

Tamil Nadu Handloom Weavers Cooperative Society Vs S.R. Ejaz rep. by his Power Agent, Muralidhar T. Balani

Court: Madras High Court

Date of Decision: Sept. 17, 2009

Acts Referred: Civil Procedure Code, 1908 (CPC) " Section 35A

Constitution of India, 1950 " Article 141

Presidency Small Cause Courts Act, 1882 " Section 41

Specific Relief Act, 1963 " Section 6

Citation: (2009) 5 LW 79 : (2009) 8 MLJ 991

Hon'ble Judges: K.K. Sasidharan, J

Bench: Single Bench

Advocate: R. Subramanian, for the Appellant; K.M. Vijayan for D. Ravichandran, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K.K. Sasidharan, J.

This is a revision filed by the defendant in O.S. No. 2889/2009 on the file of the XIV Assistant City Civil Court,

Chennai and the challenge is to the order dated 15.04.2009 in I.A. No. 5320/2009 whereby and whereunder, an interlocutory order to maintain

status quo was granted in spite of specific direction issued by the Supreme Court to put the petitioner in possession of the suit property forthwith in

case the respondent failed to give an undertaking to vacate the suit premises before 30 November 2009.

2. The substantial prayer in the revision is to reject the plaint on the ground of re-litigation.

The facts:

3. The subject proceeding had a chequered history.

4. The petitioner is the owner of the premises bearing Door No. 843, Anna Salai, Chennai-2. The property was given on lease to the respondent

on a monthly rent of Rs. 157.50. The petitioner originally filed a suit in O.S. No. 174/1978 to evict the respondent from the subject premises. The

respondent was evicted during the pendency of the suit which resulted in filing a suit by him u/s 6 of the Specific Relief Act, in O.S. No.

6998/1996. The suit was dismissed by the trial Court and in a revision, the High Court remanded the matter to the trial Court for fresh disposal.

However, the said order dated 22.05.2001 in CRP No. 1818/1995 was challenged by the respondent before Supreme Court in Civil Appeal No.

1671/2002. The Honourable Supreme Court as per order dated 26.02.2002, allowed the appeal and directed restoration of possession of the

property to the respondent. Accordingly, possession was restored on 01.04.2002. The suit in O.S. No. 174/1978 was subsequently withdrawn.

5. While the matters stood thus, the revision petitioner filed an ejectment suit before the Court of small causes at Chennai praying for a decree

directing the respondent to vacate and deliver vacant possession of the property. Since the petitioner is a Cooperative Society, the building owned

by the society was exempted from the provisions of Tamil Nadu Buildings (Lease & Rent Control) Act. The petitioner was entitled to invoke the

provisions of Section 41 of the Presidency Small Causes Court Act and accordingly, the suit was instituted.

6. The suit was contested by the respondent by filing written statement with the following substantial contentions:

(a) The plaintiff has avoided the jurisdiction of the Presidency Small Causes Court only to circumvent the filing of a suit in City Civil Court. Plaintiff

having filed an earlier suit in City Civil Court, cannot be allowed to abuse the process of law by invoking the jurisdiction under the Presidency

Small Causes Court Act.

(b) The plaintiff having filed an earlier suit before the City Civil Court is precluded from filing a fresh suit and as such, the Court has no jurisdiction

to try the suit.

(c) Plaintiff has not taken leave before withdrawing the suit in O.S. No. 174/1978 and as such, they are precluded from filing a fresh suit on the

basis of the very same cause of action.

7. The Ejectment Suit 20/2005 was allowed by the III Court of Small Causes, Chennai as per judgment and decree dated 29.08.2008.

8. The judgment and decree dated 29.08.2008 in E.S. No. 20/2005 was challenged before this Court in C.R.P. NPD No. 3338/2008. This Court

agreed with the findings recorded by the trial Judge and dismissed the revision as per order dated 29.10.2008. The order in C.R.P. NPD No.

3338/2008 was challenged by the respondent before the Supreme Court and the SLP was dismissed as per order dated 09.02.2009. While

dismissing the Special Leave Petition, Supreme Court granted time till 30.11.2009 to vacate the premises subject to the production of an

undertaking affidavit within four weeks, failing which, the petitioner was granted liberty to execute the decree with police protection and without

notice to the respondent.

9. While the petitioner was expecting delivery of possession of the property in view of the non submission of undertaking affidavit by the

respondent before the Supreme Court, they were served with a copy of the order in I.A. No. 5320/2009 in O.S. No. 2889/2009 on the file of the

XIV Assistant Judge City Civil Court, Chennai granting an order to maintain status quo. The petitioner immediately entered appearance and filed

their counter affidavit contending inter-alia that the present suit is clearly an abuse of process of law and is in violation of the order passed by the

Supreme Court and as such, the interlocutory order has to be vacated. However, even after filing counter, the learned Trial Judge appears to have

not taken any steps to dispose of the interlocutory application and the matter was adjourned periodically. In such circumstances, the petitioner has

come up with this civil revision petition to set aside the interlocutory order and to reject the plaint.

Submissions:

10. The learned Counsel for the revision petitioner submitted that the contentions now raised in the civil revision petition pertaining to maintainability

has already been decided in the earlier round of litigation. According to the learned Counsel, the respondent is not entitled to re-agitate the very

same issues, by taking up a fresh ground that the rack rent was beyond the pecuniary jurisdiction of the Small Causes Court and as such, the very

suit was not maintainable before the said Court. The learned Counsel further contended that immediately on receipt of the order to maintain status

quo, petitioner moved the trial Court with an application to vacate the interim order. Even though he was ready on 15.06.2009 itself to argue the

matter, the trial Court, without any reason, adjourned the matter to 23.06.2009 by extending the interim order. Even on 23.06.2009, he was ready

but the other side was not ready. However, the learned Trial Judge recorded that both the parties were not ready and accordingly, adjourned the

matter to 18.07.2008. The learned Counsel vehemently contended that the respondent has no respect for law and he is a man with scant regard for

the order passed by the Supreme Court. It was his further contention that the trial Court, having been appraised of the direction issued by the

Supreme Court was not justified in extending the interim order time and again.

11. The learned Senior Counsel appearing for the respondent, opposed the very revision on the ground of maintainability. According to the learned

Senior Counsel, the petitioner has got an alternative remedy before the trial Court itself and in fact, he has already availed the said remedy by filing

counter with a prayer to vacate the interim order and as such, it is not permissible to file a revision against the interlocutory order. The learned

Counsel also placed reliance on the decision of the Supreme Court in A. Venkatasubbiah Naidu v. S. Chellappan and Ors. 2008 SCC 695 as well

as a decision of a learned Judge of this Court in J. Lilli Jabakani and Ors. v. T.A. Chandrasekar 2006(5) CTC 848 in support of his contention

that the revision under Article 227 of the Constitution of India is not maintainable against an interim order.

The Issue:

12. The only question which arises for consideration in the present revision is whether the respondent is entitled to maintain a suit to protect his

possession in view of the binding judgment in E.S. No. 20/2005 which has attained finality, coupled with the direction issued by the Supreme

Court to vacate the premises and to put the petitioner in possession of the suit property.

Discussion:

13. The suit in E.S. No. 20/2005 was preferred by the revision petitioner before the Small Causes Court, Chennai as the petitioner was a

Cooperative Society exempted from the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act. The valuation for the purpose of

jurisdiction was found to be within the pecuniary jurisdiction of Small Causes Court and accordingly, the suit was instituted.

14. The suit was resisted by the respondent by filing written statement. The respondent specifically challenged the jurisdiction of the trial Court as

according to him, the Small Causes Court was not having the jurisdiction to try the matter. The respondent has also taken up a contention that the

second suit was not maintainable as the earlier suit was dismissed without liberty.

Issues considered by the trial Court:

15. The trial Court framed the following issues on the basis of pleadings:

1. Whether this Court has no jurisdiction to try this suit?
2. Whether the decree in O.S. No. 174/1978 acts as res-judicata to this suit?
3. Whether the defendant is liable to be evicted from the suit premises?
4. To what relief the plaintiff is entitled to?

16. While the suit was pending, petitioner raised the issue of jurisdiction again, as according to him, Small Causes Court had no jurisdiction to

maintain the suit as the petitioner has not satisfied the ingredients of Section 41 of the Presidency Small Causes Court Act, 1882. The said

contention was negated by the trial Court and a revision petition was preferred before this Court in CRP PD No. 1687/2007. This Court

dismissed the revision by observing that the question of jurisdiction is a matter to be raised before the trial Court at the time of trial.

17. Subsequently, the respondent filed an application in M.P.SR No. 1787/2001 in Ejectment Suit No. 20/2005 invoking Order 7 Rule 11 to

reject the plaint. The said application was rejected by the trial Court and again it was taken up before this Court. The civil revision petition was

disposed of by this Court directing the trial Court to take steps for an early disposal of the ejectment suit.

18. The respondent again filed a memo before the trial Court to frame an issue with regard to the jurisdiction and the said memo was rejected by

the Court as per order dated 08.02.2008. The order was challenged before this Court in C.R.P.(PD) No. 791/2008. This Court was of the

opinion that the issue regarding maintainability of the suit has to be decided by the trial Court along with the ejectment suit and accordingly, the trial

Court was directed to dispose of the suit within six months. The said order dated 28.02.2008 has become final.

Nature of disposal:

19. The question of jurisdiction was considered by the trial Court as a substantial issue. The said issue was answered thus:

Therefore in view of the ruling, since the rack rent is within the limits fixed by Section 41 of the Small Causes Court Act, this Court is having

concurrent jurisdiction to try this suit.

20. The second issue with regard to maintainability of the second suit without liberty to file a fresh suit in the earlier suit in O.S. No. 174/1978 was

also decided against the respondent, as according to the trial Court, withdrawal of the suit in O.S. No. 174/1978 does not act as res judicata.

Finally, after rejecting the contention regarding maintainability and res judicata, the trial Court rendered a factual finding that the respondent is liable

to be evicted from the petition schedule premises.

21. The judgment and decree dated 29.08.2008 in E.S. No. 20/2008 was challenged before this Court in CRP NPD No. 3338/2008. In the

grounds of appeal, the petitioner has specifically pleaded that the Small Causes Court has no jurisdiction to take up the ejectment suit. The

contention raised by the Counsel appearing for the respondent was answered by this Court in CRP NPD No. 3338/2008 and a categorical finding

was recorded that the petitioner was entitled to invoke the statutory remedy available u/s 41 of Central Act XV of 1882. The order dated

29.10.2008 in CRP NPD No. 3338/2008 was challenged before the Supreme Court in SLP No. 2277/2009.

Direction by Supreme Court:

22. The Supreme Court having found that there was no ground made out to interfere in the order passed by this Court in C.R.P. No. 3338/2008,

dismissed the Special Leave Petition. The order dated 09.02.2009 in SLP Civil Nos. 2277/2009 reads thus:

Heard the learned Counsel for the petitioner.

We do not find any ground to interfere with the impugned order.

The SLP is, accordingly, dismissed.

The petitioner is, however, granted time till 30th November, 2009, to vacate the premises in question upon filing usual undertaking in this Court

within four weeks from today.

It is directed that in case the petitioner fail to vacate the premises in question within the aforesaid time, it would be open to the decree holder to file

an execution petition for delivery of possession and incase such a petition has been already filed, an application shall be filed therein to the effect

that the petitioner has not vacated the premises in question within the time granted by this Court. In either eventuality, the Execution Court is not

required to issue any notice to the petitioner. The Executing Court will see that delivery of possession is effected within a period of fifteen days

from the date of filing of the execution petition or the application aforementioned. In case for delivery of possession any armed force is necessary,

the same shall be deputed by the Superintendent of Police within forty eight ours from the date requisition is received therefor. It is also directed

that in case anybody else, other than the petitioner, is found in possession, he shall also be dispossessed from the premises in question.

Needless to say that if the respondent feels aggrieved by this part of the order, it shall be open to it to seek its recall.

23. The petitioner was granted time till 30 November 2009 to vacate the premises, subject to the condition of filing an undertaking within four

weeks from the date of the order. However, no such undertaking was given by the respondent. Therefore, the second part of the direction as

contained in the order of the Supreme Court has come into play. Consequently, the respondent was liable to be evicted forthwith and the

Executing Court was obliged to put the petitioner in vacant possession of the property even without notice to the respondent. In fact, the executing

Court was directed by the Honourable Supreme Court to deliver possession within fifteen days from the date of filing the execution petition and the

Superintendent of Police was directed to give protection to execute the order.

24. The respondent with a view to circumvent the order passed by the Supreme Court, approached the City Civil Court with a suit in O.S. No.

2889/2009, which according to him was based on legal opinion which he received subsequent to the dismissal of the special leave petition.

25. In the plaint in O.S. No. 2889/2009, the respondent challenged the judgment and decree in E.S. No. 20/2005 mainly on the ground that the

rack rent was far above the pecuniary jurisdiction of the Small Causes Court and as such, the suit before the said Court was not maintainable.

26. It is true that the respondent has disclosed the dismissal of the SLP by the Supreme Court and a copy of the order dated 09.02.2009 in SLP

No. 2277/2009 was also produced along with the plaint.

Cause of action for the subject suit:

27. The cause of action for filing the suit was explained in para 12 of the plaint thus:

12. The cause of action for the above suit arose during 2005, when the defendant filed E.S. No. 20/2005 before the III Small Causes Court,

Chennai falsely stating that the rack rent is Rs. 1890/-. On 29.08.2008 when the suit was decreed on 29.10.2008 when the decree was confirmed

in revision by the Hon"ble High Court, on 09.03.2009 when the true and actual rack rent came to the knowledge of the plaintiff and on subsequent

dates, dedie in diem when the threat of eviction on the strength of the said decree subsists.

28. The respondent has also filed an application in I.A. No. 5320/2009 praying for an order of interlocutory injunction restraining the revision

petitioner and their men and agents from interfering with his peaceful possession and enjoyment of the property till the disposal of the suit. The said

application was registered on 15.04.2009, as evident from the Court Seal and on the very same day, the learned XIV Assistant Judge passed an

order to maintain status quo. The said order reads thus:

Order dated. 15.04.2009

Notice by 29.04.2009. Status quo is to be maintained by either parties till then. The petitioner is permitted to take private notice also.

29. The interlocutory order granted on 15.04.2009 was only a docket order directing the parties to maintain status quo till 29.04.2009. The order

is found on the docket in I.A. No. 5320/2009. There was nothing indicated in the said order to suggest that a separate detailed order was passed

in the very same matter in addition to the brief docket order.

Interim order:

30. The brief order which was passed on 15.04.2009 in I.A. No. 5320/2009, was supplemented with reasons subsequently and it reads thus:

Heard the petitioner"s counsel. Perused the records. As seen from the Document No. 7 i.e. Copy of the order of the Hon"ble Apex Court in

S.L.A. No. 2277/2009 dated 09.02.2009, the petitioner/plaintiff is in possession of the petition mentioned property and he has been granted time

till 30th November 2009 to vacate the premises by the Hon"ble Apex Court. Meanwhile, the petitioner/plaintiff has filed the above suit for a

declaration and a permanent injunction and has come forward with this petition for an order of ad interim injunction restraining the

respondent/defendant from interfering with the peaceful possession and enjoyment of the premises, till the disposal of the suit. Under these

circumstances, notice to the respondent/defendant is ordered returnable by 29.04.2009 and either parties are directed to maintain status quo till

then. The petitioner is permitted to take private notice also. Call on 29.04.2009.

31. It is found from the trial Court order that the Court had the benefit of considering the order passed by the Supreme Court in SLP No.

2277/2009. Therefore, it was not as if the trial Court was not aware of the order passed by the Supreme Court. The judgment dated 29.08.2008

in E.S. No. 20/2005 as well as the order passed by this Court dated 29.10.2008 in CRP NPD No. 3338/2008 were also before the trial Court.

When a specific direction was issued by the Supreme Court, the learned Trial Judge should have directed the respondent at least to inform the

Court whether an affidavit was filed before the Supreme Court, so as to enable the respondent to be in possession of the property till 30

November 2005. In case the respondent failed to file such an affidavit, the order of the Supreme Court would come into operation forthwith and

the respondent was liable to be evicted even without notice to him.

32. While considering an application for interlocutory injunction, the trial Court was obliged to peruse the plaint as well as the documents produced

by the plaintiff in the suit at least to see prima facie as to whether he would be able to decree the suit ultimately. In case the Court was of the view,

prima facie, that there was no ground to decree the suit, the question of granting an order of interim injunction during the pendency of the suit does

not arise. In any case, there is no question of granting interlocutory injunction without notice to the other side in such matters. Injunction with notice

to the opposite party is the rule and ex parte order is only an exception. The trial Court being the lowest Court in the hierarchy was expected to

Honour the order passed by the Supreme Court and the attempt should be to enforce the direction.

33. The only ground taken by the respondent for the purpose of filing a suit in the very same subject matter pertains to the jurisdiction of the Small

Causes Court to take up the ejectment suit as according to him, the rack rent in respect of the building was beyond the pecuniary jurisdiction of the

said Court. However, conveniently, he has ignored the finding rendered by the trial Court earlier that the rack rent was within the limit fixed by

Section 41 of the Small Causes Court Act. Therefore, there was a binding decision with respect to the pecuniary jurisdiction of the Court to

entertain the subject case in the earlier round of litigation. The said decree was confirmed by this Court and ultimately, Hon"ble Supreme Court

also affixed its seal of approval. The Supreme Court having found that there was no merits in the case pleaded by the respondent, directed the trial

Court to put the petitioner in possession of the property even without notice to the respondent, in case the respondent failed to give an undertaking

affidavit to vacate the property before 30 October 2009.

34. The statutory provision as contained in Section 11 CPC bars the jurisdiction of a Court to try any suit or issue in which the matter directly and

substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or

any of them claim, litigating under the same title and has been heard and finally decided by such Court. As per Explanation IV to Section 11 CPC,

any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter

directly and substantially in issue in such suit. Therefore, the second suit is barred not only on the ground that the issue raised in the said suit was

directly in issue in the former suit between the parties or their predecessor-in-interest but also on the ground of a deeming fiction. The explanation

IV to Section 11 of CPC was inserted with a specific purpose, to put an end to the litigation once for all. In the absence of such a provision, the

parties would file suits after suits with new grounds. There should be finality to litigation. The principles of constructive res judicata would be

applicable in such cases. In case parties are permitted to initiate re-litigation, it would have the effect of unsettling matters which were settled

earlier.

Concept of res judicata - Legal Position:

35. In Meher Rusi Dalal Vs. Union of India (UOI) and Others, , the concept of res judicata with reference to explanation IV to Section 11 CPC

was indicated by the Supreme Court thus:

23. Even otherwise, it is settled law that in every proceeding the whole of the claim which a party is entitled to make should be made and where a

party omits to sue in respect of any portion of the claim he cannot afterwards sue for the portion so omitted. Explanation 4 to Section 11 CPC also

provides that any matter which might or ought to have been made a ground of defence or attack in a former proceeding will be deemed to have

been a matter directly and subsequently in issue in that proceeding.

36. In Ramadhar Shrivastava Vs. Bhagwandas, , constructive res-judicata was explained by the Supreme Court thus:

15. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter, that should be taken to be

the same thing as if the matter had been actually controverted and decided. The object of Explanation IV is to compel the plaintiff or the defendant

to take all the grounds of attack or defence in one and the same suit.

37. The issues in E.S. No. 20/2005 were regarding the jurisdiction of Small Causes Court as well as the maintainability of the suit on the ground of

withdrawal of the earlier suit without liberty. The trial Court has arrived at a categorical finding that the rack rent was within the pecuniary limits of

the Small Causes Court. The plea of res judicata was also negated. The findings on those two issues have become final and as such, it cannot be

re-agitated by way of a separate suit and Section 11 CPC bars any such subsequent suit.

38. In case the respondent was of the firm case that the rack rent was not the one as found in the lease agreement, he should have produced

materials before the trial Court in E.S. No. 20/2005 to substantiate his contention. The entire materials produced by the petitioner and the

respondent in support of their contention that the rack rent was within the pecuniary jurisdiction of the Small Causes Court were considered by the

trial Court and a factual finding was recorded, negating the contentions raised by the respondent. The said judgment and decree has become

final. The respondent was not entitled to maintain another suit on the basis of contentions which according to him was made known to him

subsequent to the dismissal of the SLP by the Supreme Court. Section 11 of CPC clearly prohibits any such contention by way of a separate suit.

Therefore, the suit filed by the respondent is barred not only by the principles of res judicata, but also by the principles of constructive res judicata.

39. The learned Senior Counsel appearing for the respondent placed reliance on the decision of the Supreme Court as well as the decision of a

learned Judge of this Court in support of his contention that the remedy of the petitioner is to approach the trial Court and having approached the

said Court, it was not permissible to come by way of a revision petition under Article 227 of the Constitution of India.

40. It is true that the Hon"ble Supreme Court in A. Venkatasubbiah Naidu v. S. Chellappan and Ors. 2008 SCC 695 indicated that when the

party had other alternative remedies, they have to take recourse to those remedies, instead of invoking constitutional remedies. Similarly, this Court

in J. Lili Jabakani and Others Vs. T.A. Chandrasekhar, indicated that the remedy of the aggrieved party in the event of an interlocutory order

passed by the Court was to approach the trial Court.

Statutory remedy vis-a-vis constitutional remedy:

41. There is no dispute with respect to the legal position that before approaching the High Court in exercise of jurisdiction under Article 227 of the

Constitution of India, the parties should avail the alternative remedy. However, in a given case, if the attempt of a party to the litigation was to take

undue advantage and the suit was a clear abuse of process of law and that too in a case in which the very suit itself was filed only to circumvent the

order passed by the Supreme Court, this Court was not expected to be a mute spectator without taking steps to correct the jurisdictional error.

42. The remedy as provided under Order 7 Rule 11 CPC is an effective remedy to axe the civil suit at the threshold in case it satisfies the

ingredients of the said provision. The trial Court was given exclusive jurisdiction to decide the fate of a litigation in its initial stage itself. Therefore,

the trial Court should be apprised of the inherent defects in the plaint and on such appraisal, the trial Court was obliged to consider the

maintainability of the suit. It is true that the jurisdiction of the trial Court cannot be bypassed in a routine manner. Normally, the parties should be

directed to pursue the statutory remedy available to them before availing the constitutional remedy. However, in extraordinary circumstances, when

it was demonstrated that there was flagrant violation of the principles of law, or abuse of process of Court or the lower Court was accused of

dereliction of duty of grave nature, the parties would be entitled to invoke the jurisdiction under Article 227 of the Constitution of India.

43. Because of clever drafting, at times, it would be difficult for the trial Court to find out the inherent defects in the suit. The provisions as

contained in Order 7 Rule 11 CPC was enacted to find out such defects though at a later stage. The trial Court is within its powers to exercise the

jurisdiction under Order 7 Rule 11 CPC at any point of time. Though by-passing the alternative remedy should be in exceptional circumstances

only, it cannot be said that the High Court has to maintain silence at all point of time even when it was demonstrated that the trial Court has

committed serious illegality and its order had the effect of flouting the order passed by the Supreme Court.

44. In the case on hand, before granting interlocutory order to maintain status quo, material documents were produced before the Court which

includes the judgment and decree in E.S. No. 20/2005 as well as the direction issued by the Supreme Court in SLP Civil No. 2277/2009. The

learned Trial Judge himself recorded in the order that he has gone through the order passed by the Supreme Court in the Special Leave Petition.

The SLP also refers to the order passed by this Court in CRP NPD No. 3338/2008. Therefore, before granting interlocutory order, the trial Court

was obliged to consider the earlier judgment and decree in E.S. No. 20/2005, order passed by this Court in the civil revision as well as the

direction issued by the Supreme Court. Even according to the trial Court, the respondent was having time till 30.11.2009 to vacate the premises.

Therefore, the trial Court has not indicated as to what made it to grant an interlocutory order in April, 2009 itself, and that too without notice to the

revision petitioner. When there was an indication in the order passed by the Supreme Court to the effect that in the absence of an undertaking filed

by the respondent to vacate the premises before 30.11.2009, it would be open to the decree holder to execute the decree even without notice to

the respondent, the trial Court should have directed the respondent to state as to whether any such undertaking was given so as to enable him to

continue in possession till 30.11.2009. In case the respondent inform the Court that no such undertaking was given before the Supreme Court, he

was not entitled for an order of status quo as it would violate the direction issued by the Supreme Court.

45. The Supreme Court is vested with jurisdiction under Article 142 of the Constitution of India to do complete justice between the parties. This

inherent power to pass any decree or order is granted only to the Supreme Court as it was invested with the powers to put an end to the litigation

and to do complete justice in any cause or matter pending before it. Article 142 gives extensive powers to the Supreme Court to make such orders

in the interest of justice and there was no limitation prescribed for the exercise of the said jurisdiction.

46. Article 144 of the Constitution of India mandates that all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme

Court. Article 141 provides that law declared by the Supreme Court shall be binding on all the Courts in India. By virtue of Article 144, all

authorities in India are bound to implement the directions issued by the Supreme Court of India.

47. When the Supreme Court issues a direction in a particular matter and the Civil Court was apprised of such direction at a later point of time, the

Court was bound to implement the direction. The Court was not expected to entertain any proceeding which would interfere with the order passed

by the Supreme Court or the direction issued.

48. The decisions cited by the learned Senior Counsel would apply to those cases wherein trial Court was convinced of the necessity to grant an

interim injunction without notice to the opposite party. In such cases, the Court was obliged to dispose of the application within thirty days. The

opposite party was also not without a remedy. It would be possible for him to file an application for an order to discharge, vary or set aside the

order of injunction, invoking Order 39 Rule 4 CPC. Therefore, in the normal circumstances, the aggrieved party should be directed to file appeal

as it was not permissible to by-pass the statutory remedy. However, in cases wherein the suit itself was an abuse of process of law and filed with

the sole intention of defeating the order passed by the Supreme Court and the trial Court having apprised of such facts, failed to act at once, this

Court is entitled to exercise the supervisory jurisdiction under Article 227 of the Constitution of India to axe the suit in the initial stage itself.

Extent of supervisory jurisdiction:

49. In *Kishore Kumar Khaitan and Another Vs. Praveen Kumar Singh*, the Supreme Court indicated the extent of jurisdiction under Article 227 of

the Constitution of India thus:

13. The jurisdiction under Article 227 of the Constitution may be restrictive in the sense that it is to be invoked only to correct errors of

jurisdiction. But when a court asks itself a wrong question or approaches the question in an improper manner, even if it comes to a finding of fact,

the said finding of fact cannot be said to be one rendered with jurisdiction and it will still be amenable to correction at the hands of the High Court

under Article 227 of the Constitution. The failure to render the necessary findings to support its order would also be a jurisdictional error liable to

correction.

50. The Supreme Court in *Surya Dev Rai Vs. Ram Chander Rai and Others*, , considered the nature of jurisdiction under Article 227 of the

Constitution of India and held thus:

22. ...It is well settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of

being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide

power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider

than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of

procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost

similar.

25. ...In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it

may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to

the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court,

while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal

should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of

the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

Outright rejection of bogus litigation:

51. The issue before the Supreme Court in *T. Arivandandam Vs. T.V. Satyapal and Another*, was regarding launching frivolous and vexatious

cases without disclosing the earlier litigation between the very same parties. In the said case, the father of the petitioner contested the eviction

proceedings, lost it, appealed against it, lost again and then moved the High Court by way of revision which was also dismissed. The High Court

granted six months time to vacate the premises. Subsequently, they sought further time to vacate. Again they filed a suit before another Court for a

declaration that the order of eviction was obtained by fraud and collusion. The subsequent suit was brought to the notice of the High Court during

the hearing in connection with the prayer for further time to vacate. The High Court granted time to vacate the premises by five months. After the

expiry of the said five months, another suit was instituted before another Munsif Court making carbon copy of the old plaint and obtained an order

of Interim Injunction from the Munsif. After the appearance of the respondent, the injunction was vacated. The appeal preferred against the said

order was also dismissed. The order of dismissal was taken up before the High Court in revision and obtained an order of injunction once again.

The revision was subsequently dismissed. In the said factual context, the Hon"ble Supreme Court speaking through Mr. Justice V.R. Krishna Iyer

in His Lordship"s inimitable style observed thus:

The pathology of litigative addiction ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch

frivolous and vexatious cases.

5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently

resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First

Munsif"s Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a

meaningful "not formal" reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should

exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created

the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is

the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can

be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In

this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

It is dangerous to be too good.

6. The trial court in this case will remind itself of Section 35-A CPC and take deterrent action if it is satisfied that the litigation was inspired by

vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an

immediate hearing to the parties concerned.

7. ...Another moral of this unrighteous chain litigation is the gullible grant of ex parte orders tempts gamblers in litigation into easy courts. A Judge

who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process.

52. In K.K. Modi Vs. K.N. Modi and Others, , the Supreme Court had the occasion to consider the vices of re-litigation and on a reference to

the Supreme Court Practice 1995, published by Sweet & Maxwell, the Supreme Court made observation with respect to ""abuse of process of

Court"" thus:

One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and

public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not

be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. A proceeding being

filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the

court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely

groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.

Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with

circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that

there is no chance of the suit succeeding.

53. In Palanisami Gounder v. Sankara Ramanathan and 4 Ors. 1999 (3) LW 897, learned Judge of this Court found that the subsequent suit was

at the instance of a judgment debtor in an earlier suit, which was confirmed by the High Court and the attempt in filing subsequent suit was to set at

naught the order of eviction, and accordingly, the very suit was dismissed invoking the jurisdiction under Article 227 of the Constitution of India.

54. In Ranipet Municipality rep. By its Commissioner & Special Officer v. M. Shamsheerkhan 1997 (2) LW 761, a learned Judge of this Court

held that when the intention of the party is only one, that is to re-agitate the very same matter already concluded, the subsequent suit has to be axed

at the threshold.

55. The further question which arises in the present revision is whether the suit filed by the respondent should be allowed to continue till its logical

end.

56. The only cause for action in filing the suit, even according to the respondent was the quantum of rack rent being above the pecuniary

jurisdiction of the Small Causes Court. When there was an issue raised and decided against the respondent in the earlier suit in E.S. No. 20/2005,

the respondent was precluded from filing a subsequent suit with identical contentions. There was a clear finding against the respondent in the earlier

round of litigation that the rack rent was within the limits fixed by Section 41 of the Presidency Small Causes Court Act. The said finding was

unsuccessfully challenged up to the Supreme Court. The issue has now become final. By way of the present suit, the said issue is sought to be

raised once again. It is not necessary to read the counter filed by the petitioner herein in I.A. No. 5320/2009 to ascertain as to whether the

subsequent suit was barred by the principles of res judicata or constructive res judicata. The documents filed along with the plaint in the light of the

pleadings would make the position clear that the suit in O.S. No. 2889/2009 was clearly barred by the principles of res judicata. When the

subsequent suit is bound to be dismissed on the ground of both res judicata as well as constructive res judicata, there is no question of allowing the

suit to continue, wasting the time of the trial Court. Similarly, when the subsequent suit was found to be a vexatious suit initiated to circumvent the

binding decree passed earlier as well as to defeat the directions issued by the Supreme Court, there is no point in directing the petitioner to

approach the trial Court with an application to reject the plaint.

57. The present suit is clearly vexatious and the attempt is nothing but re-litigation. The respondent has scant respect towards the Court and the

rule of law. His attempt is to continue in possession at any cost. The learned Trial Judge should have rejected the plaint at the earliest opportunity

and at least after filing counter by the revision petitioner, opposing the plea raised in the suit as well as in the interlocutory application.

58. The facts projected in the case clearly show that the attempt of the respondent was only to flout the direction issued by the Supreme Court and

to retain his possession under some pretext or the other. Court cannot be a tool in the hands of such vexatious litigants. It will be a mockery of

justice to permit the respondent to enjoy the luxury of re-litigation.

59. It is the solemn duty of this Court to see that nothing would come in the way of frustrating the recipient of justice from executing the decree.

Similarly, the Court is expected to filter out and throw all unwanted and vexatious litigations which would be an obstruction to the decree holders in

their journey to get justice.

Conclusion:

60. The issue involved in this revision is a classic example as to how a vexatious litigant would be able to delay the legal process and cause threat

to the very justice delivery system by way of unwanted re-litigation. The respondent was attempting to make mockery of the very judicial system.

In case litigants like the respondent is permitted to achieve their objective in delaying the execution of a decree passed by the Court, which has

attained finality, the common man will lose faith in Courts as well as in the justice delivery system.

61. Therefore, I have no hesitation to conclude that the suit in O.S. No. 2889/2009 is a vexatious suit. I am also of the view that this is a fit case

for exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

62. Accordingly, the suit in O.S. No. 2889/2009 on the file of XIV City Civil Court, Chennai is struck off from the file. The order of status quo

granted by the trial Court as per order dated 15.04.2009 in I.A. No. 5320/2009 will stand vacated. There is no order as to costs. M.P. No.

1/2009 is closed.