

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.39 OF 2016
IN
WRIT PETITION NO.10007 OF 2014

Devilal Bherumal Kothari	..Applicant/original respondent
In the matter of : Union Bank of India	Petitioner
Versus Devilal Bherumal Kothari	..Respondent

Mr. Lalit V. Jain, advocate for the applicant/original respondent.
Mr. Chirag Bhavsar i/b. MDP and partner, advocate for the petitioner.

CORAM : RANJIT MORE, J.

DATE : 18th FEBRUARY, 2016.
(In Chambers)

P. C. :

The civil application is filed for clarification of the order dated 21st November, 2014, passed in the above writ petition and, accordingly, direction is sought to the petitioner-bank to pay balance amount of interest of Rs.7,78,290/- to the applicant.

2. The writ petition came to be filed by the petitioner-bank and it arises out of mesne profit proceedings. The trial Court, by its order dated 7th May, 2014, granted mesne profits to the applicant. This Court disposed of the writ petition on 21st November, 2014. For ready

reference, the operative part of the order dated 21st November, 2014, passed in the writ petition is reproduced herein below:

- "1] *The impugned order is quashed and set aside.*
- 2] *The Petitioner's application for stay to the trial Court's decree is allowed and said decree is stayed during the pendency and till the final disposal of appeal. As a condition precedent for grant of this stay :*
- (a) the Petitioner shall deposit amount of mesne profits @ Rs. 117/- per sq. ft. per month for the period 2.11.2007 to 31.3.2010.*
- (b)the Petitioner shall also deposit the amount of interest @ 6% p.a. from the dates when the same became due.*
- (c) the amount to be deposited in the trial Court within eight weeks from today.*
- 3] *The Respondent is permitted to withdraw this amount."*

2. It is the contention of the applicant that in terms of the above, the petitioner-bank is liable to deposit the amount of mesne profits @Rs.117/- per sq.ft.-per month for the period 2.11.2007 to 31.3.2010. It is also contended by the applicant that the petitioner-bank is required to deposit the amount of interest on the above amount @ Rs.6% from the dates when the same became due. The grievance of the applicant is that though the petitioner -bank correctly calculated the amount @ Rs.117/- per sq.ft.-per month for the period 2.11.2007 to 31.3.2010, however, the interest as contemplated under clause (b) of the operative part of

the order referred above is deposited till 31.3.2010 and, in fact, as per the said order, the petitioner is required to deposit the interest upto January-2015, on which date, the said amount was deposited in the trial Court. The contention of the petitioner-bank, on the contrary, is that it is liable to pay interest @6% on the said amount up to 31.3.2010 only.

3. Having gone through the order dated 21st November, 2014 and having considered the rival submissions, this Court finds no ambiguity in the order dated 21st November, 2014. So far as clause (a) of the said order is concerned, the parties are not at dispute. The dispute is about clause (b) of the operative part of the said order. Under that clause, the petitioner is liable to deposit the interest @ 6% of the amount mentioned in clause (a) from the date when the same became due. Since the petitioner-bank deposited the amount mentioned under clause (a) on 15th January, 2015, it is liable to pay the interest upto 15th January, 2015.

4. The parties are not at dispute if the amount of interest @ 6% is calculated on the amount referred in clause (a) of the operative part of the order, the petitioner is liable to deposit the balance amount of Rs.7,78,290/-. The petitioner is, accordingly, directed to deposit the said amount in the trial Court within a period of four weeks from today.

Needless to mention that in terms of the order dated 21st November, 2014, the applicant is at liberty to withdraw the same.

5. The order dated 21st November, 2014 is clarified accordingly.
The civil application stands disposed of.

[RANJIT MORE, J.]