(2000) 02 BOM CK 0021

Bombay High Court (Goa Bench)

Case No: Civil Revision Application No. 266 of 1999 and Civil Revision Application No. 11 of 2000

Shri Ganesh D. Daivajna	APPELLANT
Vs	
Shri Prakash S. Salkar	RESPONDENT

Date of Decision: Feb. 21, 2000

Acts Referred:

- Bombay High Court (Appellate Side) Rules, 1960 - Rule 20
- Chartered Accountants Act, 1949 - Section 27
- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 115
- Evidence Act, 1872 - Section 101
- Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 - Section 21, 22(2)
- Specific Relief Act, 1963 - Section 5, 6
- Transfer of Property Act, 1882 - Section 108

Citation: (2000) 2 ALLMR 586 : (2000) 3 BomCR 34 : (2000) 3 CivCC 547 : (2000) 3 MhLj 347

Hon'ble Judges: R.M.S. Khandeparkar, J

Bench: Single Bench

Advocate: M.B. D''Costa, for the Appellant; S.S. Kantak, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.M.S. Khandeparkar, J.
Both these revision applications arise from a common judgment and order passed by the lower Appellate Court in Misc Civil Appeals Nos. 30/99 and 31/99. Since the common questions of law and facts arise in both the revision applications, the same are heard together and are being disposed of by this common judgment.

2. Rule. Rule made returnable forthwith by the consent.

3. At the outset, learned Advocate for the respondent has raised an objection regarding the maintainability of the revision applications by referring to Chapter IV. Rule 20 of the Bombay High Court (Appellate Side) Rules, 1960 and submitted that in view of failure on the part of the petitioner to place on record copies of all the documents which are being referred to in the impugned orders passed by the courts below, the petitioner is not entitled to seek interference by this Court in its revisional jurisdiction in the impugned orders in relation to the findings arrived at based on such documents. Firstly, Rule 20 speaks about the obligation of the petitioner to file the copies of the material documents along with the petition and not regarding the powers of the Court to entertain the revision application or regarding the scope of revisional jurisdiction. Assuming there is some lapse on the part of the petitioner in not producing the copies of documents that by itself would not prevent the Court from exercising its revisional powers if the Court finds that the lower Court has decided the matter in total disregard to and in violation of a rule of law or procedure or breach of provision of law affects the ultimate decision in the matter. Secondly, since the objection relates to non-filing of copies of documents based on which the findings in the judgments of the courts below are arrived at, in order to consider the objection itself, it would be necessary for this Court to peruse the judgments of the courts below and find out as to how far the findings based on such documents are relevant to arrive at the ultimate decision which the courts below have arrived at and in that view of the matter, the objection cannot be considered as preliminary objection and will have to be decided while considering the entire matter in revision applications. Thirdly, the failure on the part of the petitioner to file copies of the relevant documents and all the documents on which the petitioner desires to rely upon cannot, by itself, be sufficient to reject the revision applications summarily, but, it can be a factor against the petitioner while deciding the matter in the revision application. That apart, as already stated the said Rule does not, in any manner over-ride or limit jurisdiction of this Court u/s 115 of the Code of Civil Procedure.

4. The facts, in brief, relevant for the decision are that it is the case of the petitioner that he is the tenant of room No. 4 of a building by name "Roshan Manzil", situated at Panaji since 1969. One Govind Sadekar of M/s. G.D. Sadekar, a painting contractor was allowed to occupy the suit premises and carry on his business therefrom and since he took up new premises, the petitioner is in exclusive possession of the suit premises. However, on 21-3-98, when the petitioner''s nephew opened the suit premises at about 11.20 hours, he found therein some of unknown furniture and other items. Around 2 p.m., some persons entered the premises, caught hold of him, assaulted him and forcibly took him to the police station. The petitioner thereafter lodged a complaint with the police on 21-3-1998. The petitioner had been paying rent to the landlady and also paying telephone bills in respect of two telephones in the suit premises in his name. The electricity charges for the suit premises are also paid by the petitioner. The police put a lock to the suit premises

and after obtaining the ex-parte temporary injunction from the trial Court, the police unlocked the premises and the petitioner thereupon again took possession of the suit premises from the police.

5. On the other hand, it is case of the respondent that the petitioner had sublet the premises to M/s. G.D. Sadekar and sometime in the year 1996, the said M/s. G.D. Sadekar let out the premises to the respondent under an agreement and on payment of Rs. 2500/- per months. The suit premises are in exclusive possession the respondent and on 21-3-98, when the respondent came to the suit premises, he found that the lock of the suit premises had been changed and also found Rs. 15,000/- from the table drawer as well as a copy of the agreement missing. The respondent was also threatened of being killed by some persons in case he did not vacate the suit premises. The respondent filed a counter claim seeking relief of mandatory injunction directing the petitioner to restore the possession of the suit premises to the respondent and an injunction, restraining the petitioner from interfering in his possession of the suit premises.

6. The trial Court, after hearing the parties, dismissed the application for temporary injunction filed by the petitioner and vacated the ex-parte order granted in favour of the petitioner and simultaneously granted temporary mandatory injunction as prayed for by the respondent against the petitioner directing the petitioner to restore the possession of the suit premises to the respondent within 15 days from the date of order and further restrained the petitioner from disturbing the respondent''s possession of the suit premises till further orders. Being dissatisfied with the said orders, the petitioner filed appeals before the lower Appellate Court, which were dismissed by the impugned judgments and orders by the lower Appellate Court.

7. The undisputed facts in the case are that the suit premises belong to Mrs. R.N. Hassan and the petitioner is the tenant thereof on monthly rent of Rs. 215/- and that for sometime, M/s. G.D. Sadekar was occupying the suit premises at the instance of the petitioner. It is the case of the petitioner that the occupation by M/s. G.D. Sadekar was pursuant to the permission granted by the petitioner, whereas it is the contention of the respondent that M/s. G.D. Sadekar was the sub-tenant in respect of the suit premises, the sublease being created by the petitioner. Further, it is the case of the petitioner that the respondent has no right whatsoever in the suit premises, whereas according to the respondent, the suit premises have been let out to him by M/s. G.D. Sadekar for rent of Rs. 2500/- per month and an agreement to that effect was executed between the parties, but the same was missing along with Rs. 15,000/- since 21-3-98 and the same was realised by the respondent after it was noticed that the lock of the premises was found to have been changed. The above basic facts have been disclosed in the pleadings of the respective parties and are also apparent on the face of the impugned orders. Besides, admittedly, the respondent has filed two affidavit of two sons of Mrs. R.S. Hassan who is the owner

of the building, and both the said sons of the landlady have stated in their affidavits that the suit premises had been given on rent to the petitioner. It is to be noted that both the sons of the landlady have further stated in their affidavits that on the ground floor of the same building, they are conducting business of sale of electrical items in one of the shops.

8. Section 21 of the Goa, Daman & Diu Buildings (Lease, Rent and Eviction) Control Act, 1968, (hereinafter called as "the said Act") clearly provides that notwithstanding anything to the contrary contained in any other law or contract, a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of Chapter V of the said Act. Section 22(2)(b) of the said Act provides that if the Controller, after giving the tenant a reasonable opportunity of showing cause against the application for eviction on any of the grounds mentioned thereunder is satisfied about the grounds of eviction claimed by the landlord, then the Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application. In other words, the provisions contained in the said Act clearly disclose that a person, who is undisputedly a tenant in respect of a premises, gets full protection against his eviction from such premises, subject, of course, to the provisions of law contained in Chapter V of the said Act. It is not the case of the respondent that at any point of time the landlady had invoked any of the provisions of Chapter V of the said Act for eviction of the petitioner from the suit premises, or that the petitioner was at any point of time evicted from the premises or that his tenancy right in the suit premises were lawfully terminated by the landlady.

9. Section 22(2)(b) of the said Act further provides that a lease can be assigned in favour of third party by a tenant, but such assignment has to be preceded by a written consent from the landlord for such assignment and in the absence of such written consent by landlord, the tenant can face eviction proceedings against him and his sub-tenant on the ground disclosed u/s 22(2)(b) of the said Act. The provisions contained in section 22(2)(b) of the said Act, therefore, also disclose that a lawful sub-lease can be created provided there is a written consent from the landlord prior to sub-letting and not otherwise. In other words, in order to claim lawful title of sub-tenancy, it is necessary to establish prior written consent from the landlord for creation of sub-tenancy by the original tenant in favour of the sub-tenant.

10. It is not the case of the respondent that there was at any time written consent by the landlord for sub-letting the suit premises by the petitioner in favour of M/s. G.D. Sadekar. Moreover, one Manish G. Sadekar, a son of Govind Sadekar, who was stated to be the proprietor of M/s. G.D. Sadekar, has filed an affidavit wherein he has stated that the petitioner is his family friend and his father was allowed by the petitioner to use the suit premises for his business purpose by permitting him to

occupy a table space in the suit premises. In the set of facts there is nothing on record to show that there was, at any time any consent, much less written consent, by the landlady for sub-letting the suit premises by the petitioner to M/s. G.D. Sadekar. It is also the contention of the respondent that the suit premises were sublet to him by M/s. G.D. Sadekar. However, undisputedly, there was no consent obtained from the petitioner for such sub-letting of the premises in favour of the respondent. Once the respondent claims to be a sub-tenant of the suit premises, and sub-tenancy is claimed to have been created by M/s. G.D. Sadekar, who in turn, is stated to be the sub-tenant of the petitioner, the latter is for all purposes landlord of the M/s. G.D. Sadekar, and, therefore, prior written consent of the petitioner was necessary in order to create a lawful sub-tenancy of the suit premises by M/s. G.D. Sadekar, in favour of the respondent.

11. It is not in dispute that the provisions of the said Act are not applicable to the suit premises. Even, otherwise, in terms of section 108(c) of the Transfer of Property Act, 1882, the landlord is not entitled to interfere with the possession of the tenant once a person is admitted to be a tenant of the premises and is paying rent in accordance with contract of lease. There is no dispute raised by Mrs. R.N. Hassan in this regard and for that matter even by two of her sons who have filed affidavits and have confirmed the tenancy right of the petitioner in the suit premises. It is also an undisputed fact that the petitioner had been paying the rent of Rs. 215/- per month in respect of the suit premises to the landlady Mrs. R.N. Hassan.

12. In the above circumstances, it is prima facie apparent that the petitioner had made out a prima facie case of lawful possession in respect of the suit premises. As against this, the respondent has neither been able to disprove the same, nor has been able to establish the lawful possession of the suit premises. It is pertinent to note at this stage that the courts below while analysing the materials on record, have totally over-looked this material aspect of the case. In fact, the courts below have analysed the materials on record only to consider as to who was in possession of the suit premises on the date i.e. 21-3-1998, without even applying its mind to the most important aspect that such possession ought to have been a lawful possession in order to enable the party to seek protection from the Court by way of equitable relief. In the matter of Datta Damodar Kakule of Calangute Vs. Krishna Sridor Pai @ Subhash Shridar Pai Lotlicar, , the learned Single Judge of this Court has clearly held that the Court must examine whether the person claiming possession of the property has got title of title to remain in possession in order to grant injunction. Similarly, in the matter of Mrs. Juliana M. Sing v. Habib Alam, reported in 1989(1) G.L.T. 14, it was held that the Court has to apply its mind as to whether the applicant has title to remain in possession in order to grant the injunctive relief. In Mulji Umershi Shah and etc. Vs. Paradisia Builders Pvt. Ltd. and Others, , it has been held that in the suit for perpetual injunction, the Court may be called upon to hold inquiry in title, right, interest and status, as the case may be in the pleadings to find out whether the plaintiff is entitled to protection of his possession by decree or

injunction. The same consideration, prima facie, is required to be seen while considering an application for temporary injunction. The question of possession presupposes lawful possession and for adjudication of that question whether finally or at interlocutory stage, the inquiry into title, rights, interest or status of plaintiff is not foreign to the subject matter. It is, apparent that both the courts below did not apply their mind to the basic point which was required to be considered, that is, as to who has right to be in possession pending the decision merits of the suit. This itself not only discloses improper exercise of jurisdiction by the Courts below while deciding the matter, but also of having acted illegally and with material irregularity and if such an order is allowed to stand, it is bound to result in failure of justice. Therefore, both the orders warrant interference by this Court in its revisional jurisdiction.

13. Perusal of the impugned judgments discloses that the lower Appellate Court merely by referring to certain documents, sought to be relied upon by the respondent, has held that the respondent is in possession of the suit premises. The documents referred to by the lower Appellate Court arc a receipt book under the name of ''Queen Paulo Travels'', a register and tourist posters, found in the office, some correspondence between the respondent and Government approved/recognized operators disclosing the address of the respondent to be the suit premises, a receipt issued in favour of the respondent by one Sharma Transport, who is stated to be transport operator recognized by the Government. The lower Appellate Court has observed that all these documents disclose the address of the respondent to be that of the suit premises. Admittedly, there is no affidavit filed by any person or any representative of the firm who is stated to have issued any of the said receipts or letters, or other documents disclosing the address of the respondent to be that of the suit premises. In absence of any such affidavit in support of truthfulness of the contents of such documents, no evidentiary value, not even prima facie, can be attached to any of those documents in the facts and circumstances of the case. The trial Court also has referred to letterheads of the respondent disclosing booking office as the suit premises, letters and receipts and a police complaint. Undoubtedly, the police complaint is dated 21-3-98, the day on which the incident giving cause of action for filing the suit is stated to have occurred and therefore, merely lodging a complaint, giving the suit premises to be the address of the respondent, by itself, can be of no assistance to hold that the complaint establishes the possession of the suit premises with the respondent. The letter heads, tourist posters and for that matter even the booking receipts in the name of the respondent himself can be of no assistance to prove the possession of the suit premises with the respondent. In fact, such documents can be made available within no much time, as the printing of such materials does not require much time. In any case, all these documents sought to be relied upon by the respondent and as disclosed from the judgments of the Appellate Court, as well as that of the trial Court, can be of no assistance to decide the issue as to whether the

respondent was in possession of the suit premises on or prior to 21-3-98 and that such a possession was lawful or not. This is more particularly so in view of the fact that there is no dispute that the petitioner has been a lawful tenant of the suit premises, paying rent to the landlady and the petitioner is having two telephones in the suit premises, the charges of which are being paid by the petitioner. The electricity consumption charges in respect of the suit premises are also being borne by the petitioner and the payment receipts in that regard clearly establish the same. The documents issued in support of the payment of the charges of telephones and the electricity are, undoubtedly, issued by public authorities. They are not the documents which can be manufactured or fabricated by the parties. When these documents are compared with the documents of the respondent, it is ex-facie evident that the documents sought to be relied upon by the respondent are all private documents, having no sanctity in law and the contents of such documents are not proved, even prima facie, by filing affidavits of the persons who might have prepared or issued, or signed those documents. For the same reason, non-production of copies of such document along with the revision applications, is of no consequence. When such documents prima facie are of no assistance to decide the matter in issue, failure on the part of the petitioner to produce copies of those documents cannot non-suit the petitioner in these revision applications.

14. The courts below have expressed surprise over finding some posters, receipt book in the name of ''Queen Paulo Travels'', a register and tourist posters in the suit premises on the ground that the suit premises were under lock with the petitioner, and the said documents have been considered to be sufficient to arrive at a finding in favour of the respondent regarding his possession of the suit premises, at the same time, the courts below have not been able to find any material being placed on record by the respondent to deny the fact that the lock of the premises was opened by the petitioner''s nephew on 21-3-98. As regards the fact of opening of the lock by the nephew of the petitioner on 21-3-98, there is a bare denial by the respondent. It is not the case of the respondent that the petitioner broke open the lock of the suit premises on 21-3-89. The respondent has neither pleaded nor established that the petitioner''s nephew had, at any occasion, opened the lock except with the key of such lock in possession of the petitioner''s nephew on 21-3-98. Had there been any materials placed on record by the respondent to show that the premises were having a lock of which the petitioner could not have been in possession of any key thereof on 21-3-98, then, perhaps, the observations regarding finding of the materials in the premises in connection with the business of respondent could have been of some relevance to establish possession of the suit premises with the respondent. However, in the absence of any such materials being placed on record by the respondent, the reasonings of both the courts below apparently are absurd and the findings based thereon cannot be sustained. Even assuming that the respondent had dumped some of his materials in the suit premises on or about 21-3-98, that itself prima facie would not entitle the

respondent to claim any right to posses the suit premises.

15. It was sought to contend on behalf of the petitioner that the incident of 21-3-98 was a plan by the sons of the landlady to illegally oust the petitioner from the suit premises with an intention to let it out to get higher rent. On the other hand, it is submitted by learned Advocate for the respondent that there is no such case made out by the petitioner and there are no pleadings in that regard. There can be no dispute that the pleadings of the petitioner do not disclose any such allegation. However, it is a fact that the matter undisputedly pertains to a tenanted premises, wherein one of the parties to the litigation has the benefit of affidavits by two sons of the landlady. The case of the respondent had been that he is in the business of travel agency and has been working as the agent for many bus operators and sell tickets on behalf of those operators for various places like Bombay-Poona, etc. and in that connection, the case disclosed in the affidavits of both the sons of the landlady is that they are having hotel business and the respondent was being approached by them in connection with the travelling arrangements for the guests in their hotel. This discloses some dealings between the sons of the landlady and the respondent. That apart, the suit premises are stated to be in the same building wherein both the said sons of the landlady are conducting business of sale of electrical items in one of the shops, on the ground floor. Both the said sons of the landlady have also stated that to their knowledge, the suit premises were being occupied for some years by M/s. G.D. Sadekar and for the last 2 years by the respondent along with M/s. G.D. Sadekar and that for the last 6 months, M/s. G.D. Sadekar had not been occupying the suit premises. This shows that both the sons claim to have detail knowledge about the fact that the suit premises were occupied by M/s. G.D. Sadekar and the respondent over a period of last some years. Admittedly the rent paid by the petitioner to the landlady is Rs. 215/- per month. It is unbelievable that the landlady, being made aware by her sons about the fact that the premises which have been let out to the tenant on a meagre amount of Rs. 215/- per month is being allowed by the tenant to be occupied by strangers and that too on such higher rent would take no action in the matter. Can it be believed that in such circumstances, the landlady would keep quite without taking any action against the tenant for sub-letting such premises? Viewed from this angle, though there are no pleadings regarding allegation of attempt on the part of the landlady to oust the petitioner with the hope of getting higher rent, while considering the matter relating to grant of equitable relief, these facts certainly assume some importance being disclosed by the materials on record by the respondent himself, and therefore certainly cannot be discarded totally though may not be sufficient to decide the matter in one way or other.

16. Much value is attached to the visiting card of the petitioner by the lower Appellate Court to arrive at a conclusion that the visiting card of the petitioner would have disclosed the suit premises as his Branch Office. It is not known as to on what basis such a finding is at all possible. Whether a party should disclose all his

business centres in one visiting card or the visiting card should disclose only one place of his business, are the matters which the party printing his visiting card in his discretion decides, and merely because the visiting card does not disclose a particular place to be his place of business, no inference can be drawn that the person is not carrying out any business from such place. The visiting card is not a certificate disclosing persons activities from particular place. Even, without having any business at a particular place, nothing prevents a party from printing his visiting card showing such place to be his business centre. Besides, taking into consideration all the facts on record, prima facie no value could have been attached to the visiting card of the petitioner produced by the respondent.

17. Reliance is sought to be placed by learned Advocate for the respondent on a decision of Single Judge of this Court in the matter of Harishchandra Narayan Maurya Vs. Rajendraprasad Dargahi Varma, . That was a case wherein the plaintiff had claimed possession of the suit property on the basis of the affidavit and the receipt of payment of money stated to have been issued by the defendant in the said suit, by virtue of which right to the property was said to have been transferred by the defendant in favour of the plaintiff. Learned Single Judge clearly observed that admittedly there was no registered conveyance deed evidencing transfer and the plaintiff had based his right on the affidavit and the receipt. The defendant, however, had denied the execution of any such affidavit or issuance of receipt and according to him, both the documents were fabricated and forged and considering rival contentions set out by the parties, the learned Single Judge observed that it was to be seen whether the plaintiff had been able to prima facie establish the transaction and that whether he had been in exclusive possession of the suit property on the date disclosed in the affidavit. In the background of the facts of the case and on detail analysis of the materials on record, the learned Single Judge observed that on account of mis-statement of facts and mis-representation of facts by the plaintiff, based on which he bad obtained order of temporary injunction against the defendant and in the guise and garb of that injunction order had sought to dispossess the defendant and in fact the defendant was dispossessed, the plaintiff was not entitled for any equitable relief. Shri Kantak, learned Advocate for the respondent did contend that in the case in hand also there are misrepresentation of facts inasmuch as the petitioner had falsely claimed to be in possession of the suit premises even on 21-3-98, even though the suit premises were in possession of the respondent. However, as already stated above, the facts on record which are apparently disclosed from both the judgments of the trial Court as also that of the lower Appellate Court themselves and which find corroboration from materials placed on record, clearly prima facie establish that the petitioner was a lawful tenant in possession of the suit premises as on 21-3-98 and still continues to be so and, therefore, there is, prima facie no case of misrepresentation of the facts or misstatement of the facts by the petitioner in the case in hand. Therefore, the decision in the matter of Harishchandra Narayan Maurya v. Rajendraprasad Dargahi

Verma (Supra), is of no assistance to the respondent.

18. Learned Advocate for the respondent also submitted that the petitioner had not produced any material regarding the fact that the petitioner was actually carrying out his profession from the suit premises. In that regard, he drew my attention to the contents of para 3 of the written statement wherein the respondent had specifically stated that the petitioner has never practised his profession from the suit premises and that the petitioner was specifically called upon to submit proof in regard to his claim regarding his profession being carried out from the suit premises. The learned Advocate further submitted that apart from mere denial of the claim of the respondent that the petitioner has not been carrying on his profession from the suit premises, the petitioner has not produced any proof in respect thereof. As against this, the learned Advocate for the petitioner has submitted that the petitioner had relied upon necessary letter issued by the Institute of Chartered Accountants, disclosing the suit premises to be the place of profession of the petitioner. In my considered opinion, once it is not disputed by the respondent that the petitioner is lawful tenant in respect of the suit premises, it is primarily for the respondent to establish a lawful possession of the suit premises with him and not for petitioner to justify his claim of possession over the suit premises. Once a person is admitted to be a lawful tenant of a premises his possession is fully protected by section 21 of the said Act, as well as section 108 of the Transfer of Property Act, unless it is shown that he is lawfully evicted therefrom. It is not the case of the respondent that at any time any eviction proceedings were initiated and culminated in eviction of the petitioner from the suit premises. In the absence of any such case put forth by the respondent, failure on the part of the petitioner in disclosing any further acts of the possession is absolutely irrelevant in the facts and circumstances of the case. That apart, as rightly submitted by learned Advocate for the petitioner, the petitioner having communicated the suit premises to be place of his profession to the Institute of Chartered Accountants that by itself should be considered as prima facie proof regarding conduct of his profession from the suit premises unless the respondent had established to the contrary. As regards section 27 of the Chartered Accountants Act, admittedly, there is no specific plea in that regard raised by the respondent before the trial Court and only sub-mission in that regard was made when the matter was being argued before the lower Appellate Court. Being So, it is not necessary to consider the same in these revision applications. That apart, the said point is not relevant in the facts and circumstances of this case.

19. In view of the allegations made by the respondent that in the course of the incident that occurred on 21-3-98 he had lost a sum of Rs. 15,000/-, from the suit premises, while granting equitable relief to the petitioner, it is also necessary to ensure that the respondent''s interest in that regard is protected and till rival contentions on merits are decided by the trial Court, while granting injunctive relief in favour of the petitioner, it is necessary that the petitioner be directed to furnish a

Bank Guarantee in the sum of Rs. 25,000/- of any Nationalised Bank, before the trial Court which shall be kept enforceable till the disposal of the suit and shall be subject to final decision in the suit.

20. In the result, the revision applications succeed. The impugned judgments and orders of the trial Court as well as that of the lower Appellate Court are, hereby, quashed and set aside. The petitioner''s application being Civil Misc. Application No. 67/98 filed in the trial Court is, hereby, allowed and the respondent, his agents, servants are restrained from interfering in the suit property till the disposal of the suit and the application filed by the respondent being Civil Misc. Application No. 170/98 filed before the trial Court is, hereby, dismissed. The petitioner shall furnish the Bank Guarantee as stated above before the trial Court within a period of 30 days. The rule is made absolute in the aforesaid terms with no order as to costs.

21. Revision application succeed.