

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9354 OF 2026

Bank of India Petitioner
Versus
Dr. Hari J. Nain (Since Deceased) and Anr. Respondents

Mr. Amit Tungare a/w. Ms. Fleur D'Souza i/b. M/s. Asahi Legal,
Advocate for the Petitioner.
Mr. Shanay Shah a/w. Mr. Yashpal Jain and Ms. Jahnvi Vora,
Advocate for the Respondents.

CORAM: ARUN R. PEDNEKER, J.

DATED: 5th OCTOBER, 2026.

PC:-

1. The present Writ Petition challenges the Judgment and Order dated 4th May, 2026 passed by the learned Appellate Court in Appeal No. 82 of 2024, whereby Appellate Court dismissed, the appeal and confirmed the Judgment and Decree dated 7th November, 2023 passed by the learned Trial Court in T.E. & R. Suit No. 168/181 of 2024 granting mesne profit.

2. The brief facts of the Petition are that the Petitioner is a banking company and was a lessee of a portion of the ground floor

admeasuring 1,411 sq. ft. and a portion of the first floor admeasuring 1,422 sq. ft. of the building known as “The Shelter”, situated at National College Road, Khar (West), Mumbai – 400050 (“**Suit Premises**”). The said building, including the Suit Premises, is owned by the Respondents. A Lease Deed was executed between the Petitioner and the Respondents in respect of the Suit Premises for a period of 10 years commencing from 1st June, 2003 and ending on 31st May, 2013.

3. It is submitted by the Petitioner that, Upon expiry of the Lease Deed in 2013, the Respondents accepted monthly rent from the Petitioner, thereby treating the Petitioner as a monthly tenant in respect of the Suit Premises. Thereafter, the Respondents issued a notice dated 17th January, 2014 terminating the Petitioner’s tenancy.

4. It is undisputed that the Suit was instituted for eviction and recovery of arrears of rent, mesne profits and interest thereon. However, during the pendency of the Suit, the Petitioners surrendered possession of the Suit Premises to the Respondents on 29th February, 2016. Consequently, the relief of eviction and recovery of possession did not survive and the Suit, to that extent,

became infructuous. The Suit thereafter remained pending only in respect of the reliefs seeking recovery of arrears of rent, mesne profits and interest thereon.

5. The issue raised before this Court is “whether the learned Trial Court, without framing an issue and recording any finding as to the legality of the Petitioner’s occupation of the Suit Premises after termination or expiry of the Lease, could have passed an order directing payment of mesne profits?”.

6. The learned Counsel for the Petitioner submits that having surrendered the leased premises in the year 2016, the Petitioner was no longer in occupation of the premises. In order to render a finding on mesne profits, it was necessary for the Court to primarily render a finding as to whether the possession of the Petitioner after the efflux of lease period was illegal. In the absence of any issue being framed in this regard, there could have been no finding by the Trial Court on this aspect, and in the absence thereof, there could have been no direction to pay mesne profits.

7. The learned counsel for the Petitioner relies upon the judgment of Supreme Court in the case of *Pramod Shroff vs.*

Mohan Singh Chopra¹, particularly at paragraph number 28, to contend that the framing of issues, although not mandatory, if omitted, causes prejudice to the parties and vitiates the trial. The learned counsel submits that in the absence of an issue in this regard, there could be no finding regarding the occupation of the Petitioner beyond the efflux period of tenancy. The paragraph no. 28 in the case of **Pramod Shroff vs. Mohan Singh Chopra (Supra)** for ready reference is noted below:

“28. Though framing of issues, as mentioned above, although, is not mandatory yet, if the omission to frame the same causes prejudice to the parties, then the same can vitiate the trial. The test for finding as to omission to frame the issues have caused prejudice to the parties or not can be laid down on the touchstone as to whether parties that go to trial had knowledge that (i) a particular question is in issue and (ii) had opportunity to lead evidence on that issue.”

8. The learned counsel for the Petitioner further submits that the trial Court was required to pass a decree of possession, and in the absence thereof, there could have been no directions for mesne profits. For that purpose, he relies upon the order of this Court in the case of **State Bank of India vs. Amum Builders**² at paragraph nos. 20 and 21 as noted below:

1 2026 SCC OnLine SC 598

2 2025 SCC OnLine Bom 3383

“20. In the context of the controversy at hand, a correct reading of Rule 12 of Order XX would imply that where a Court passes a decree for possession of immovable property, the decree may provide for, firstly, the delivery of possession of the property, secondly, for the rent or mesne profits which have accrued on the property during the period from the institution of the Suit or an enquiry as to such past rent or mesne profits and, thirdly, an enquiry as to future rent or mesne profits till the delivery of possession to the decree holder or relinquishment of possession by the judgment debtor.

21. A decree for delivery of possession of immovable property is, in a sense, a composite decree for possession of the property as well as the past and future mesne profits from the time the possession of the Judgment Debtor becomes wrongful. A direction for determination of the mesne profit. In the context of the controversy at hand, a correct reading of Rule 12 of Order XX would imply that where a Court passes a decree for possession of immovable property, the decree may provide for, firstly, the delivery of possession of the property, secondly, for the rent or mesne profits which have accrued on the property during the period from the institution of the Suit or an enquiry as to such past rent or mesne profits and, thirdly, an enquiry as to future rent or mesne profits till the delivery of possession to the decree holder or relinquishment of possession by the judgment debtor.”

9. Per contra, learned counsel appearing for the Respondents opposes the Petition and submits that the absence of a specific issue regarding the legality of the Petitioner’s occupation of the suit premises would not, by itself, preclude the Trial Court from determining the Petitioner’s liability to pay mesne profits. In

support of the said contention, reliance is placed upon the judgment of the Hon'ble Supreme Court in **Kali Prasad Agarwalla (Dead) by LRs. and Others v. M/s. Bharat Coking Coal Limited and Others**³, particularly paragraphs 19 and 20 as noted below:

“19.It was, however, urged for the appellants that there... is no proper pleading or issue for determination of the aforesaid question and the evidence let in should not be looked into. It is too late to raise this contention. The parties went to trial knowing fully well what they were required to prove. They have adduced evidence of their choice in support of the respective claims. That evidence has been considered by both courts below. They cannot now turn round and say that the evidence should not be looked into. This is a well accepted principle.

20. In Kunju Kesavan v. M. M. Philip², this Court has stated (as summarised in the headnote at p. 637):

The parties went to trial, fully understanding the central fact whether the succession as laid down in the Ezhava Act applied to Bhagavathi Valli or not. therefore, did not lead to a material sufficient to vitiate the The absence of an issue, decision. The plea was hardly needed in view of the fact that the plaintiff stated in his replication that the "suit property was obtained as makkathayam property, by Bhagavathi Valli under the Ezhava Act". The subject of exemption from Part IV of the Ezhava Act, was properly raised in the trial court and was rightly considered by the High Court.”

3 1989 Supp (1) SCC 628

10. Learned counsel for the Respondents further relies upon the judgment of this Court in **Bharat Petroleum Corporation Limited v. Paramjitsingh Ghai and others**⁴, wherein it was held that, upon valid termination of the tenancy, the possession of the tenant becomes unlawful from the date of termination and not merely from the date on which the decree. Paragraph 21 of the judgment of this court is noted as under:

“21.The contention that the possession becomes unlawful only on the date of passing of the decree by the Appellate Bench (12 October 2010) deserves to be rejected summarily. This is not a Rent Act suit and Defendant, being not only a Public Sector Undertaking but also having share capital in excess of Rs.1 crore, is excluded from application of the Maharashtra Rent Control Act, 1999 under Section 3(1)(b) thereof. Therefore, in the present case, the possession of the Defendant in respect of the suit premises would become unlawful not from the date of the decree of the Appellate Bench but from the date of termination of the tenancy. The Appeal is obviously continuation of the suit and therefore it would be erroneous to contend that mesne profits would be payable from the date of decree passed by the Appellate Bench. The Appellate Bench has merely directed doing of something which ought to have been done by the Small Causes Court itself. Therefore, the decree for possession passed by the Appellate Bench would date back essentially to the date of filing of the suit. One of the issues before the Appellate Bench was about the validity of termination notice dated 14 August 2004 and the Appellate Bench has held the termination of the lease by notice dated

4 MANU/MH/4105/2024

14 August 2004 to be valid. Thus possession of the Defendant in respect of the suit premises has become unlawful from the date of termination of lease which is 14 August 2004. I therefore do not find any substance in the contention raised on behalf of the Applicants about liability to pay mesne profits only from the date of the decree of the Appellate Bench.”

11. Learned counsel for the Respondents, therefore, submits that the impugned judgments do not warrant interference in the supervisory jurisdiction of this Court.

12. Perused the judgment of the Appellate Court. Paragraph Nos. 35, 36 and 37 of the Judgment are noted below :

“35. On the contrary, the conduct of the parties indicates that after expiry of the lease period, the defendant continued in possession and the plaintiffs accepted rent, thereby treating the defendant as a tenant holding over on a month-to-month basis. This position continued until the issuance of the termination notice dated 17.01.2014, which has been duly served and acknowledged by the defendant. Upon termination of the Tenancy, the continued occupation of the defendant, in the absence of any subsisting contractual or statutory protection, assumes the character of unauthorized occupation and wrongful possession within the meaning of mesne profits as defined under Section 2(12) of the CPC.

36. The contention of the defendant that it is entitled to protection under the provisions of the

Maharashtra Rent Control Act is 36 without merit, particularly in view of the admitted status of the defendant as a banking company, which is not entitled to such protection. Consequently, upon termination of the tenancy, the possession of the defendant after the expiry of the notice period becomes wrongful, thereby entitling the plaintiffs to claim mesne profits for such period of unauthorized occupation and wrongful possession.

37. It is not in dispute that the defendant remained in possession of the suit premises from 01.03.2014 to 29.02.2016, during which period its branch continued to operate from the said premises. The surrender of possession on 29.02.2016 brings the period of wrongful occupation to an end. Therefore, the plaintiffs are entitled to mesne profits for the aforesaid period, subject to determination of a reasonable and just rate based on the evidence available on record.”

From the judgment it appears that the parties had lead evidence on the aspect of the legality of the Petitioner's occupation of the Suit Premises after expiry of the Lease Deed and on the quantum of mesne profits. The Respondents had contended that the Petitioner's occupation of the Suit Premises after termination or expiry of the lease was unlawful. Although the possession of the tenanted premises are surrendered during pendency of the suit and no issue was formed as regards the legality of possession of the petitioner after termination of lease, the parties had led evidence on the

question of the legality of such occupation and the liability to pay mesne profits. The parties were fully aware of the case put up and the nature of occupation of the Petitioner after termination of lease and thus merely because an issue was not framed as to whether occupation of petitioner became unlawful after determination of lease, the same would not preclude the Court from rendering a finding on that aspect. In the instant case the court has rendered finding that the possession of suit property is illegal after termination of lease.

13. In view of the judgment of the Hon'ble Supreme Court in **Kali Prasad Agarwalla (Dead) by LRs. and Others** (supra) the issue stands covered. The parties adduced evidence in support of respective contentions.

14. Accordingly, no case is made out for interference with the impugned judgments in the exercise of the supervisory jurisdiction of this Court. The Writ Petition is **dismissed**.

(ARUN R. PEDNEKER, J.)