

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 652 OF 2008
WITH
CA/3958/2015 IN FA/652/2008**

...

1. Uco Bank, Formarally
United Commercial Bank,
Through its General Manager,
10, B.T.M., Sarni Braburne
Stadium Road, Kolkatta.
(West Bangal).
2. Uco Bank, Formarally,
United Commercial Bank,
Through Its Division Office,
Manager Opp.15/A/I.
Sangampress, Kothrud,
Pune.
3. Uco Bank, Formarally,
United Commercial Bank,
Through its Manager,
Branch at Gulmandi Road,
Aurangabad, Now situated
at Wadgaonkar Building,
Samarthnagar, Aurangabad. ...Appellants...
(orig. Respondents.)

VERSUS

1. Asaram s/o Mohanlal Samdani,
age 75 years, Occ. Legal Practitioner,
R/o Pandariba Mohalla,
Aurangabad.
2. Shirish s/o Asaram Samdani,
age 50 years, Occ. Legal Practitioner,
R/o Pandariba Mohalla,
Aurangabad.

3. Anilkumar s/o Asaram Samdani,
age 48 years, Occ. Business,
R/o Pandariba Mohalla,
Aurangabad.
4. Madhusudan s/o Asaram Samdani,
age 45 years, Occ. Service,
R/o Pandariba Mohalla,
Aurangabad.
5. Sow. Rukhamadevi w/o Asaram Samdani
(Dead),
age 70 years, Occ. Household,
R/o Pandariba Mohalla,
Aurangabad. ..Respondents..
(orig. applicants.)

...

Advocate for Appellants : Mr M M Ambhore
Advocate for Respondents 1-4 : Mr S S Rathi
Respondent No.5 – Dead.

...

CORAM : V.K. JADHAV, J.

...

Reserved on : April 28, 2016
Pronounced on : May 03, 2016.

...

JUDGMENT :-

1. Being aggrieved by the Judgment and Order dated 21.09.2007 passed in M.A.R.J.I. No.791 of 2003, the original respondents preferred this appeal.
2. Brief facts, giving rise to the present appeal, are as follows :-

a] The parties hereinafter are referred to as per their status in MARJI No.791/2003.

b] The original applicants in MARJI no.791/2003 are the owners of the house No.2-17-25/26, CTS No.5274 and 5285 known as "Samdani Chambers", situated at Diwan Deodi, Aurangabad. The appellants/original Respondents-Uco Bank were the tenants of basement floor, ground floor and mezzanine floor on the basis of lease deed executed for a period from 1.3.1983 to 28.2.1993. On 5.2.1985 said lease deed was executed and it was corrected by correction deed dated 28.6.1985. On expiry of period of tenancy of 10 years as aforesaid, the Respondents-Uco Bank did not vacate the suit premises as per the terms of lease deed and continued to remain in possession, but, at increased rate in the rent by 20% as per renewal clause in the lease deed. However, no fresh lease deed has been executed. Consequently, the appellants/original respondents-Uco Bank remained in possession for five years after expiry of period of said lease i.e. after 28.2.1993 as per clause 4(f) of the correction deed. Thereafter, the original

applicants-land lords issued a notice as contemplated u/s 106 of the Transfer of Property Act on 11.5.2001 for termination of tenancy and accordingly, terminated the tenancy of respondent-UCO Bank on 31.5.2001. On expiry of period of notice, the original applicants (in MARJI) instituted an eviction suit bearing Small Cause Suit No.39 of 2001 along with mesne profit for the month of June and July 2001 @ Rs.30,615/- for each month and for other consequential reliefs. Learned 2nd Jt. Civil Judge S.D., Aurangabad, by its judgment and decree dated 10.10.2003 in Small Cause Suit No.39 of 2001, decreed the suit with costs and thereby ordered the appellants/original respondents-UCO Bank to vacate and handover peaceful possession of the suit tenement described in plaint paragraph no.1 to the plaintiff within a period of one month from the date of order and further ordered to pay Rs.61,730/- towards damages or mesne profits and notice charges to the plaintiffs. The learned Judge also directed that an enquiry be made for determination of future mesne profit from the date of suit till receipt of possession of the suit tenement as provided Under Order 20 Rule 12

of the Code of Civil Procedure. Being aggrieved by the same, the appellants/original Respondents-UCO Bank have preferred Regular Civil Appeal No.349 of 2003 before the District Court, Aurangabad. Learned 4th Additional District Judge, Aurangabad, by its judgment and order dated 31.8.2004 dismissed the appeal with costs, however, allowed the cross objection of respondents and held that, the respondents/original plaintiffs are entitled for interest @ 15% on the amount of damages as granted by the Trial Court from the date of the order of the Trial Court till the complete satisfaction of that amount. It is a matter of record that, appellants/original Respondents-UCO Bank vacated the suit premises on 31.12.2004.

c] The applicants/original plaintiffs have filed MARJI No.791 of 2003 for determination of mesne profit U/O 20 Rule 12 of the Code of Civil Procedure. According to the applicants, they are entitled to claim mesne profit from 1.8.2001 to 31.12.2004 i.e. for period of 41 months. According to the applicants, during the period of 15 years, the City of Aurangabad developed very rapidly.

The prices of the properties increased several times. Consequently, there is substantial increase in the rent also. The suit property is located not only on ground floor but on upper floors also. According to the applicant, the area where the suit property is situated is now in the heart of the city. Entire building is used as a Commercial property and the locality is at present a prime center of business. During the pendency of the suit, even the plaintiffs had given an offer about rate of rent prevailing in the area @ Rs.15/- per sq. ft. for ground floor and Rs.12/- per sq. ft for mezzanine and basement floor. The appellants/Respondents-UCO Bank also accepted said rate of rent, however, due to some dispute in respect of other terms, rate of rent could not be materialized.

d] The appellants-Respondents-UCO Bank has strongly resisted the application by filing written statement at Exh.22. The Respondent-UCO Bank has denied that the bank has accepted rate of rent as proposed by the applicants/original plaintiffs. It is also contended that, the proceedings filed by the applicants

for mesne profits are not maintainable. It is further contended that, the Respondent-Bank has paid monthly rent as per the terms and conditions of the lease deed and also paid all the taxes to the Government authorities for the said suit premises. Even the Respondent UCO Bank paid rent to the applicants for the said premises as per the correction deed after March, 1993 by increasing 20% on the initial monthly rent. It is also contended that, prevailing market rate in the said area is not Rs.15/- per square ft for the ground floor as alleged and Rs.12/- per sq. ft. for basement and mezzanine.

e] The learned Civil Judge S.D., Aurangabad, by its impugned judgment and order dated 21.9.2007 allowed the application with costs and thereby directed the Respondent-UCO Bank to pay future mesne profits from 1.8.2001 to 31.12.2004 @ Rs.37,428/- per month amounting to Rs.8,91,627.70/- to the applicants alongwith interest @ 6% from the date of order till the complete realization of the amount. Aggrieved by the same, the Respondent UCO Bank has preferred this

appeal.

3. The learned counsel appearing for the appellant-UCO Bank submits that, there is no specific prayer in the original suit for inquiry into mesne profits as provided Under Order 20 Rule 12 of Civil Procedure Code and in absence of specific prayer for an inquiry into mesne profit, the same should not be granted by the Court below. Learned counsel for the appellants-UCO Bank further submits that the Bank had paid monthly rent of the suit premises as per terms and conditions of the lease deed and also as per the correction lease dated 28.6.1985, even the appellant-UCO Bank has paid all the taxes to the Government Authorities, such as water taxes, electricity taxes, etc pertaining to the suit tenement. Learned counsel submits that, all these important aspects have not been considered by the Trial Court while passing the impugned judgment and order.

4. The learned counsel for the appellant-UCO Bank further submits that the rate of rent of suit premises as

claimed by the respondent-original plaintiff @ Rs.15/- per sq. ft. for ground floor and Rs.12/- per sq. feet for mezzanine and basement floor was only on the basis of the offer accepted by the present appellants as per letter dated 23.5.2003. Learned counsel submits that said letter was issued by the appellant-UCO Bank on the basis of application made by the Respondents-original applicants in MARJI No.791/2003 in which the rates were quoted for renewal of fresh lease deed of the suit premises. Learned counsel submits that the rates as quoted were not based on prevailing market rates of the locality where the suit premises is situated. Learned counsel submits that the same is, however, not considered by the trial court. The learned counsel for the appellant-UCO Bank submits that the suit premises is not situated in commercial and densely populated area as alleged. It is also not situated in central part of the city as alleged. Learned counsel submits that the respondents/original applicants have failed to prove the prevailing market rate of rent of the suit premises in the said area and the locality at Rs.15/- per sq. ft for ground floor and Rs.12/- per sq. feet for basement and

mezzanine floor, as alleged. Learned counsel for respondents/original claimants have admitted in cross examination that said rate of rent as proposed by them in their application made to the original respondent-present appellant-UCO Bank only for renewal of the lease deed and the same does not reflect prevailing market rate in the locality. Learned counsel for the appellant-UCO Bank further submits that the Trial Court has committed a grave mistake of law in awarding future mesne profit for more than three years. Learned counsel submits that, the same is against the provisions of Order 20 Rule 12 of the Code of Civil Procedure.

5. Learned counsel for the appellant-UCO Bank in order to substantiate his submissions placed his reliance on following judgments :-

1. ***Mrs. Indira Bhalchandra Gokhale (deceased by L.Rs) vs. Union of India and another,*** reported in ***AIR 1990 Bombay 98,***
2. ***Ganapati Madhav Sawant (dead) through his LRs. vs. Dattur Madhav Sawant,*** reported in ***(2008) 3 SCC 183,***

3. ***Mohd. Amin and others vs. Vakil Ahmad and others***, reported in ***AIR 1952 SC 358*** and
4. ***Gulamhusain Asgaraly Vahanvaty & others vs. Allahabad Bank***, reported in ***2011 (4) Bom.C.R.169***.

6. The learned counsel for respondents/original claimants in MARJI No.791/2003 submits that the applicants have specifically prayed for directions for inquiry into the future mesne profit in the original suit and accordingly, learned Judge of the Trial Court decreed the suit with costs by directing an inquiry to be made for determination of future mesne profit from the date of the suit till receipt of the possession of the suit tenement as provided under Order 20 Rule 10 of Civil Procedure Code. Learned counsel submits that, during the pendency of the suit, the applicants have claimed market rate of rent for ground floor Rs.15/- per sq. feet and for basement and mezzanine floor Rs.12/- per sq. ft. Learned counsel submits that said proposal was not materialized because of certain problems, however, fact

remains that the bank had agreed to materialize the proposal for rate of rent as stated above. Learned counsel submits that, it is not disputed that the suit property is situated in prime market area and prices of the property have been increased rapidly during the last 10-15 years. Learned counsel submits that after termination of tenancy, the appellant-UCO bank could not be said to be in a lawful possession and therefore, liable to pay the mesne profit till the suit premises is vacated. Learned counsel submits that the appellant bank remained in possession of the property despite the decree and therefore, liable to pay mesne profit for use and occupation of the suit property until it is delivered to the original applicants. The learned counsel submits that it is clear that the respondents/original applicants are entitled to the future mesne profit from 1.8.2001 to 31.12.2004 along with interest. Learned counsel submits that Rule 12 of Order 20 was substituted by Bombay High Court by way of CPC (amendment) Act 104 of 1976 w.e.f. 1.2.1977. Learned counsel submits that it is clear from the rule as amended in respect of the mesne profit that, there is no restriction of the period of three years

which was found in the earlier rule of 12 c (iii). Learned counsel submits that, there is no substance in the appeal and the appeal is liable to be dismissed with costs.

7. The determination of mesne profits involves adjudication of a pure question of fact and there exists hardly any uniform and standard pattern of assessment in this regard. The Court has to undertake a comparative assessment of nature, location, age, condition etc. of the suit schedule premises, on one hand, and the similar characteristics of the premises in the surrounding area, on the other, as it is very difficult to find the premises of a similar nature, size and quality at the same location. Even if there exists any broad similarity on this aspects, the rent in respect of such premises would depend, mostly, upon the need of the lessee and the circumstances under which the leases are granted.

8. Inspite of valid termination of tenancy, the appellant-UCO Bank remained in occupation of the

premises and the trial court, in consonance with the prayers made in the suit, directed to hold an inquiry under Order 20 Rule 10 of Civil Procedure Code to determine the rate and quantum of mesne profits to be recovered from the appellant-UCO Bank. I do not find any substance in the submission of learned counsel for the appellant-UCO Bank that the respondents-original plaintiffs did not pray for such an inquiry for the mesne profit under Order 20 Rule 10 of the Code of Civil Procedure and in absence of a specific prayer for inquiry into mesne profit, the Trial Court while deciding Small Cause Suit No. 39 of 2001, directed an inquiry into mesne profit under Order 20 Rule 10 of the Code of Civil Procedure. Even in the case of **Gulamhusain Asgaraly Vahanvaty** (supra), relied upon by learned counsel for appellant-UCO Bank, this Court has taken a view that the relief of mesne profits is a consequential relief to the main relief and the trial court has to pass an order of holding inquiry into mesne profit when the suit is decreed. If such a suit for recovery of possession is dismissed, the question of payment of mesne profits does not arise and therefore, very often, issue of mesne

profits is not framed since there is an independent provision in the CPC for holding an inquiry for mesne profits, and only when the suit is decreed further consequential relief is to be granted.

9. It is clear from Rule 12 of Order 20 of the Code of Civil Procedure that as per Bombay Amendment in respect of mesne profit, there is no restriction of period of three years. The same was found in the earlier Rule 12 (1) (c) (iii) of Order 20 of Code of Civil Procedure. Even this Court, in a case of Sadabai and another Vs. Nivrutti Vithoba Takale and others, reported in AIR 1979 Bombay page 29, has expressed a view that as per the amended Rule, there is no restriction of three years and the Bombay Amendment so made is having a retrospective effect. I do not find any substance in the objection raised by learned counsel for the appellant that the Trial Court has determined future mesne profit exceeding the period of three years and the same is contrary to the provisions of Order 20 Rule 12 of the Code of Civil Procedure.

10. Learned counsel for the appellant-UCO Bank has vehemently submitted that in the light of the letter dated 23.5.2003, issued by the Bank in response to the proposal for renewal of lease deed submitted by the present respondents/original applicants, the trial court has erroneously determined the rate of future mesne profit of the suit premises. It is true that the said proposal submitted by respondents/original applicants could not be materialized due to some other reasons, however, on perusal of said letter dated 23.5.2003, it appears that, the appellant-UCO Bank has unequivocally accepted the market rates of the suit premises @ Rs.15/- per sq. ft for ground floor and Rs.12/- per sq. ft for basement/ mezzanine floor.

11. As stated in the foregoing paragraphs, determination of mesne profit is a pure question of fact. The witness for the appellant-UCO Bank has also admitted in his cross examination that the suit premises is situated in the commercial area at Aurangabad. It appears from the impugned judgment and order that the Trial Court has undertaken a

comparative assessment of the nature, location, condition, etc., of the suit premises. It also appears that the Trial Court has also considered the circumstances under which the lease came to be granted and also considered the size and quality of the area occupied by the appellant- UCO Bank. I do not find any fault in the impugned Judgment and Order of the Trial Court. There is no substance in the appeal. Hence, the following order.

ORDER

- I. The First Appeal is hereby dismissed with costs.
- II. In view of dismissal of first appeal, nothing survives for consideration in pending civil application and same stands disposed of accordingly.

sd/-

(V.K. JADHAV, J.)

.....

aaa/-