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

APPEAL FROM ORDER NO. 750 OF 2013

with

CIVIL APPLICATION NO. 1284 OF 2013

Ms. Vimleshwar Hotels and Resorts
Pvt. Ltd.

... Appellants/Applicants

V/s.

Union of India and Ors.

... Respondent.

with

APPEAL FROM ORDER NO. 952 OF 2013

Joint Secretary (Development) and
Estate Officer, and Ors.

... Appellants.

V/s.

Ms. Vimleshwar Hotels and Resorts
Pvt. Ltd. And Ors.

... Respondents.

Mr. Kunal Bhanage for the Appellants/Applicants in CAA 1284/13 and Applicants in CAA 1284.13 and for Respondent No.1 in AO 952/13.

Mr. Shrishailya Deshmukh a/w. S. Chaugule for Respondents 2 & 3 in AO 750/13 and Appellants in AO 952/13.

CORAM : N.M. Jamdar, J.

03 August, 2016.

Oral Order :-

These two Appeals challenge the same order and by consent, are taken up for disposal together.

2. Appeal from Order No. 750 of 2013 is filed by the Appellant - Original Plaintiff in Special Civil Suit No. 22 of 2012. The Appellant – Original Plaintiff is aggrieved by the condition imposed by the learned Civil Judge while granting temporary injunction in favour of the Appellant – Plaintiff to deposit the entire rent due at the agreed rate of interest. The Appellant in the Appeal from Order No. 952 of 2013, the Defendant in the Suit, is aggrieved by the impugned order in as much as it grants temporary injunction in favour of the Plaintiff.

3. It is the case of the Defendant – Appellant in Appeal from Order No. 952 of 2013 that the Application for temporary injunction could not have been entertained at all in view of the order passed by the Division Bench of this Court in Writ Petition No. 7354 of 2011 and the undertaking filed by the Plaintiff pursuant to the order. It is the case of the Defendant that the only scope left was in respect of the amount of penalty that was left to be adjudicated

and it was not open to the learned Civil Judge to decide question of possession and eviction. It is the contention of the Appellant – Plaintiff that the penal interest at 20% per month is exorbitant and unreasonable.

4. The learned Counsel for the Appellant in both these Appeals are *ad-idem* that the learned Civil Judge has not considered the rival contentions in proper perspective. According to the defendant, the learned Civil Judge has exceeded the scope left in the suit, while it is the contention of the Plaintiff that the imposition of 20% of interest is without application of mind.

5. I have gone through the impugned order. There is no discussion as to why 20% penal interest is required to be imposed. There is also no discussion as to what are the implications of the order passed by the Division Bench of this Court in Writ Petition No. 7354 of 2011 and what is the scope left to be adjudicated and whether inspite of the order of this Court, an application for temporary injunction could be entertained. In the circumstances, the impugned order cannot be sustained. Accordingly, both the Appeals are allowed. The impugned order dated 9 May 2012 passed by the Civil Judge, Senior Division, Daman is quashed and set aside. The Application filed below Exhibit 5 by the Plaintiff stands restored to file.

6. It is clarified that this restoration is without prejudice to rights and contentions of the Defendants that such application is not maintainable in view of the order passed by this Court and this contention is kept open. The learned Civil Judge will consider the implications of the order passed by the Division Bench of this Court and undertaking given by the Plaintiff so also the question as to whether penal interest at the rate of 20% is to be imposed, if that issue arises.

7. The Suit is of the year 2012. The proceedings have been earlier initiated against the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Keeping this subject matter in mind, the learned Civil Judge will give priority to the disposal of the Suit. Civil Application is also disposed of accordingly.

(N.M. Jamdar, J.)