

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 185 OF 2015

Copper Rollers Pvt. Ltd. .. Petitioner
vs.
Security Guard Board for Greater Mumbai .. Respondent

Mr. V. C. Ghosalkar for the Applicant.
Mr. M. S. Topkar for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 12 JUNE 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] This Civil Revision Application impugns the judgment and order dated 29 November 2014 made by the Appellate Bench of the Small Causes Court only to extent it sets aside the award of means profit, at the rate of Rs.8000/- per day for the period specified therein and further directs enquiry into the mesne profits by invoking the provisions contained under Order 20 Rule 12 of the CPC.

3] There is no reason to interfere with this part of the impugned order, at this stage. Upon remand, once the mesne profits are determined, if the petitioner is dissatisfied with such determination,

it will always be open to the petitioner to question the same. At such stage, the petitioner can always be granted liberty to contend that the direction for determination of mesne profits by ignoring the clause for liquidated damages in the contract between the parties, was not proper. Accordingly, such liberty is expressly granted to the petitioner herein.

4] The learned counsel for the petitioner submits that from October 2011 till March 2014, the respondent had failed to pay even the rent as agreed in the contract between the parties, which amounts to Rs.1,14,461/- per month. The arrears on this core, therefore, amount to Rs.33,42,261/-

5] The learned counsel for the respondents then, further, submits that the rent for the aforesaid period had been dispatched to the petitioner-landlord from time to time by way of cheques, however, the petitioner-landlord declined to accept the same. Further, it is the case of the respondent-tenant that the rent has originally specified in the contract between the parties is only Rs.1,09,011/- per month.

6] Even if, it is to be accepted that the rents were offered by the respondent-tenant to the petitioner-landlord from time to time, the fact remains that for the period between October 2011 and March 2014, the rents remained unpaid. The learned counsel for the petitioner-landlord makes reference to 5% enhancement as specified in the contract itself and on the said basis submits that the rent should be Rs.1,14,461/- per month. The difference between two figures as suggested by the learned counsel for the parties is really not significant, particularly as the matter has been remanded to the Small Causes Court for determination of mesne profits.

7] In view of the aforesaid and without prejudice to the contentions of either parties, it would be appropriate to direct the respondent-tenant to deposit before the Small Causes Court a sum of Rs.33,42,261/- towards arrears of rent for the period between October 2011 and March 2014, within a period of eight weeks from today. Upon such deposit, the petitioner-landlord shall be permitted to withdraw the same. The learned Small Causes Court to take into consideration such payment, at the stage of determination of mesne profits.

8] With the aforesaid observations and liberty, this Revision Application is disposed of.

9] It is clarified that except to the limited extent as aforesaid, this Court has not examined the merits of the matter and therefore, the learned Small Causes Court to comply with the remand order, uninfluenced by any observations that may appear in this order.

10] Rule is disposed of to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)

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