

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.445 OF 2016

The ICICI Bank Limited	...	Applicant
Vs.		
Jivratna Medi Treat Private Limited	...	Respondent

WITH
CIVIL REVISION APPLICATION NO.321 OF 2016

Jivratna Medi Treat Private Limited ... Applicant
Vs.
The ICICI Bank Limited ... Respondent

Mr. G. S. Godbole, Senior Advocate a/w. Mr. Mayur Bhojwani & Ms. Prangana Barva i/b. M/s. Manilal Kher Ambalal & Co. for Applicant in CRA No.445 of 2016 and for Respondent in CRA No.321 of 2016.
Mr. P. S. Dani, Senior Advocate a/w. Mr. Suraj S. Shah for Applicant in CRA No.321 of 2016 and for Respondent in CRA No.445 of 2016.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 06, 2016

P.C. :

Heard Mr. Godbole, learned Senior Counsel for applicant in C.R.A.No.445 of 2016 and for respondent in C.R.A.No.321 of 2016 and Mr. Dani, learned Senior Counsel for applicant in C.R.A.No.321 of 2016 and for respondent in C.R.A.No.445 of 2016 at length. Rule. Learned Counsel for respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Applications are taken up for final hearing forthwith.

2. C.R.A.No.445 of 2016 is instituted by the applicant, hereinafter referred to as 'defendant', challenging the judgment and order dated 07.05.2015 passed by the learned trial Judge presiding over Court Room No.10 of the Court of Small Causes at Bombay in Mesne Profits Miscellaneous Application No.37 of 2008 in T.E.&R. Suit No.213/227

of 2002 as also the judgment and order dated 07.05.2016 passed by the Appellate Bench of the Small Causes Court in Appeal No.263 of 2015.

3. C.R.A.No.321 of 2016 is instituted by the applicant, hereinafter referred to as 'plaintiff', challenging the judgment and order dated 07.05.2016 passed by the Appellate Bench of the Small Causes Court in Appeal No.263 of 2015.

4. By order dated 07.05.2015, the Mesne Profits Application filed by the plaintiff was allowed in the following terms:

ORDER

1. The application for Mesne profits is hereby allowed / decreed as under.

2. The claim of the plaintiff regarding Mesne profits in respect of the suit premises admeasuring 1,745 square feet Carpet area, on the 1st floor of building Yashwant Niwas situated at N.C.Kelkar Road, Dadar (West), Mumbai 400 028 bearing Cadestral Survey No.178 of Mahim Division of Island City of Mumbai to the tune aggregate of Rs.5,92,04,880/- (Rupees Five Crore Ninety Two Lacs Four Thousand Eight Hundred Eighty only) for a period from April, 2002 till the end of month September 2010 i.e. for 102 months, is hereby allowed together with simple interest @ 6% per annum from the date of 1/4/2002 till realization of entire decretal amount.

3. The plaintiff shall pay the court fees over the said aggregate claim amount of the mesne profits within a period of Two months from today.

4. If the plaintiff fails to pay court fees as directed, then this application for mesne profits of the plaintiff shall be treated as dismissed.

5. The defendant do pay the said amount of mesne profits of Rs.5,92,04,880/- (Rupees Five Crore Ninety Two Lacs Four Thousand Eight Hundred Eighty only) for a period from April, 2002 till the end of month September 2010 i.e. for 102 months, together with interest @ 6% per annum from the date of 1/4/2002 till the date of entire realization of decretal amount of mesne profits, within a period of Two months from today.”

5. Aggrieved by this order, defendant preferred Miscellaneous

Appeal. Pending the appeal, defendant filed application exhibit-14 under Order 41, Rule 27 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for leading additional evidence. It is common ground between the parties that application exhibit-14 was not decided by the appellate Court. It is also admitted position that the appellate Court did not pass order "not pressed by the defendant". It is further admitted position that appellate Court did not pass separate order below exhibit-14. In short, while deciding the appeal, the appellate Court did not decide application exhibit-14 which is also evident from Rojnama dated 28.04.2016 to 07.05.2016.

6. As the application exhibit-14 under Order 41, Rule 27 of C.P.C. is not decided by the appellate Court, on this ground alone, the impugned order passed by the appellate Court is required to be set aside thereby restoring the appeal. Parties agree that they will appear before the appellate Court on 17.10.2016 and for that purpose, no fresh notice be issued to them. In view thereof, Applications are disposed of in the following terms:

- a. The impugned judgment and order dated 07.05.2016 passed by the Appellate Court is quashed and set aside and Appeal No.263 of 2015 is restored to the file of the appellate Court;
- b. The appellate Court will decide the application at exhibit-14 either before deciding the Appeal or along with the appeal;
- c. In view of the order dated 07.01.2016 passed by this Court in Writ Petition No.10699 of 2015, the appellate Court is requested to decide the Appeal as expeditiously as possible, and preferably within 3 months from production of authenticated copy of this order. Parties agree that they will

appear before the appellate Court on 17.10.2016 and for that purpose, no fresh notice be issued to them;

d. The interim order dated 27.07.2015 shall remain in force pending the appeal and the Bank Guarantee furnished by the defendant to the extent of 25% in terms of clause 4 shall be kept alive during the pendency of the appeal;

e. Rule is made absolute in both the Applications in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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