact been furnished to the obstructionists. The learned counsel appearing on behalf of the Respondent Nos.1 to 10 fairly states that since the Chamber Summons No.397 of 1999 has already been furnished to the obstructionists, the affidavit in support of the said Chamber Summons would be furnished to the obstructionists within one week from date. In the light of the aforesaid, no case for interference is made out, the Writ Petitions are accordingly dismissed. Needless to state that the observations made in the impugned orders as well as the observations made herein above would not influence the Executing Court whilst deciding the Chamber Summonses filed under Order XXI Rule 97 of the Code of Civil Procedure and the same to be decided on their own merits and in accordance with law.

**[R.M.SAVANT, J]**