IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4012-4013 OF 2012
ARISING OUT OF S.L.P.(C) NOS. 14163-14164 OF 2012
ARISING OUT OF CC NOS. 21115-21116 OF 2011

A. SHANMUGAM ..... APPELLANT

VERSUS

ARIYA KSHATRIYA RAJAKULA VAMSATHU MADALAYA NANDHAVANA PARIPALANAI SANGAM REPRESENTED BY ITS PRESIDENT ETC. ..... RESPONDENTS

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J U D G M E N T

DALVEER BHANDARI J.

Delay condoned.

2. Leave granted.

3. These two appeals arise out of cross suits filed before the High Court of Judicature at Madras in S.A. No. 1973 of 2002 and S.A. No. 869 of 2009 dated April 20, 2011. In both these appeals, A. Shanmugam is the appellant and Ariya Kshatriya Raja Kulavamsa Madalaya Nandhavana Paripalana Sangam is the respondent which for convenience hereinafter is referred to as the 'Society'.

4. The property in question belonged to one, Muthu Naicker, who dedicated the suit land for construction of a Dharamshala. In the southern part of India, it is called as 'choultry'. A 'Dharamshala' is commonly known as 'a place where boarding facilities are provided either free of cost or at a nominal cost'. In the instant case, a Dharamshala was to be constructed for the benefit of the Ariya Kshatriya community. The appellant's father, Appadurai Pillai was engaged as a Watchman on a monthly salary by the respondent-Society to

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look after the Dharamshala and in that capacity lived in the premises with his family including the appellant.

5. According to the appellant, in the year 1994, the respondent-Society claiming to be the owner of the suit property tried to dispossess the appellant by force necessitating the appellant to file a suit in O.S. No.1143 of 1994 on the file of the Second Additional District Munsif, Tiruvannamalai praying for issuance of permanent injunction against the respondent-Society. The said suit was, however, dismissed. As against that, the appellant preferred an appeal in A.S. No.94 of 2001 on the file of the Additional District Judge, Tiruvannamalai and the said appeal was allowed and consequently, the appellant's suit was decreed. The respondent-Society preferred a Second Appeal in S.A. No.1973 of 2002 before the High Court of Madras against the said judgment of the Additional District Judge.

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6. The respondent-Society during the pendency of Second Appeal filed a suit in O.S. No.239 of 2003 before the Additional Subordinate Judge, Tiruvannamalai praying for declaration of title and recovery of possession of the suit property comprised in T.S. No.1646/1 of Tiruvannamalai Town having an extent of 70 feet east to west and 30 feet north to south bearing Old Door No.116 and New Door No.65. The said suit was decreed as prayed for. Against that, the appellant preferred an appeal in A.S. No.19 of 2008 on the file of the Additional District Judge, Tiruvannamalai and the decision of the trial court was reversed in Appeal resulting in the dismissal of the suit filed by the respondent-Society. Aggrieved against the appeal being allowed and the suit being dismissed, the respondent-Society preferred a Second Appeal in S.A. No.869 of 2009 before the High Court of Madras. The learned Judge of the Madras High Court heard both the aforesaid Second Appeals together and by a common judgment set aside the well-considered judgments of the First Appellate Court. Aggrieved by the said common impugned judgment, the appellant has preferred these appeals by way of special leave.

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7. It may be pertinent to mention that the appellant filed Original Suit No.1143 of 1994 and also filed the following documents :-

1.	20.11.1899	Certified copy of the registered agreement between Krishnasamy Raju and others
2.		Certified copy of the bye-law of the plaintiff Sangam(respondent-Society before us)
3.		Certified copy of Memorandum of Association of plaintiff-Sangam (respondent-Society before us)
4.		Certified copy of Registration Certificate
5.		Certified copy of field Map Book Plan
6.		Certified copy of Town Survey Field Register
7.		Certified copy of Demand Register Extent
8.		Certified copy of Tax receipts (9)
9.		Certified copy of Indemnity Card by Munusamy
10.		Certified copy of Ration Card of Munusamy
11.		Certified copy of account of plaintiff Sangam (respondent-Society before us)

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12.		Certified copy of photocopy of Silesasanam
13.	14.5.29	Copy of application by the President of plaintiff-Sangam to Municipal Chairman
14.	24.2.32	Copy of the application by the President of plaintiff-Sangam to Municipal Chairman
15.	17.8.2001	Certified copy of judgment in O.S. No. 1143/94 of District Munsif Court, Tiruvannamalai
16.	31.5.2002	Certified copy of judgment in A.S. No.94/2001 of Additional District Judge, Tiruvannamalai
17.	2000-02	House Tax Receipt
18.	2001-02	House Tax Receipt
19.	2002-03	House Tax Receipt
20.		Xerox copy of the Minutes Book pages 13 to 19.

8. The trial court on the basis of the pleadings has framed the following issues:-

1. Whether the plaintiff has the right to possession and enjoyment of the suit property?

2. Whether the plaintiff and his father have obtained right of enjoyment through adverse enjoyment?

3. As per the averments on the defendant's side, is it true that the plaintiff's father in the capacity of the watchman of the suit property has been in enjoyment of the suit property?

4. Whether the plaintiff is entitled to a relief of permanent injunction as prayed for by him?

5. Other relief?

9. In Suit No. 239 of 2003 filed by the respondent-Society against the appellant seeking a decree for possession, the following issues were framed:-

1. Whether the plaintiff Association is competent to file this case?

2. Whether the plaint property belongs to the plaintiff's club?

3. Is it right that the defendant's father Appadurai Pillai in the capacity of a Watchman, has been maintaining the suit property?

4. When there is a Second Appeal pending before the High Court in S.A. No.1923 of 2002 against the

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judgment and decree of the Court of the District Munsif in O.S. No. 1143 of 1994 is sustainable.

5. Whether the defendant has acquired the right of possession in the plaint property due to adverse possession?
6. Whether this case has been procedurally evaluated for the court fee and jurisdiction?
7. Is the Court competent to try this Court?
8. To what other relief is the plaintiff entitled to?

10. The trial court in Suit No.1143 of 1994 has held that the appellant was in possession of the suit property in the capacity of a Watchman. Regarding Issue No. 3, the trial court has observed as under:

> "… … …As per the July 1949 register Ex.D5 it is established that the plaintiff's father has been employed as a watchman in the association. Further, it has already been decided that the suit property belongs to the defendants Association. Further it has also been decided that apart from that the plaintiff's father has only been a watchman to the suit property. Only source of the plaintiff's father had been a watchman, he was permitted to stay in a portion in the suit property only because of that he had not instituted a case for the total

> extent 110 x 56 feet but only for the extent of 70 x 30 feet. He admits that the remaining portion is in the possession of the association. It is true that only for this reason the defendants association has permitted that plaintiff and his family members to reside in the suit property. It is evident that only in the status of a watchman that the plaintiff's father has been occupying a portion in the suit survey number. This issue is decided accordingly."

11. Regarding Issue No. 2 of adverse possession, the trial court found that the appellant's father was employed by the respondent-Society as a Watchman on a petty monthly salary and in that capacity he was allowed to stay in the suit property. The appellant did not acquire the suit property by adverse possession and the issue was rightly decided against the appellant by the trial court.

12. Regarding issue No. 4, the trial court found that the appellant's father was residing in the suit premises as a Watchman and after his death the appellant was also allowed to continue to stay in the suit property as a Watchman.

13. The trial court relied on a judgment of the Madras High Court reported in ***Alagi Alamelu Achi*** v. ***Ponniah Mudaliar***

AIR 1962 Madras 149. The Court held that a person in wrongful possession is not entitled to be protected against lawful owner by an order of injunction.

14. The trial court also came to a definite conclusion that the appellant has concealed certain vital facts and has not approached the Court with clean hands and consequently, he is not entitled to the grant of discretionary relief of injunction.

15. The First Appellate Court reversed the judgment of the trial court and held that the appellant was entitled to the relief of injunction because of his long possession of the suit property. The First Appellate Court also set aside the decree passed by the trial court in O.S. No.239 of 2003.

16. The Suit No. 239 was decreed against the appellant. Aggrieved by this, the appellant preferred First Appeal before the District Judge which was allowed on 3rd April, 2009. Aggrieved by this judgment, the respondent-Society filed a

Second Appeal before the High Court which was allowed. The High Court heard both the appeals filed by the respondent-Society and the same were allowed by a common judgment dated 20th April, 2011.

17. The High Court by a detailed reasoning, set aside the judgment of the First Appellate Court and held that the First Appellate Court was not justified in reversing the judgments passed by the trial court in both the abovementioned suits, O.S. No.1143 of 1994 and O.S. No.239 of 2003. The appellant, aggrieved by the said judgment, has preferred these two appeals. We propose to decide both these appeals by this common judgment.

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18. We have heard the learned counsel for the appellant at length.

19. In our considered view, a well-reasoned judgment and a decree passed by the trial court ought not to have been reversed by the First Appellate Court. It is reiterated that the

appellant's father was engaged as a Watchman on a monthly salary and in that capacity he was allowed to stay in the suit premises and after his death his son (the appellant herein) continued to serve the respondent-Society as a Watchman and was allowed to live in the premises. The property is admittedly owned by the respondent-Society.

20. The appellant has also failed to prove the adverse possession of the suit property. Only by obtaining the ration card and the house tax receipts, the appellant cannot strengthen his claim of adverse possession. The High Court was fully justified in reversing the judgment of the First Appellate Court and restoring the judgment of the trial court. In our considered opinion, no interference is called for.

21. This case demonstrates widely prevalent state of affairs where litigants raise disputes and cause litigation and then obstruct the progress of the case only because they stand to gain by doing so. It is a matter of common experience that the Court's otherwise scarce resources are spent in dealing with

non-deserving cases and unfortunately those who were waiting in the queue for justice in genuine cases usually suffer. This case is a typical example of delayed administration of civil justice in our Courts. A small suit, where the appellant was directed to be evicted from the premises in 1994, took 17 years before the matter was decided by the High Court. Unscrupulous litigants are encouraged to file frivolous cases to take undue advantage of the judicial system.

22. The question often arises as to how we can solve this menace within the frame work of law. A serious endeavour has been made as to how the present system can be improved to a large extent. In the case of ***Maria Margarida Sequeria Fernandes and Others*** v. ***Erasmo Jack de Sequeria (Dead) through L.Rs.*** (2012) 3 SCALE 550 (of which one of us, Bhandari, J. was the author of the judgment), this Court had laid stress on purity of pleadings in civil cases. We deem it appropriate to set out paras 61 to 79 of that judgment dealing with broad guidelines provided by the Court which are equally relevant in this case:-

"61. In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.

62. Possession is an incidence of ownership and can be transferred by the owner of an immovable property to another such as in a mortgage or lease. A licensee holds possession on behalf of the owner.

63. Possession is important when there are no title documents and other relevant records before the Court, but, once the documents and records of title come before the Court, it is the title which has to be looked at first and due weightage be given to it. Possession cannot be considered in vacuum.

64. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the Courts.

65. A suit can be filed by the title holder for recovery of possession or it can be one for ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit under Section 6 of the Specific Relief Act to recover possession.

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66. A title suit for possession has two parts – first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.

67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.

68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place

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before the Court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.

(a) who is or are the owner or owners of the property;
(b) title of the property;
(c) who is in possession of the title documents
(d) identity of the claimant or claimants to possession;
(e) the date of entry into possession;
(f) how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method;
(g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the

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rent, license fee or lease amount;

(h) if taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed;

(i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;

(j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and

(k) basis of his claim that not to deliver possession but continue in possession.

71. Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.

72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

73. Discovery and production of documents and answers to

interrogatories, together with an approach of considering what in ordinary course of human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage for issues.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission.

75. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

76. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.

77. XXXX XXXX XXXX

78. The Court must ensure that pleadings of a case must contain

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> sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence.
>
> 79. In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case."

23. We reiterate the immense importance and relevance of purity of pleadings. The pleadings need to be critically examined by the judicial officers or judges both before issuing the ad interim injunction and/or framing of issues.

ENTIRE JOURNEY OF A JUDGE IS TO DISCERN THE TRUTH

24. The entire journey of a judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of justice delivery system. This Court in ***Dalip Singh*** v. ***State of U.P.*** **and Others** (2010) 2 SCC 114 observed that truth constitutes an integral part of the justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts

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irrespective of the consequences. However, post-independence period has seen drastic changes in our value system.

25. This Court in ***Maria Margarida Sequeria Fernandes*** (supra) had an occasion to deal with the same aspect. According to us, observations in paragraphs 31 to 52 are absolutely germane as these paragraphs deal with relevant cases which have enormous bearing on the facts of this case, so these paragraphs are reproduced hereunder:-

> "31. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies. The truth should be the guiding star in the entire judicial process.
> 32. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty.
>
> 33. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.
>
> 34. In ***Mohanlal Shamji Soni*** *v.* ***Union of India*** 1991 Supp (1) SCC 271, this Court

observed that in such a situation a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions-whether discretionary or obligatory-according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.

35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

36. In ***Ritesh Tewari and Another*** *v.* ***State of Uttar Pradesh and Others*** (2010) 10 SCC 677 this Court reproduced often quoted quotation which reads as under:

> "Every trial is a voyage of discovery
> in which truth is the quest"

37. This Court observed that the power is to be exercised with an object to subserve the cause of justice and public interest and for getting the evidence in aid of a just decision and to uphold the truth.

38. Lord Denning, in the case of ***Jones*** v. ***National Coal Board*** [1957] 2 QB 55 has observed that:

> *"In the system of trial that we evolved in this country, the Judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of the society at large, as happens, we believe, in some foreign countries."*

39. Certainly, the above, is not true of the Indian Judicial System. A judge in the Indian System has to be regarded as failing to exercise his jurisdiction and thereby discharging his judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that "every trial is a voyage of discovery in which truth is the quest". In order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

40. Lord Denning further observed in the said case of ***Jones*** (supra) that "'It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth…"

41. World over, modern procedural Codes are increasingly relying on full disclosure by the parties. Managerial powers of the Judge

are being deployed to ensure that the scope of the factual controversy is minimized.

42. In civil cases, adherence to Section 30 CPC would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and judges. Section 30 CPC reads as under:-

> 30. **Power to order discovery and the like.** – Subject to such conditions and limitations as may be prescribed, the Court may, at any time either of its own motion or on the application of any party, -
>
> (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
>
> (b) issue summons to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
>
> (c) order any fact to be proved by affidavit

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43. "**Satyameva Jayate**" (Literally: "Truth Stands Invincible") is a mantra from the ancient scripture Mundaka Upanishad. Upon independence of India, it was adopted as the national motto of India. It is inscribed in Devanagari script at the base of the national emblem. The meaning of full mantra is as follows:

> "Truth alone triumphs; not falsehood. Through truth the divine path is spread out by which the sages whose desires have been completely fulfilled, reach where that supreme treasure of Truth resides."

44. Malimath Committee on Judicial Reforms heavily relied on the fact that in discovering truth, the judges of all Courts need to play an active role. The Committee observed thus:

> 2.2……. In the adversarial system truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defence before a neutral judge. The judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt. The State discharges the obligation to protect life, liberty and property of the citizens by taking suitable preventive and punitive measures which also serve the object of preventing private retribution so essential for maintenance of peace

and law and order in the society doubt and gives the benefit of doubt to the accused. It is the parties that determine the scope of dispute and decide largely, autonomously and in a selective manner on the evidence that they decide to present to the court. The trial is oral, continuous and confrontational. The parties use cross-examination of witnesses to undermine the opposing case and to discover information the other side has not brought out. The judge in his anxiety to maintain his position of neutrality never takes any initiative to discover truth. He does not correct the aberrations in the investigation or in the matter of production of evidence before court……."

2.15 "The Adversarial System lacks dynamism because it has no lofty ideal to inspire. It has not been entrusted with a positive duty to discover truth as in the Inquisitorial System. When the investigation is perfunctory or ineffective, Judges seldom take any initiative to remedy the situation. During the trial, the Judges do not bother if relevant evidence is not produced and plays a passive role as he has no duty to search for truth….."

2.16.9. Truth being the cherished ideal and ethos of India, pursuit of

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> truth should be the guiding star of the Criminal Justice System. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice. Therefore truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. It is of seminal importance to inject vitality into our system if we have to regain the lost confidence of the people. Concern for and duty to seek truth should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth.

45. In ***Chandra Shashi*** *v.* ***Anil Kumar Verma*** (1995) 1 SCC 421 to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.

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46. Truth has been foundation of other judicial systems, such as, the United States of America, the United Kingdom and other countries.

47. In ***James v. Giles et al.*** *v.* ***State of Maryland*** 386 U.S. 66 (1967) 87, S.Ct. 793, the US Supreme Court, in ruling on the conduct of prosecution in suppressing evidence favourable to the defendants and use of perjured testimony held that such rules existed for a purpose as a necessary component of the search for truth and justice that judges, like prosecutors must undertake. It further held that the State's obligation under the Due Process Clause "is not to convict, but to see that so far as possible, truth emerges."

48. The obligation to pursue truth has been carried to extremes. Thus, in ***United States*** *v.* ***J. Lee Havens*** 446 U.S. 620, 100 St.Ct.1912, it was held that the government may use illegally obtained evidence to impeach a defendant's fraudulent statements during cross-examination for the purpose of seeking justice, for the purpose of "arriving at the truth, which is a fundamental goal of our legal system".

49. Justice Cardozo in his widely read and appreciated book "The Nature of the Judicial Process" discusses the role of the judges. The relevant part is reproduced as under:-

> "There has been a certain lack of candour," "in much of the discussion of the theme [of judges' humanity], or rather perhaps in

> the refusal to discuss it, as if judges must lose respect and confidence by the reminder that they are subject to human limitations." I do not doubt the grandeur of conception which lifts them into the realm of pure reason, above and beyond the sweep of perturbing and deflecting forces. None the less, if there is anything of reality in my analysis of the judicial process, they do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do."

50. Aharon Barak, President of Israeli Supreme Court from 1995 to 2006 takes the position that:

> "For issues in which stability is actually more important than the substance of the solution – and there are many such cases – I will join the majority, without restating my dissent each time. Only when my dissenting opinion reflects an issue that is central for me – that goes to the core of my role as a judge – will I not capitulate, and will I continue to restate my dissenting opinion: "Truth or stability – truth is preferable".
>
> "On the contrary, public confidence means ruling according to the law and according to the

> judge's conscience, whatever the attitude of the public may be. Public confidence means giving expression to history, not to hysteria. Public confidence is ensured by the recognition that the judge is doing justice within the framework of the law and its provisions. Judges must act – inside and outside the court – in a manner that preserves public confidence in them. They must understand that judging is not merely a job but a way of life. It is a way of life that does not include the pursuit of material wealth or publicity; it is a way of life based on spiritual wealth; it is a way of life that includes an objective and impartial search for truth."

51. In the administration of justice, judges and lawyers play equal roles. Like judges, lawyers also must ensure that truth triumphs in the administration of justice.

52. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth."

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26. As stated in the preceding paragraphs, the pleadings are foundation of litigation but experience reveals that sufficient attention is not paid to the pleadings and documents by the judicial officers before dealing with the case. It is the bounden duty and obligation of the parties to investigate and satisfy themselves as to the correctness and the authenticity of the matter pleaded.

27. The pleadings must set-forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the Court must carefully look into it while deciding a case and insist that those who approach the Court must approach it with clean hands.

28. It is imperative that judges must have complete grip of the facts before they start dealing with the case. That would avoid unnecessary delay in disposal of the cases.

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29. Ensuring discovery and production of documents and a proper admission/denial is imperative for deciding civil cases in a proper perspective. In relevant cases, the Courts should encourage interrogatories to be administered.

FRAMING OF ISSUES

30. Framing of issues is a very important stage of a civil trial. It is imperative for a judge to critically examine the pleadings of the parties before framing of issues. Rule 2 of Order X CPC enables the Court, in its search for the truth, to go to the core of the matter and narrow down, or even eliminate the controversy. Rule 2 of Order X reads as under:-

> "2. Oral examination of party, or companion of party. – (1) At the first hearing of the suit, the Court -
>
> (a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and
>
> (b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in

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person or present in Court or his pleader is accompanied.

(2) xxx xxx xxx

(3) xxx xxx xxx

31. It is a useful procedural device and must be regularly pressed into service. As per Rule 2 (3) of Order X CPC, the Court may if it thinks fit, put in the course of such examination questions suggested by either party. Rule 2 (3) of Order X CPC reads as under:-

"2. (1) xxx xxx xxx

(2) xxx xxx xxx

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party."

32. If issues are properly framed, the controversy in the case can be clearly focused and documents can be properly appreciated in that light. The relevant evidence can also be carefully examined. Careful framing of issues also helps in

proper examination and cross-examination of witnesses and final arguments in the case.

GRANT OR REFUSAL OF INJUNCTION

33. In ***Maria Margarida Sequeria Fernandes*** (supra), this Court examined the importance of grant or refusal of an injunction in paras 86 to 89 which read as under:-

> "86. Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence and attention must be bestowed by the judicial officers and judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the defendant. In order to grant or refuse injunction, the judicial officer or the judge must carefully examine the entire pleadings and documents with utmost care and seriousness.
>
> 87. The safe and better course is to give short notice on injunction application and pass an appropriate order after hearing both the sides. In case of grave urgency, if it becomes imperative to grant an ex-parte ad interim injunction, it should be granted for a specified period, such as, for two weeks. In those cases, the plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an ex-parte ad

interim injunction. The Court, in order to avoid abuse of the process of law may also record in the injunction order that if the suit is eventually dismissed, the plaintiff undertakes to pay restitution, actual or realistic costs. While passing the order, the Court must take into consideration the pragmatic realities and pass proper order for mesne profits. The Court must make serious endeavour to ensure that even-handed justice is given to both the parties.

88. Ordinarily, three main principles govern the grant or refusal of injunction.

a) prima facie case;
b) balance of convenience; and
c) irreparable injury, which guide the Court in this regard.

89. In the broad category of prima facie case, it is imperative for the Court to carefully analyse the pleadings and the documents on record and only on that basis the Court must be governed by the prima facie case. In grant and refusal of injunction, pleadings and documents play vital role."

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RESTITUTION AND MESNE PROFITS

34. Experience reveals that a large number of cases are filed on false claims or evasive pleas are introduced by the defendant to cause delay in the administration of justice and this can be sufficiently taken care of if the Courts adopt realistic approach granting restitution. This Court in the case

of ***Ramrameshwari Devi*** v. ***Nirmala Devi*** (2011) 8 SCC 249 (of which one of us, Bhandari, J. was the author of the judgment) in paragraph 52 (C, D and G) of the judgment dealt with the aspect of imposition of actual or realistic costs which are equally relevant for this case reads as under:-

> "C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.
>
> D. The Court must adopt realistic and pragmatic approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits.
>
> G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice."

35. Unless wrongdoers are denied profit or undue benefit from frivolous litigations, it would be difficult to control frivolous and uncalled for litigations. Experience also reveals

that our Courts have been very reluctant to grant the actual or realistic costs. We would like to explain this by giving this illustration. When a litigant is compelled to spend Rs.1 lac on a frivolous litigation there is hardly any justification in awarding Rs. 1,000/- as costs unless there are special circumstances of that case. We need to decide cases while keeping pragmatic realities in view. We have to ensure that unscrupulous litigant is not permitted to derive any benefit by abusing the judicial process.

36. This Court in another important case in ***Indian Council for Enviro-Legal Action*** v. ***Union of India and Others*** (2011) 8 SCC 161 (of which one of us, Bhandari, J. was the author of the judgment) had an occasion to deal with the concept of restitution. The relevant paragraphs of that judgment dealing with relevant judgments are reproduced hereunder:-

> 193. This Court in ***Grindlays Bank Limited*** *v.* ***Income Tax Officer, Calcutta*** (1980) 2 SCC 191 observed as under :-
>
> > "...When passing such orders the High Court draws on its inherent power to make all such orders as are necessary

> for doing complete justice between the parties. The interests of justice require that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court, by the mere circumstance that it has initiated a proceeding in the court, must be neutralised. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it. …"

194. In ***Ram Krishna Verma and Others*** *v.* ***State of U.P. and Others*** (1992) 2 SCC 620 this Court observed as under :-

> "The 50 operators including the appellants/ private operators have been running their stage carriages by blatant abuse of the process of the court by delaying the hearing as directed in ***Jeevan Nath Bahl's*** case and the High Court earlier thereto. As a fact, on the expiry of the initial period of grant after Sept. 29, 1959 they lost the right to obtain renewal or to ply their vehicles, as this Court declared the scheme to be operative. However, by sheer abuse of the process of law they are continuing to ply their vehicles pending hearing of the objections. This Court in ***Grindlays Bank Ltd.*** *vs* ***Income-tax Officer*** - [1990] 2 SCC 191 held that the High Court while exercising its power under Article 226 the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage

> on the party responsible for it. In the light of that law and in view of the power under Article 142(1) of the Constitution this Court, while exercising its jurisdiction would do complete justice and neutralise the unfair advantage gained by the 50 operators including the appellants in dragging the litigation to run the stage carriages on the approved route or area or portion thereof and forfeited their right to hearing of the objections filed by them to the draft scheme dated Feb. 26, 1959. ..."

195. This Court in ***Kavita Trehan*** *vs* ***Balsara Hygiene Products*** (1994) 5 SCC 380 observed as under :-

> "The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words "Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, ...". The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court."

196. This Court in ***Marshall Sons & Co. (I) Ltd.*** *v.* ***Sahi Oretrans (P) Ltd. and Another*** (1999) 2 SCC 325 observed as under :-

"From the narration of the facts, though it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Because of the delay unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also known fact that after obtaining a decree for possession of immovable property, its execution takes long time. In such a situation for protecting the interest of judgment creditor, it is necessary to pass appropriate order so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, Court may appoint Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour decree is passed and to protect the property including further

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alienation."

197. In ***Padmawati*** *v.* ***Harijan Sewak Sangh*** - CM (Main) No.449 of 2002 decided by the Delhi high Court on 6.11.2008, the court held as under:-

> "The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Court. One of the aims of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person."

198. We approve the findings of the High Court of Delhi in the aforementioned case.

199. The Court also stated "Before parting with this case, we consider it necessary to observe that one of the main reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the *lis*, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrongdoer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrongdoers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts".

200. Against this judgment, Special Leave to Appeal (Civil) No 29197/2008 was preferred to this Court. The Court passed the following order:

> "We have heard learned counsel appearing for the parties. We find no

ground to interfere with the well-considered judgment passed by the High Court. The Special Leave Petition is, accordingly, dismissed."

208. In ***Marshall sons and Company (I) Limited v. Sahi Oretrans (P) Limited and Another*** (1999) 2 SCC 325 this Court in para 4 of the judgment observed as under:

"...It is true that proceedings are dragged for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and a person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may

> prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property including further alienation. ..."

209. In ***Ouseph Mathai and Others v. M. Abdul Khadir*** *(2002) 1 SCC 319* this Court reiterated the legal position that the stay granted by the Court does not confer a right upon a party and it is granted always subject to the final result of the matter in the Court and at the risk and costs of the party obtaining the stay. After the dismissal, of the *lis*, the party concerned is relegated to the position which existed prior to the filing of the petition in the Court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection.

210. This Court in ***South Eastern Coalfields Limited v. State of M.P. and others*** *(2003) 8 SCC 648* on examining the principle of restitution in para 26 of the judgment observed as under:

> "In our opinion, the principle of restitution takes care of this submission. The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see ***Zafar Khan*** v. ***Board of Revenue, U.P*** - *(1984) Supp SCC 505*) In law, the term "restitution" is used in three senses: (*i*) return or restoration of some specific thing to its rightful owner or status; (*ii*) compensation for benefits derived from a wrong done to another; and (*iii*) compensation or reparation for the loss caused to another."

211. The Court in para 28 of the aforesaid judgment very carefully mentioned that the litigation should not turn into a fruitful industry and observed as under:

> "… … …Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation."

212. The Court in the aforesaid judgment also observed that once the doctrine of restitution is attracted, the interest is often a normal relief given in restitution. Such interest is not controlled by the provisions of the Interest Act of 1839 or 1978.

213. In a relatively recent judgment of this Court in ***Amarjeet Singh and Others v. Devi Ratan and***

Others (2010) 1 SCC 417 the Court in para 17 of the judgment observed as under:

> "No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court. ... ..."

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215. In consonance with the concept of restitution, it was observed that courts should be careful and pass an order neutralizing the effect of all consequential orders passed in pursuance of the interim orders passed by the court. Such express directions may be necessary to check the rising trend among the litigants to secure the relief as an interim measure and then avoid adjudication on merits.

216. In consonance with the principle of equity, justice and good conscience judges should ensure that the legal process is not abused by the litigants in any manner. The court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorized or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the respondent or the defendant has in fact incurred in order to defend himself in the legal proceedings. The courts would be fully justified even imposing punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage fraudulent, unscrupulous and dishonest litigation.

217. The court's constant endeavour must be to ensure that everyone gets just and fair treatment. The court while rendering justice must adopt a pragmatic approach and in appropriate cases realistic costs and compensation be ordered in order to discourage dishonest litigation. The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases.

218. This Court in a very recent case ***Ramrameshwari Devi and Others v. Nirmala Devi and Others*** 2011(6) Scale 677 had an occasion to deal with similar questions of law regarding imposition of realistic costs and restitution. One of us (Bhandari, J.) was the

author of the judgment. It was observed in that case as under:

> "While imposing costs we have to take into consideration pragmatic realities and be realistic what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.
>
> The other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various courts. The appellants in the instant case have harassed the respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The appellants have also wasted judicial time of the various courts for the last 40 years."

37. False averments of facts and untenable contentions are serious problems faced by our courts. The other problem is that litigants deliberately create confusion by introducing irrelevant and minimally relevant facts and documents. The

court cannot reject such claims, defences and pleas at the first look. It may take quite sometime, at times years, before the court is able to see through, discern and reach to the truth. More often than not, they appear attractive at first blush and only on a deeper examination the irrelevance and hollowness of those pleadings and documents come to light.

38. Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this Court, on later stage, but once discovered, it is the duty of the Court to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.

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39. Now, when we revert to the facts of this case it becomes quite evident that the appellant is guilty of suppressing material facts and introducing false pleas and irrelevant documents. The appellant has also clouded the entire case with pleas which have nothing to do with the main controversy involved in the case.

IRRELEVANT DOCUMENTS:

40. All documents filed by the appellant along with the plaint have no relevance to the controversy involved in the case. We have reproduced a list of the documents to demonstrate that these documents have been filed to mislead the Court. The First Appellate Court has, in fact, got into the trap and was misled by the documents and reached to an entirely erroneous finding that resulted in undue delay of disposal of a small case for almost 17 years.

FALSE AND IRRELEVANT PLEAS:

41. The appellant is also guilty of introducing untenable pleas. The plea of adverse possession which has no foundation

or basis in the facts and circumstances of the case was introduced to gain undue benefit. The Court must be cautious in granting relief to a party guilty of deliberately introducing irrelevant and untenable pleas responsible for creating unnecessary confusion by introducing such documents and pleas. These factors must be taken into consideration while granting relief and/or imposing the costs.

42. On the facts of the present case, following principles emerge:

1. It is the bounden duty of the Court to uphold the truth and do justice.

2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.

3. The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that

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pleadings and all other presentations before the court should be truthful.

4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrong doer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.

5. It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.

6. Watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman,

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caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, Courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same.

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

8. The protection of the Court can be granted or extended to the person who has valid subsisting rent agreement, lease agreement or licence agreement in his favour.

43. In the instant case, we would have ordinarily imposed heavy costs and would have ordered restitution but looking to the fact that the appellant is a Watchman and may not be able to bear the financial burden, we dismiss these appeals with

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very nominal costs of Rs. 25,000/- to be paid within a period of two months and direct the appellant to vacate the premises within two months from today and handover peaceful possession of the suit property to the respondent-Society. In case, the appellant does not vacate the premises within two months from today, the respondent-Society would be a liberty to take police help and get the premises vacated.

44. Both the appeals are, accordingly dismissed, leaving the parties to bear their own costs.

.....J
[**DALVEER BHANDARI]**

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.....J
[DIPAK MISRA]

NEW DELHI,
APRIL 27, 2012.