PETITIONER:
FIRM OF HARBANSLAL JAGMOHANDAS & ANR.

Vs.

RESPONDENT:
PRABHUDAS SHIVLAL

DATE OF JUDGMENT16/04/1971

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
RAY, A.N.

CITATION:
1973 AIR 2056 1971 SCR 397
1971 SCC (2) 155

ACT:
Practice and Procedure-Application for special leave to this Court Averment giving impression that attention of High Court was drawn to the conflicting decision of another High Court, when in fact it was not so drawn-Grant of leave-If may be revoked on the ground that this Court was misled.

HEADNOTE:
The respondent who was the landlord of certain premises in Surat, filed a suit for the eviction of the petitioners, who were the tenants, on the ground of non payment of rent. The petitioners filed a written statement in which they raised a dispute regarding the standard rent, and also contended that they had raised such a dispute, within the time allowed by law that is, one month of service of the suit notice., The trial court as well as the appellate court found that a dispute regarding standard rent was not raised within one month of service of the suit notice and held, following a decision of the Gujarat High Court, that the respondent was entitled to recover possession under s. 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947. The High Court of Gujarat also rejected the petitioners' revision petition. Thereupon, the petitioners filed an application in this Court, for special leave, contending that the High Court of Bombay had held that it was sufficient if the dispute regarding standard rent was raised in the written statement, and that, in such a case eviction could not be ordered under s. 12(3) (a); and since there was a direct conflict between the High Courts of Gujarat and Bombay an important question of law relating to the scope and applicability of s. 12(3) (a) arose. This Court granted special leave and stay.
The respondent filed an application for revocation of the grant of special leave on the ground that the averments in the special leave petition gave the impression that the attention of the Gujarat High Court was drawn to the decision of the Bombay High Court, while in fact, it was not so, and that therefore the petitioners had misled this Court.
HELD: Assuming that the grounds in the special leave application gave the impression that the attention of Gujarat High Court was drawn to the decision of the Bombay

High Court, it could not be stated that there was any misstatement or untrue averment in the grounds. The contention raised was a legal contention, and there was no other manner in which a party could draw the attention of this Court to the conflict between the two High Courts. [405E-G].

It is but proper that if a party wants to have a particular legal position settled in a High Court, reconsidered on the basis of a different view taken by another High Court, he should draw the attention of the High Court, when the question is raised, to the conflicting decisions. Even if he has omitted to do so it cannot be said that when the correctness of the judgment so given, is concerned before this Court he should not be allowed to challenge the decision on the ground that another High Court has taken a different view. Such A ground on a legal point should not be confused

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or mixed up with averments regarding material facts or matters of importance. [405G-H; 406A-C].

The statements in the special leave petition could not be considered to be untrue or false on material facts or matters of importance, and therefore, the prayer for revoking the special leave would have to be rejected. [406D].

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Misc. Petition Nos, 854 and 2282 of 1971.

Applications for stay and for amendment of the prayer in C. M. P. No. 854 of 1971.

Civil Appeal No. 28 2 of 1971.

Appeal by special leave from the judgment and order dated December 22, 1970 of the Gujarat High Court in Civil Revision Application No. 1353 of 1970.

S. T. Desai, S. V. Tambwekar for S. K. Dholakia, for the petitioners and appellants.

I. N. Shroff, for the respondent.

The Judgment of the Court was delivered by

Vaidialingam, J.-The petitioners in both these applications have taken on lease the ground floor portion of property in Ward No. V. Nondh No. 1088 of Surat. The respondent became the owner of the said property by purchasing it from the previous owner by a registered sale deed dated September 18, 1958. The petitioners who were the tenants of the premises even prior to the date of purchase by the respondent, have continued to be his tenants and they are using the premises for their business purposes. The respondent landlord filed on February 12, 1967 a civil suit No. 144 of 1967 in the court of the Third Joint Civil Judge, Junior Division, Surat for evicting the petitioners.

According to the landlord the petitioners had not paid the rent for a period of over six months and had also not complied with the notice issued under Section 12 of the Bombay Rents Hotel and Lodging House Rates (Control) Act 1947 (Act 57 of 1947) (hereinafter called the Bombay Rent Act). The respondent had alleged that he had terminated the tenancy of the petitioners by notice dated November 24, 1966. The respondent sought eviction of the petitioners on two grounds namely, (1) default in payment of rent, and (2) premises being required for bonafide personal use and occupation.

The petitioners contested the suit on various grounds and

denied that they were in arrears and pleaded that they had raised a dispute in respect of the standard rent within the time allowed
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by law They also contended that the landlords requirements for use of occupation-was not bonafide Both the trial court as well as the appellate : Court the Extra Assistant Judge, surat, have concurrently rejected the plea of the respondent that he required the promises bonafide for personal use. Both the courts held that the petitioners have not raised any dispute about the standard rent within one month of service of suit notice either by preferring a standard rent application or by sending, a reply to the, suit: notice raising such a dispute. : On this basis both the courts hold that the respondent-plaintiff is entitled to recover possession of the premises on the ground of, non payment of rent under Section 12 (3) (a) of the Bombay Rent Act and accordingly passed an order directing eviction of the petitioners from the suit, premises.

The petitioners filed Civil, Revision Application No. 1353 of 1970 before the Gujarat High. Court challenging the decision of the two subordinate courts ordering their eviction. The High Court summarily rejected the said application by its order dated December 22, 1970.

The petitioners filed Special Leave Petition No. 342 of 1971 seeking special leave to appeal against the decision of the Gujarat High- Court. In the special, leave petition it has been stated that the appeal raises important the of law relating to the scope ,and applicability of Section 12 (33) (a) of the Bombay Rent Act, which applies in all material particular& to both the States of Maharashtra and Gujarat. It has been further stated that there is a direct conflict regarding the interpretation of this section between the Full Bench of the Bombay High Court and the Gujarat High Court.

According to the petitioners, the Bombay High Court has held that the matter will not fall under. Section 12 (3) (a) even in those cases where a dispute in respect of standard rent has been raised in the written statement, whereas the Gujarat High Court has held to the contrary and, therefore, there is a direct conflict between the two High Courts on this point. Along with the special leave petition the petitioners have filed C. M. P. No. 854 of 1971 praying for the stay of operation of the order of the Gujarat High Court in Civil Revision Application No. 1353 of 1970. In view of the conflict between the Bombay and Gujarat High Courts regarding the interpretation of the above section, this Court granted special leave by its order dated February 15, 1971. This Court further granted exparte stay pending disposal of the notice of motion, which was made returnable within three weeks.

The respondent entered appearance and filed his counter-affidavit in C. M. P. No. 854 of 1971. In the counter-affidavit the respondent has made two prayers, namely, (1) to revoke the
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special leave granted to the petitioners and (2) to dissolve the order of stay granted- exparte. In order to, clarify the Prayers made in C.M. P. No. 854 of 1971, the petitioners have filed C. M. P. No, 2282 of 1971 requesting permission to amend their original application C. M. P. No: 854 of 1971 by stating that the relief asked for is for stay of eviction of the petitioners from the suit premises and to grant, stay of operation of the judgments of the trial court as well as of the Appellate Court. Reading the two applications it is

clear that the petitioners seek relief from dispossession pending the disposal of the appeal by this Court. We will deal with the prayers for grant of stay of dispossession after disposal of the plea raised by the respondent that the Special leave granted by this Court should be revoked. The grounds on which the respondent requests for cancellation of special leave are that the petitioners have completely misled this Court in regard to the true facts of the case and that they are guilty of suppressio veri or suggestio falsi.

The bone of contention in this regard as pointed out by Mr, 1. N. Shroff, learned counsel for the respondent is that the Full Bench decision of the Bombay High Court, which is stated to be in direct conflict with the decision of the Gujarat High Court has never been placed before the Gujarat High Court when it dismissed in limine C. R. P. No. 1353 of 1970.

Mr. S. T. Desai, learned counsel for the petitioners, pointed out by reference to the special leave petition that there has been no attempt by his clients to mislead this Court and he further urged that all the facts have been stated correctly. He admitted that it has been mentioned in the special leave petition that there is a direct conflict between the Bombay and Gujarat High Courts in the matter of interpretation of Section 12 (3) (a) of the Bombay Rent Act. This plea, being a legal contention was available to the petitioners and they were perfectly justified in placing before this Court the conflict so that it may be resolved one way or the other. The statement regarding the conflict made in the special leave petition is also true.

At the outset we may clear the ground by stating that Mr. S. T. Desai, learned counsel for the petitioners, desired us to proceed on the basis that there is nothing on record to show that the Full Bench decision of the Bombay High Court was placed before the Gujarat High Court when C. R. P. No. 1353 of 1970 was being heard.

We Will now refer to the statements made in the special leave petition, which are relevant for the purpose of deciding whether there has been any untrue statement made by the petitioners. In

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paragraph 2, it is stated that the special leave petition raises important question of law relating to the scope and applicability of Section 12 (3) (a) of the Bombay Rent Act, which applies in all material particulars to both the States of Maharashtra and Gujarat and that there is a direct conflict between the Full Bench of the Bombay High Court and the, Gujarat High Court. It is further stated that the Bombay High Court has held that a matter will not fall in Section 12(3)(a) not only in those cases for which a dispute in respect of standard rent has been raised within one month of the service of, notice but also in those cases in which a dispute in respect of standard rent is raised in written statement filed in reply to the plaint of the landlord.

In paragraph 2 it is further stated

> "This important decision given by the Full Bench of the Bombay High Court, it is respectfully submitted, is in direct conflict with the authorities of the Gujarat High Court, and the present decision of the Gujarat High Court from which this special leave is being filed has also proceeded on the basis which is in direct conflict with the judgment of the Bombay High Court. This is because the petitioners who are the tenants had in any

event and accepting all findings of fact of the Courts below. raised a dispute regarding standard rent in the written statement and therefore on the ratio of the Bombay High Court judgment the petitioners cannot be ordered to be evicted from the premises."

Paragraphs 4 to 13 give the facts and circumstances leading to the filing of the petition for special leave. In. those paragraphs facts relating to the tenancy, the notices that passed between the parties, as well as the findings of the two subordinate courts and the dismissal by the High Court of C. R. P. No. 1353 of 1970 are stated. Paragraph 14 enumerates the various grounds which, according to the petitioners, will enable them to obtain special leave.

Grounds which according to the respondent, amount to statements of facts and which are not true are Nos. 2, 3 and 16. They are as follows :

"II. That the High Court ought to have examined the aspect as to whether in view of the judgment of the Full Bench of the Bombay High Court in Special Civil Application No. 718 of 1968 decided on 17th August, 1970, a case is made out as to whether Section 12 (3) (a) of the aforesaid Act applied when a dispute about standard rent is raised at the time of written statement.

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III. That the High Court ought to 'have considered the reasons on the basis of which the judgment of the Full Bench of the Bombay High Court was delivered, particularly in view of the fact that there was a clear conflict between the judgments of the High Court of Bombay and the High Court of Gujarat on the question of the scope and applicability of section 12 (3) (a) of the aforesaid Act.

XVI. It is respectfully submitted that the petition involves substantial questions of law of public importance and the decision on which would affect a large number of pending cases both in the Maharashtra and Gujarat Courts which deal with identical section 12 (3) (a) of the aforesaid Act. In view of the direct conflict between the Bombay and Gujarat High Courts it is respectfully submitted that it is a fit case for this Hon'ble Court or other-wise the same section would be interpreted by both the courts in contradictory manner. In fact if the petitioners had been in Maharashtra then he would have succeeded in view of the Full Bench judgment of the Bombay which squarely applies to the facts of this case, even accepting all findings of facts against the petitioners. A true copy of the Bombay High Court Full Bench judgment is annexed hereto as Annexure B and a true copy of the judgment of the lower appellate court is annexed hereto to as Annexure C."

The true copy of the Full Bench, judgment of the Bombay High Court, referred to in ground No. XVI is the one in Special

Civil Application No. 781 of 1968 decided on August 17, 1970. In the counter-affidavit filed by the respondent in C. M. P. No. 854 of 1971 in paragraph 5, after referring to the fact that the Petitioners are making a grievance about the summary dismissal of the C. R. P. No. 1353 of 1970 by the Gujarat High Court on the ground that the said decision is in conflict with the Full Bench decision of the Bombay High Court, referred to above, it is stated :

> "The enquiries made by me show that the Petitioners had not produced before the Gujarat High Court a Certified or even an Ordinary copy of the said Full Bench Judgment of the Bombay High Court nor had the petitioners at the admission stage of the Petitioners' Civil Revision Petition before the Gujarat High Court cited or referred to the said Full Bench decision. If the information received by me is correct and I believe it to be correct, it is wholly improper for the Petitioners to approach this
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> Hon'ble Court and to contend that the Gujarat High Court is in error in not examining and following the Full Bench decision of the Bombay High Court."
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> In Paragraphs 8 and 9 it is stated
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> "8. The conduct of the Petitioners would further appear to be improper because they do not appear to have taken up this point in their Civil Revision Petition No. 1353 of 1970 filed by them in the Gujarat High Court.
>
> 9. It, therefore, appears that the Petitioners have completely misled this Hon'ble Court in regard to the true facts and have thereby obtained from this Hon'ble Court Special Leave to Appeal, which, in all probability, this Hon'ble Court would not have been pleased to grant had the Petitioners placed before this Hon'ble Court true facts of the case."

Therefore, it will be seen from the material averments of the respondent that his bone of contention regarding the statements of fact by the petitioners is that the statements contained in the relevant paragraphs of the special leave petition, adverted to earlier, give the impression that the Full Bench decision of the Bombay High Court was placed before the Single Judge of the Gujarat High Court when C. R. P. No. 1353 of 1970 was being disposed of. That the said judgment was not brought to the notice of the High Court is clear from the fact that no grounds were taken in the Civil Revision Petition regarding any conflict between the Gujarat and the Bombay High Courts on identical provisions of the statute.

The petitioners have in their rejoinder affidavit controverted the allegation that they have in any manner misled the Court. They have, on the other hand, stated that the conflict between the two High Courts has been stated in the special leave petition, which is a fact and it was mainly on that basis that the special leave was asked for and granted by this Court. They have further stated that there has been no suppression of many material facts or misstatement of facts which misled the Court in granting the special leave.

Mr. I. N. Shroff has referred us to the decisions of this Court wherein it has been held that when there has been an

untrue statement of a matter of importance or when there has been a misstatement as to valuation so as to mislead the Count to exercise its discretion in a party's favour or when a false statement has been made on material facts. this Court had revoked the special leave already granted.

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There can be no- controversy that if the petitioners have made an untrue averment regarding material statements or false statement of matters of importance or a deliberate untrue statement of material facts so as to mislead this Court or if there, has been any suppression on any point of importance the special leave granted by this Court will have to be revoked. But the question is whether in the circumstances of the case the petitioners have made any such misstatement or untrue statement of matters of importance. In S. R. Shetty v. Phirozeshah Nusserwanji Golabawalla and another (1) special leave was revoked on the ground that the valuation had been' deliberately inflated by the parties with a view to getting over the preliminary hurdle regarding valuation. In Hari Narain v. Badri Das (2), it was observed by this Court :

> "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked."

In Rajabhai Abdul Rehman Munshi v. Vasudev Dhanjibhai Mody (3) this Court after referring to the previous decision, cited above, observed as follows :

> "Exercise of the jurisdiction of the Court under Art. 136 of the Constitution is discretionary : it is exercised sparingly and in exceptional cases, when a substantial question of law falls to be determined or where it appears to the Court that interference by, this Court is necessary to remedy serious injustice. A party who approaches this Court invoking the exercise of this overriding discretion of the Court must come with clean hands. If there appears on his part any attempt to overreach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised in revoking the leave to appeal granted even at the time of hearing of the appeal."

(1) C.A.No. 155 of 1963 decided on 5-4-1963. (2) [1964] 2 S. C. R. 203.

(3) [1964] 3 S. C. R. 480.

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In Sita Bai (dead by her legal representative and another v. sonu vanji Warti and others (1) this Court revoked special

leave on the ground that on matter of importance the, appellants therein had made untrue statements' before this Court. Recently in Shankar Madhoji Nemade v. Chisuji Janaji Bhadke and others (2) this Court reiterated the principles laid down in the above decisions. But on facts it was held that there has been no untrue or false averment regarding material facts.

Having due regard to the principles laid down above and applying them to the case on hand, we are of the, opinion that the request of the respondent for revoking special leave granted has to be rejected. We are also satisfied that there has been no false or untrue averment on material facts made by the petitioners for the purpose of misleading this Court.

Paragraph No. 2 of the special leave petition refers to the conflict between the Gujarat and- Bombay High Courts with regard to the scope and applicability of Section 12 (3) (a) of the Bombay Rent Act. The contrary view taken by the Gujarat High Court is the one reported in Chunilal Shivlal v. Chimanlal Nagindas (3), which has been followed by the two subordinate courts. No doubt the High Court has summarily rejected the Civil Revision Petition. Therefore, what is stated in paragraph No. 2 is a pure statement of the legal position and factually it is correct. We have also referred to the grounds Nos. 2, 3 and 16 which are purely legal contentions. The contention of Mr. Shroff, learned counsel for respondent is that a reading of these grounds gives the impression that the attention of the Gujarat High Court was drawn to the Full Bench decision of the Bombay High Court when the Civil Revision Petition was disposed of. Assuming it is so, in our opinion, it cannot be stated that there is any misstatement or untrue averment contained in these grounds. It must be remembered that they are legal contentions taken in the grounds attacking the judgment of the Gujarat High Court. We fail. to see in what other manner a party can draw the attention of this Court to a conflict between two High Courts with regard to the interpretation of a substantially similar provision of a statute. It is needless to state that if a party wants to have a particular legal position settled in a High Court, reconsidered on the basis of a different decision on identical point by another High Court and specially with regard to the same statute, he must draw the attention of the learned Judge to that decision bearing on the point in question. This will be a very proper thing for a party to do. But that is far from saying

(1) C. A. No. 982 of 1965 decided on 25-4-1968.
(2) C. A. No. 85 of 1967 decided on 8-9-1970.
(3) 7 C. L. R. 945.

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that if he has omitted to place a particular decision of another High Court on' an identical matter, but nevertheless when the judgment so given is before a higher Tribunal, he should not be allowed to challenge the decision on the ground that the other High Courts have taken a different view. For instance, if a matter is disposed of by a Division Bench of the same High Court and a similar matter is disposed of by a Single Judge' on the next day without being made aware of the decision of the Division Bench in our opinion, it will be perfectly open to the party aggrieved by the judgment of the Single Judge, when filing. an appeal against that judgement to urge that it is contrary to the Division Bench decision of the same court, though that judgment was not brought to the notice of the Single Judge. The grounds taken on legal points should not, in our

opinion, be confused or mixed up with the averments regarding material facts or matters of importance.

We are of the opinion that none of the statements in the special leave petition relied on by Mr. Shroff can be considered to be untrue or false statements on material facts or matters of importance. Therefore, the prayer of the respondent for revoking the special leave granted will have to be rejected. The C. M. Ps. Nos. 2282 of 1971 is allowed and the prayer in C. M. P. No. 854 of 1961 will stand suitably amended.

Regarding the stay application, it is ordered that there will be a stay of dispossession of the petitioners from the premises pending disposal of the appeal by this Court provided, (1) the petitioners deposit in the trial court within one month from today the entire arrears of rent; and (2) the petitioners deposit in the trial court rent for every month on or before the 10th of the succeeding month. The respondent will be at liberty to withdraw the rents so deposited unconditionally and without prejudice to his contentions in the appeal. If the petitioners fail to deposit the arrears or commit two consecutive defaults in depositing the monthly rent, the stay granted will stand vacated and the respondent will be entitled to take delivery of the properties. It is also recorded that Mr. S. T. Desai, learned counsel for the petitioners, has undertaken on behalf of the firm and its partners that they will deliver possession of the premises within three months from the date of judgment in the appeal, in case the appeal is dismissed. There will be no order as to costs.

V.P.S.

Appeal dismissed.

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