

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.790 OF 2012

IN

MISC. APPEAL NO.158 OF 2011

IN

MISC. NOTICE NO.909 OF 1993

IN

L.E.SUIT NO.291/338 OF 1983

Mridangraj Hiralal Suchak )  
alias Barfiwalla, residing at Madhav Bhuvan )  
3<sup>rd</sup> Floor, 142, N. Desai Road, Mumbai-400 004 )...Appellant  
(Org. Applicant/  
Plaintiff-Decree  
holder

V/s.

Bank of Baroda )  
a body corporate constituted under the Banking )  
Companies (Acquisition and Transfer of )  
(Undertakings) Act, 1970, having its Head office )  
at Mandvi, Baroda, State of Gujarat and having )  
its Zonal Office at Maharashtra New Stock )  
Exchange Towers, Dalal Street, Fort, Mumbai-001 )...Respondents  
(Org.Appellants/  
Defendants-Judg-  
ment Debtors

WITH

CIVIL REVISION APPLICATION NO.406 OF 2012

Bank of Baroda )  
a body corporate constituted under the Banking )  
Companies (Acquisition and Transfer of )  
(Undertakings) Act, 1970, having its Head office )  
at Mandvi, Baroda, and its C.P.Tank Branch at )

Halai Lohana Mahajan Building, 6/10, Dr.Babasaheb)  
Jaykar Marg, Mumbai-400 002

)...Petitioner  
(Org.Respondent/  
Defendant

Vs.

Mridangraj Hiralal Suchak  
alias Barfiwalla, residing at Madhav Bhuvan  
3<sup>rd</sup> Floor, 142, N. Desai Road, Mumbai-400 004

)  
)  
)...Respondent  
(Org.Applicant/  
Plaintiff

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Mr.Rohit Kapadia, Sr.Advocate a/w Mr.Atith Shukla i/by Mr.Ashok G.Toraskar for appellants in CRA 790/2012 and for respondent in CRA No.406/2012.

Mr.P.S.Dani Sr.Advocate a/w Mr.A.R.Bamne i/by M/s.A.R.Bamne & Co. for respondents in CRA No.790/2012 and for appellants in CRA No.406/2012.

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**CORAM: K.R.SHRIRAM, J.**

**DATED : 18<sup>TH</sup> MARCH 2015**

**JUDGMENT :**

1 Both, the plaintiff and defendant before the trial court have filed independent Civil Revision Applications. The plaintiff decree-holder has filed Civil Revision Application No.790 of 2012 and the defendant has filed Civil Revision Application No.406 of 2012. Both the Civil Revision Applications can be disposed by this common judgment. For convenience, the description of the parties in the trial court is maintained.

2 Facts, in brief, that led to the filing of the said two revision applications are as under :-

3 The suit property being commercial property consisted of three shops on the ground floor of a building by name "Coronation" at Block No.C-57-59, Vithalbhair Patel Road, Mumbai-400 004. It is situated at C.P.Tank junction which is one of the busiest locality in that part of Mumbai, a junction of 5 roads and had access to it from the main road itself. The said 3 shops were joint together and the total area of the premises was 2255 sq. ft. (the suit premises).

4 The plaintiff was not the owner of the suit premises but a tenant and inducted the defendant as a licensee. In the year 1969, the plaintiff had inducted the defendant as the licensee for a period of 10 years with renewable clause. The license was renewed in the year 1981 for 10 years but the renewal took effect from 1979. This would mean the leave and license term was upto 1989. The agreed license fee was Rs.5.25 per sq.ft. per month which rate was fixed without any escalation clause. The rate therefore, was to remain firm for the entire duration of 10 years, i.e., upto 1989.

5 On 12.12.1983, the plaintiff filed an eviction suit being L.E. Suit No.291/338 of 1983 before the Small Causes Court, Mumbai after terminating said leave and license agreement. The said suit for possession was decreed on 27.2.1992 against which the defendant filed an appeal before the appellate bench of the Small

Causes Court. While decreeing the suit the trial court also ordered inquiry for determination of mesne profit from the date of filing of the suit for eviction till handing over possession. The appeal came to be dismissed on 30.3.1993.

6 The defendant challenged this by way of writ of petition. The writ petition came to be dismissed and in pursuance of the decree passed by the trial court, the defendant, on 31.7.1993, surrendered to the plaintiff, possession of the suit premises.

7 The plaintiff thereafter filed Misc. Notice No.909 of 1993 in L.E. Suit No.291/338 of 1983. By the said application, the plaintiff made two alternative pleas. It was contended that the plaintiff was entitled to mesne profit on the basis of actual profits earned by the bank from time to time while the bank was in possession of the suit premises from December-1983 till 31.7.1993. It was alleged that the bank displayed profits made by it on the notice board in the branch of the bank at the suit premises and the plaintiff was entitled to profits that was made by the defendant while utilizing the suit premises for the aforesaid period. It was also contended that the plaintiff would be entitled to 25% of the net profit which was made by the bank during the aforesaid period and the said 25% of net profit was calculated to be Rs.3,33,75,000/-. The plaintiff also claimed interest of Rs.2,22,00,000/- upto date of filing of the said application.

8           The alternative claim of the plaintiff was that the plaintiff would otherwise be entitled to the amount that the bank would be required to pay for having obtained an other suitable premises, had the bank vacated the suit premises and was required to obtain such premises during the aforesaid period i.e., from 1983 till 1993. It was also contended by the plaintiff that the plaintiff was an estate broker who had shown willingness to give premises similar to the suit premises to other banks and the defendant bank and it was contended that similar premises were available at the rate of Rs.110 per sq. ft. in the same locality and therefore, the plaintiff will be entitled to that amount. It was also contended that the defendant had acquired an area very close to the suit premises @ Rs.45/- per sq.ft. per month exclusive of taxes and if the taxes were included in the said rate, then the aggregate rate would be Rs.72 to Rs.75 per sq.ft. and that is the rate that the plaintiff was entitled to per month because that would be the net amount that the bank would have paid. The plaintiff also claimed interest and in all, claimed an amount of Rs.2,81,00,000/- as an alternative figure/amount.

9           The defendant resisted the demand of the plaintiff and suggested other methods of deciding the mesne profits which according to the defendant was more correct.

10          Before I go into what the defendant had submitted, the plaintiff's stand that the defendant should pay 25% of the profit that it made to the plaintiff is scarcely credible. It is beyond the bounds

of possibility that the defendant would have displayed, in its branch office, on the notice board, the profits that it had made. There has been no evidence also to that effect. Moreover, the profits of the bank is calculated on the basis of the profits of all the branches together and therefore, it is seemingly impossible to calculate branch wise profits. It is also not conceivable that the profits earned by the bank, have been earned from the premises within the meaning of definition of section 2(12) of the Code of Civil Procedure. Therefore, this claim of the plaintiff cannot be accepted. In fact, the counsel for the plaintiff also did not press this point.

11           On the alternative method claimed by the plaintiff for calculating the mesne profit, the stand of the bank was no evidence was produced by the plaintiff to prove the actual market rate of rent in respect of the suit premises or vicinity nor any evidence placed on record that would show what was the actual market rate at which the said alternative premises would have been available to the bank, had the bank opted for the same between the period December-1983 to July-1993.

12           It was also submitted that the plaintiff himself being a tenant in respect of the suit premises, was not entitled to charge anything over and above the standard rent during the period 1983 to 1993. The Bombay Rent Act was in force at that point of time and the Bombay Rent Act prohibited the tenants to sub-let the premises at any rate in excess of the standard rent. The plaintiff, since he was

paying only Rs.681/- per month to the main landlord, cannot claim anything more than the said amount.

13 In the alternative, it was submitted by the defendants that the rates will have to be calculated only on the ready reckoner rate and that also only the plaintiff was in a position to show that the property would go for such rate by keeping in mind the fact that the suit premises was tenanted premises. Therefore, if such sale consideration is calculated as per the ready reckoner value and returns is taken as 6% to 10% of the ready reckoner value, then such amount would, at the most, be what the bank will have to shell out for obtaining such premises on leave and license or lease basis. Therefore, the plaintiff is not entitled to anything over and above the same.

14 The defendant also submitted in the alternative that the leave and license in any way was to expire only in 1989 and therefore, upto 1989 the plaintiff would have received only, had he not terminated the agreement, Rs.5.75 per sq.ft per month and therefore, upto 1989, the plaintiff should be paid Rs.5.75 per sq. ft. per month. It was also submitted that for the balance period even though the defendant had obtained in the year 1993, an alternative premises @ Rs.45 per sq. ft. per month, excluding taxes, that rate cannot be the basis for calculating mesne profit for the suit premises and it would be much lower than that. How much lower, was left to the discretion of the court but the defendant submitted that the court

should consider the fact that the new premises for which defendant was paying Rs.45/- per sq. ft. per month was of about 3500 sq.ft. as compared to the suit premises which was 2255 sq. ft. , the new premises was in a newly constructed building which was on the main road, in better locality and better suited business-wise, whereas the suit premises was in a very old building.

15 In fact, these are the same grounds which the defendant took in the present Civil Revision Application and while making their submissions. The plaintiffs, however, were happy with the decision of the appeal bench except to the extent of interest. The appeal court had granted 6% interest from the date of the decree until possession was handed over, whereas the plaintiffs wanted at least 18% for the entire period, i.e., from the date of the suit until possession was handed over, because (a) the defendant had lent money to the plaintiff at 22% and (b) the defendant had also claimed the 3 months compensation which the defendant had paid to the plaintiff as advance rent/deposit be adjusted with interest thereon @ 18% per annum.

16 Before the trial court, on the issue of mesne profits, the parties went in for trial and evidence was led. The trial court granted mesne profits at the rate based on ready reckoner value. The trial court considered the ready reckoner rates and granted thereon fair and reasonable mesne profit @ 12% per annum. This was for the period 1990 to 1993. As the valuer had not stated what was the rate

of ready reckoner for the period 1983 to 1989, the court reduced the mesne profit rates @ 15% per annum. The ready reckoner rates provided by the valuer in the year 1990 was Rs.4000/- and the mesne profit @ 12% of Rs.4000/- per month came to Rs.40 per sq.ft. per month. Therefore, the trial court took Rs.34 per sq. ft. per month for 1989, Rs.29 per sq. ft. per month for 1988, Rs.25/- sq.ft. per month for 1987 and concluded at Rs.13 per sq. ft per month approximately for 1983.

17 Being aggrieved by the said judgment passed by the trial court, both the parties went into appeal before the appellate bench of the Small Causes Court. The grievance of the defendant was that the trial court should not have granted mesne profit at any rate over and above the standard rent of the premises. Both the appeals came to be disposed of by a common judgment dated 22.3.2012 whereby the appeal filed by the bank was dismissed and the appeal filed by the plaintiff was allowed and the appellate bench held rate of Rs.80/- as the basic rate for the year 1992 with reduction of Rs.5 per sq. ft. per year either downwards or upwards. The appellate bench also granted interest @ 6% p.a. from the date of the decree till actual realization of the amount.

18 The High Court has a very limited jurisdiction under Section 115 of the Code of Civil Procedure. The High Court while exercising the revisional jurisdiction can interfere with the order passed on appeal by the appellate authority only on three grounds, i.e.,

- (i) Where the original or appellate authority exercised a jurisdiction not vested in it by law ;
- (ii) Where the original or appellate authority failed to exercise a jurisdiction so vested, or
- (iii) Where in following the procedure or passing the order, the original or appellate authority acted illegally or with material irregularity.

19           The present case of both the plaintiff and the defendant do not fall under the first two of the aforesaid situations as both, the trial court as well as the appellate court have decided the matters in due exercise of jurisdiction so vested in them. At the same time, the High Court is not bound to interfere merely because the conditions in the section are satisfied. Notwithstanding that the High Court cannot say that it will not interfere merely because the conditions are not satisfied. General equities of the case are matters to be taken into account in considering whether the High Court, even in cases where the conditions which attract jurisdiction exist or not, should exercise its jurisdiction.

20           Before we proceed further let us see what does mesne profit mean. Mesne profit is defined in section 2 (12) of the Code of Civil Procedure as under :-

*“mesne profits* of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such

profits, but shall not include profits due to improvements made by the person in wrongful possession”.

21 It is settled law that while ascertaining mesne profit the test to be applied is, not what the landlord has lost or would have earned by letting out or using the property himself but the test is what the wrongful occupant had actually received or might with ordinary diligence have received therefrom. (Umayun Dhanrajgir Vs. Ezra Aboody<sup>1</sup>, Kesardeo Vs. Nathmal Kisanlal Goenka<sup>2</sup>, Smt.Purificacao Fernandes Vs. Hugo Vicente de Perpetuo<sup>3</sup> and Fateh Chand Vs. Balkishan Dass<sup>4</sup>).

22 How to measure *mesne profit* or the methods of valuation have been summarized in Umayun Dhanrajgir Vs. Ezra Aboody (supra). Paragraph-31 of the said judgment reads as under :-

“31. Having taken survey of the various cases and methods of valuation, it can be broadly summarised as under :-

(i) The claim for ‘*Mesne Profit*’ remains floating till the decree of possession is passed in favour of the plaintiff, which can also be termed as royalty ;

(ii) The measure of *Mesne Profits* is the value for the use of the premises and not necessarily the value of the property ;

(iii) Value for use will be determined by :-

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1 2008 (6) Bom. C.R. 862

2 1964 Indian Law Reports 364

3 AIR 1985 BOMBAY 202

4 AIR 1963 SC 1405

- (a) What that value will be in the hands of the person in wrongful possession ;
- (b) comparables, if available and applicable in real sense ;
- (c) finding out the prevailing rate of rental at which the wrongful person ought to have found equivalent accommodation.”

23        The appeal bench did not accept the trial courts' calculation of *mesne profit* based on ready reckoner rates. The appellate court was correct in disregarding the same because the ready reckoner is applicable only to determine the stamp duty and it does not give any indication qua the market value/rent. In fact, the ready reckoner method of calculation had been given up by the defendants. In paragraph-16 (internal page-14) of the impugned judgment, it is recorded as under :-

“So far as determination of the appropriate quantum of mesne profits is concerned, the learned counsels discussed three prominent methods for determination of mesne profits. The same are (1) actual profit received, (2) comparable method and (3) ready reckoner method. Out of these three methods, both the learned advocates submitted that determination of mesne profits on the basis of ready reckoner method is not proper method.”

24        In view of the above, we need to look into only the comparable method, the actual profit received having been rejected earlier.

25        The defendants' submission that the parties had agreed as per the leave and license agreement for a rate of Rs. 5.75 per sq. feet per month and therefore, the plaintiff should be paid only that much amount as compensation also cannot be accepted. The plaintiff had in this case terminated the leave and license agreement and the termination was held to be valid by all courts including this court. Applying the principles emanating from the judgments in the matter of Smt. Purificacao Fernandes Vs. Dr.Hugo (supra) and Kesardeo Vs. Nathmal Kisanmal Goenka (supra), the defendant cannot proceed on the basis that leave and license agreement was not terminated. Though in those cases the agreement in question was a tenancy agreement that makes no difference to this principle.

Paragraph 14 of the judgment in the case of Smt. Purificacao Fernandes (supra) reads as under :-

14. Mesne profits are defined in S. 2(12) Civil P.C. as meaning those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession of other's property has to pay for such wrongful occupation to the owner of the land. It further appears that mesne profits are a compensation, which is penal in nature. According to the definition, the mesne profits correspond to the profits which the person in wrongful possession is receiving or might receive with due diligence for his wrongful occupation of the land. Nowhere, mesne profits are linked with any benefits that the owner of the

land may get from the said land. This being so, in my view, it is difficult to accept the submission of Mr. Usgaonkar only because, under the provisions of the Rent Control Act, the landlord cannot get a rent higher than the one he was getting from the original lessee. Mesne profits, as already said are by definition, to be calculated on basis of the profits which the person in unlawful possession is receiving or might have received. It is true that, in Dwarka Prasad case , a division Bench of the Allahabad High Court has held a different view. It was observed in that case that the plaintiff was not free to let the premises concerned to anyone with whom he could strike a bargain and that if he had been free in that respect the amount of damages could be fixed on the probable amount which he could have obtained from the person desirous to rent the premises. However, the Control of Rent and Eviction act controls the amount of rent which a landlord can get for any accommodation and it also provides as to whom the accommodation is to be let. In view of this, the Allahabad High Court held that the mesne profits were to be calculated on basis of the rent that the landlord/plaintiff could have got under the provisions of the control of Rent and Eviction act. this view appears, however, to be in a collision course with the definition of mesne profits itself, as I already observed and, therefore, cannot be accepted. I am fortified in this opinion by the decision of Paranjpe J., in Kesardeo's case. In the said case, the learned Judge, relying on the decision of the Supreme Court in [Fateh Chand v. Balkishan Dass](#), AIR 1963 SC 1405, observed that the mesne profits are to be calculated on basis of the profits that a person in wrongful possession has received or might have received with due diligence. It has been observed in the said case as follows:--

"The Rent Control Order was, no doubt, for the benefit and protection of tenants , but it will be going too far to say that the protection was to continue even to erstwhile tenants despite the fact that their possession was as trespassers on the termination of the relationship of

landlord and tenant. The moment a person ceased to be a tenant, he dis-entitled himself from the privileges he could have got under the Rent Control Order. Accepting this submission of Mr. Bobde in this connection would virtually amount to giving a legal status of a tenant of a person who has been held by competent Courts to be a rank trespasser after the termination of tenancy. No authority was shown in support of this impossible position. The defendant, who was no longer a tenant, could not still insist on saying that the rent which the plaintiff could have got under the Rent Control Order should be treated as the measure of damages. The claim of the defendant that the mesne profits must be limited to the rent recoverable by the plaintiff under the provisions of the Rent Control Order would virtually mean that the quantum of mesne profits was, not what the defendant had actually received or might with ordinary diligence have received but what the plaintiff as a landlord lost or had not been able to get. That would militate against the definition of mesne profits in S. 2(12), of Civil P.C.

These observations are, as already said, based on what had been held by the Supreme Court in AIR 1963 SC 1405 . The Supreme Court observed therein that the normal measure of mesne profits is the value of the user of the land of the person in wrongful possession. It is, therefore, clear that there can be no manner of doubt after this decision of the Supreme Court that that mesne profits are to be calculated on basis of the advantage the person in unlawful occupation sets by the use of the property. The same view was otherwise held by a Division Bench of this Court in Kakubhai & Co's case. I am, therefore, unable to accept the submission of Mr. Usgaonkar that the mesne profits were to be calculated on basis of the maximum rent that the respondents could have fetched if the premises were freshly let out.

(emphasis supplied)

26 Therefore, the submissions of the defendants that Rs.5.75 should be the amount payable, cannot be accepted.

27 The defendants' submission that only standard rent of Rs.681/- is payable, also cannot be accepted. The defendant was not a protected tenant at all. The privity between the plaintiff and the defendant was the leave and license agreement and the suit filed was for eviction under the leave and license agreement. In view of this, the provisions of standard rent is not applicable in the facts of the present case. The courts have held that once the agreement is terminated, the protection cannot continue because on termination, the possession is as that of a trespasser. Even for a tenant, once the tenancy is terminated, it would dis-entitle the tenant from the privileges he could have got under the Rent Control Act. Therefore, the submissions of the defendants that the plaintiff is only entitled to standard rent cannot be accepted.

28 On the rates applied by the appeal court viz. Rs.45/- per sq. ft. per month + Rs.30/- towards taxes and increase/decrease of Rs.5 per month is something in which this court will not interfere under Section 115. The plaintiff had led evidence and was cross-examined by the defendant. The plaintiff in his evidence had deposed that he was invited for the inauguration of the newly acquired premises of the respondent. The plaintiff also deposed that then branch manager of the defendant had told the plaintiff that the premises was acquired at the license fee of Rs.45/- per sq. ft. per month excluding taxes.

The payment of property taxes is the liability of the landlord and the payment of the same is made on behalf of the landlord and is a matter of convenience and to ensure this payment. This is because when a party takes a premises on leave and license on long term basis, if the landlord after collecting the license fee including taxes, does not pay the municipal taxes for whatever reason, any action taken by the authorities will have a direct effect on the licensees' enjoyment of the licensed premises. The defendant was paying property taxes separately in addition to the license fee that they were paying to their licensor. The defendant had an opportunity to controvert this figure themselves or at the very least produce the leave and license agreement which was exclusively in their possession and also the tax receipts. The defendant did not produce. In fact, the defendant was called upon twice to produce leave and license agreement but still they did not.

29 For the comparative study, the appeal court has also considered the fact that the defendant's witness who was employed in the concerned branch, had stated in the cross-examination that the present premises of the bank is a marriage hall and are partly situated on the 1<sup>st</sup> floor and partly on the 2<sup>nd</sup> floor. The appeal court also considered in its judgment the evidence of the plaintiff that the suit premises was situated on the ground floor and that there was access from the main road and it was situated at a junction of 5 roads etc. In short, the appeal court has considered all the factors and came to the conclusion at the rate at which *mesne profit* has to be paid. In the

judgment of the Apex court in the matter of DLF Housing Company etc. Vs. Sarup Singh<sup>1</sup>, the Apex Court has held that it is not competent to the High court to correct errors of facts or errors of law unless such errors have relation to the jurisdiction of the court to try the dispute itself. This is not the case where the appeal court has exercised jurisdiction not vested in it or it has failed to exercise jurisdiction so vested in it. Therefore, this court will not interfere into the issue of the *mesne profit* calculation arrived at by the appeal court.

30        What remains now to be considered is the plaintiff's claim for *pendente lite* interest and to be paid interest in excess of 6% that was awarded for the period from the time of decree of eviction till the payment thereof. The counsel for the plaintiff submitted that by not awarding interest *pendente lite* the courts below failed to exercise jurisdiction so vested in them as mandated by the Statute under the definition of *mesne profit* and in this regard intervention of the court is necessitated.

31        *Mesne profit* is defined as those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits but shall not include profits due to improvements made by the person in wrongful possession. Therefore while determining the quantum of *mesne profit*, awarding interest on *mesne profit* is

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1 AIR 1971 SUPREME COURT 2324

mandated by the Statute. The courts below have given their findings on interest. Should this court interfere while exercising the revisional jurisdiction ?

32 In the DLF Housing Judgment (supra) the Apex Court has held that the words “illegality” and “with material irregularity” as used in clause -c of Section 115 do not cover either errors of fact or either law ; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may relate to either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or law after the prescribed formalities have been complied with. Paragraph-8 of the said judgment reads as under:-

The position thus seems to be firmly established that while exercising the jurisdiction under s. 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material

irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to. errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under s. 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under s. 115 of the Code when there. was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.

(emphasis supplied)

33        The trial court granted simple interest @ 6% only from the date of the decree till actual realization of the amount. The Division Bench did not interfere with the interest granted by the lower court. For the period upto 1992 when the decree was passed, the appeal court has in paragraph-31 presumed the rate of Rs.80 per sq. ft. per month inclusive of taxes by keeping in mind the interest component as well.

34 It would not be correct to say that the Appellate Court failed to award interest *pendente lite*. If one reads paragraph-31 of the impugned order which reads as under :-

31 As stated earlier, we have already held that the Bank has secured a new premises at the rate of Rs.72/- to Rs.75/- per sq.ft. p.m. in the year 1992, just near the suit premises. Therefore, considering the old nature of the suit premises, and also keeping in mind the aspect of interest, the prevailing market rental value in the year 1992 can safely be presumed at the rate of Rs.80/- per sq. ft. p.m. inclusive of taxes. Further deduction of Rs.5/- per year would be reasonable to ascertain the rate of prevailing market rate of the suit premises for the preceding years upto 1983. Likewise rise of Rs.5/- in the market rate of the year 1992 would fetch us market rent of Rs.85/- per sq.ft.p.m. for the year 1993 regarding the suit premises.”

(emphasis supplied)

35 Therefore, the question of granting any interest separately for the period upto the decree does not arise and there was no illegality or irregularity.

36 For the period from the date of decree until payment/realization @ 6% p.a., though it was discretionary on the part of the trial court and has been confirmed by the appeal court, only the appeal court in paragraph-32 of the impugned judgment has given reasons. The reason is defendant-bank was a nationalized bank implementing various schemes of Government for the common

people. That cannot be a reason for giving only 6% p.a. rate of interest. If this explanation has to be accepted, then in cases where a charitable trust or a Government agency is in wrongful possession of a property, it would mean that they should not be asked to pay any interest at all. The Appellate Court, therefore, erred in the manner in which this conclusion was reached. There was, hence, material irregularity in the manner in which the Appellate Court arrived at its conclusion.

37        The grievance of the plaintiff is that when the bank lent money to the plaintiff, the rate of interest was almost 22% and the bank was claiming set off for the amount which the defendant had paid to the plaintiff as advance rent/deposit together with @ 18% p.a. The counsel therefore, submitted that the plaintiff should be paid at least 18% p.a.

38        As per the definition of *mesne profit* the amount payable is those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom together with interest on such profits. For the period from the date of the decree until possession was handed over, the defendant held on to the money that was payable to the plaintiffs. If that amount had been placed in fixed deposit with defendant-bank, the plaintiff would have earned about 8% to 10% on an average. The bank would have lent that money to its borrowers at interest in the range of 14% to 18% p.a. thereby making

a profit of 6% to 8% p.a. using the plaintiff's money. In my view, that profit would be the profit which the defendant who was in wrongful possession has received. This profit, it would meet interest of justice, if it is shared with the plaintiff. Therefore, the rate of interest @ 6% p.a. from the date of decree until actual realization of the amount is increased to 9% p.a. The rest of the appeal court's judgment remains unaltered.

39 Both the Civil Revision Applications are accordingly, disposed of.

**(K.R.SHRIRAM, J.)**

40 At this stage, the Advocate appearing for the defendants requests stay of this judgment. The plaintiffs not to execute decree for a period of four weeks from today.

**(K.R.SHRIRAM,J)**