

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO. 587 OF 2016

Union of India & Ors.

... Petitioner

V/s.

Dr. Rustam Sam Boyee

... Respondent

Mrs. MS. I. Shah i/b S.I. Shah & Co. for the Petitioner.

Mr. Mayur Khandeparkar with Pooja Batra with Rushabh Sheth i/b M/s.
Bodhwalla & Co. for the Respondent.

CORAM : K. K. TATED, J.

DATED : 02/05/2016

PC.:

. Heard learned Counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the petitioner defendants challenge the order dated 11.12.2015 passed by Appellate Bench of Small Causes Court below Exh. 9 in Appeal No. 325 of 2015 directing the defendants to deposit the mesne profit in respect of suit premises @ Rs.2,00,000/- per month from 23.07.1979 till 31.12.2015.

3 In the present proceeding, the respondent plaintiff filed RAE & R Suit No. 1429/4857 of 2003 for vacant and peaceful possession of the suit premises i.e. plot of land admeasuring 414 sq. yards together with 37 tenements (rooms) in a four storeyed building known as “Boyce Building” situated on Golwala Tank Road, Mumbai. The total floor space area was about 12,000 sq. ft. The Trial Court passed decree on 04.09.2000 directing defendants to handover the possession of the suit

premises.

4 That decree was challenged by the defendants before the Appellate Bench of Small Causes Court. The Appellate Bench confirmed the Trial Court's decree on 06.06.2002.

5 Thereafter, the decree was executed by the plaintiff on 21.11.2000.

6 Thereafter, the plaintiff filed Misc. Notice No. 794 of 2003 for quantifying the mesne profit under the provisions of Order 20 Rule 12(1)(c) of the Code of Civil Procedure, 1908. That Misc. Notice decided by the Trial Court by judgment and decree dated 09.05.2014 holding that plaintiffs are entitled to mesne profit @ Rs.2 lacs per month from the date of filing of the suit i.e. 29.07.1979 till 20.11.2002 along with 6% interest per annum.

7 The said Judgment and Decree was challenged by the defendants by preferring Appeal No. 325 of 2015 before the Appellate Bench of Small Causes Court. In that Appeal, the defendants preferred application below Exh.9 for stay. The Appellate Bench directed the defendants to deposit the mesne profit as awarded by the Trial Court @ Rs.2 lacs per month from 23.07.1979 till 31.12.2015. Hence, the present Writ Petition.

8 The learned Counsel Mrs. S.I. Shah appearing on behalf of defendants submit that the Appellate Court erred in coming to the conclusion that for hearing and final disposal of appeal and application

for stay, defendant has to deposit the entire mesne profit as awarded by the Trial Court. She further submits that even the Trial Court erred in coming to the conclusion that the plaintiff is entitled to mesne profit in respect of the suit premises @ Rs.2 lacs per month. She submits that the building was in dilapidate condition. These facts were not considered by the Trial Court at the time of deciding mesne profit application of the plaintiff. She submits that the Trial Court awarded mesne profit on higher side. She submits that the defendants have good chance of success in the appeal pending in Small Causes Court. She further submits that the Appellate Bench erred in coming to the conclusion the defendants have to deposit mesne profit up to 31.12.2015 whereas, Trial Court held the defendants are liable to pay mesne profit only up to 20.11.2002. She further submits that they have good chance of success in the Appeal preferred by them. She submits that in the interest of justice, this Hon'ble Court be pleased to set aside the order dated 11.12.2015 passed by the Appellate Bench of Small Causes Court below Exh.9 and direct the Appellate Court to decide the defendants' application for stay as well as appeal. She further submits that the if present petition is not allowed, irreparable loss will be caused to them. The learned Counsel for the defendant relies on ground taken by them in Appeal before the Appellate Court for setting aside the order.

9 On the other hand, the learned Counsel for the plaintiff submits that they have no objection if impugned order dated 11.12.2015 is modified to the extent directing the defendants to deposit the mesne profit up to 20.11.2002 as directed by the Trial Court. He submits that being a money decree, there is no question of granting blanket stay in

foavour of the defendants.

10 I heard both the sides at length. It is to be noted that in the present proceeding, the Trial Court by Judgment and Decree dated 09.05.2014 held that plaintiffs are entitled to mesne profit in respect of suit premises @ Rs.2 lacs per month from 29.07.1979 i.e. date of filing of the suit till 20.11.2002. Being a money decree that cannot be stayed without any conditions. Apart from that, the Appellate Court specifically held that if amount is deposited, the same to be deposited in the Fixed Deposit of any nationalised bank for the period of one year with liberty to renew the fixed deposit every year.

11 It is to be noted that the Appellate Court directed defendants to deposit the mesne profit w.e.f. 23.07.1979 till 31.12.2015 which is contrary to the order passed by the Trial Court. In any case, the plaintiffs are entitled to mesne profit only till the date of possession of the suit premises. In the present proceeding, there is no dispute that the possession of the suit premises taken by the plaintiff on 20.11.2002. To that effect, the order passed by the Appellate Bench of the Small Causes Court is required to be modified.

12 Considering the above mentioned fact, I am of the opinion that the defendants have made out case for allowing the present petition partly as under:

a) Order passed by the Appellate Court dated 11.12.2015 below Exh.9 is modified to the extent that defendants have to deposit the mesne profit w.e.f. 23.07.1979 till 20.11.2002 instead of upto 31.12.2015 as directed by the Appellate Bench.

b) Rest of the order of Appellate Bench of Small Causes Court remains as it is.

c) Liberty granted to the defendants to comply the said order on or before 15.07.2016.

d) At the request of learned Counsel for the petitioner, liberty granted to the petitioner to apply for early hearing of Appeal after deposit of the entire amount.

e) With these directions, Writ Petition stands disposed of accordingly.

(K.K.TATED, J.)