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

SECOND APPEAL NO. 144 OF 1992

Bhanudas Madhav Jagtap,
Aged about 57 years,
Occu: Business,
R/o. House No. 217, Balaji Peth,
Jalgaon

..APPELLANT

VERSUS

Waman Tanhaji Bhavsar,
Aged about 53 years, Occu: Service,
R/o. Jalgaon Polytechnic College,
Jalgaon

..RESPONDENT

Mr S. V. Dixit, Advocate for appellant;
Mr Prasanna Dadape, Advocate holding for Mr P. R. Katneshwarkar,
Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 6th June, 2017

ORAL JUDGMENT

This appeal is by the original plaintiff-landlord. Pursuant to a decree passed in Regular Civil Suit No.66 of 1976 on 30th September, 1980, an application under provisions of Order XX Rule 12, sub-rule (1) clause (c) of the Code of Civil Procedure (for short "CPC") for recovery of mesne profits came to be moved being Mesne Profits Application No.4 of 1982 before the Court of Civil Judge Senior Division, Jalgaon.

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2. In the aforesaid application, it was claimed that the premises can fetch Rs.100/- per month towards rent and as such, plaintiff was entitled for recovery of mesne profits at the rate of Rs.7,650/- for a period from 12th March, 1976 to 30th July, 1982.

3. Considering the circumstances as were brought before the Court, the learned Joint Civil Judge Junior Division, Jalgaon ordered that the present appellant is entitled for mesne profits from 12th March, 1976 to 30th July, 1982 to the tune of Rs.3,325/-, rent of five months, i.e. from 1st March, 1982 to 30th July, 1982 at the rate of Rs.18/- per month total amount Rs.90/- alongwith costs and interest at the rate of 6% p.a. From the date of order.

4. An appeal was carried by the respondent-tenant against the aforesaid order to the Court of Additional District Judge, Jalgaon in Appeal No.444 of 1984, which came to be partly allowed, thereby directing the respondent-judgment debtor to pay mesne profits at the rate of Rs.30/- per month, instead of Rs.50/- per month from the date of the decree, i.e. 30th September, 1980 to 30th July, 1982. This judgment of the lower appellate Court is questioned in the present second appeal.

5. Mr Dixit, learned Counsel appearing on behalf of the appellant-plaintiff would urge two-fold submissions, first, that the order of the lower appellate Court is contrary to the scheme of Order XX Rule 12, sub-rule (1) clause (c) of CPC, as according to him, the amount of mesne profits

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should have been permitted to have been claimed from the date of filing of the suit and not from the date of passing of the decree. He would place reliance on the provisions of Order XX Rule 12, sub-rule (1) clause (c) of CPC and secondly, that the lower appellate Court ought not to have reduced the amount of mesne profits from Rs.50/- to Rs.30/- per month when the appellant had brought on record sufficient evidence thereby demonstrating that he was entitled for the mesne profits at the rate of Rs.100/- per month.

6. Per contra, the learned Counsel appearing on behalf of the respondent-tenant would urge that the scope of second appellate jurisdiction of this Court, having regard to the provisions of Section 100 of CPC is required to be appreciated. According to him, this Court should not re-appreciate the evidence at this stage so as to interfere with the findings recorded by the lower appellate Court. According to him, the findings of the lower appellate Court are based on the evidence as was brought on record by the respondent-original non-applicant.

7. The substantial questions of law those need to be addressed by this Court in view of the above referred submissions are :-

- (i) Whether the lower appellate Court has committed an error by recording findings that the entitlement for the mesne profits will be from the date of the judgment and not from the date of the suit and whether such findings are contrary to Order XX Rule 12, sub-rule (1) clause (c) of CPC?

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(ii) Whether the lower appellate Court has committed an error in reducing the amount of mesne profits from Rs.50/- to Rs.30/- per month?

8. So far as first question of law as regards the provisions of Order XX Rule 12, sub-rule (1) clause (c) of CPC is concerned, the plain reading thereof contemplates that mesne profits can be recovered from the date of institution of the suit and it is not required to be restricted only from the date when the decree was passed. Though the learned Counsel for the respondent has tried to submit that till the suit was decided the status of the respondent would remain as that of tenant only as there is no finding recorded as regards eviction against him.

9. The aforesaid submissions are required to be rejected in view of the scheme of Order XX Rule 12, sub-rule (1) clause (c) of CPC, as those are contrary to the said provisions. As such, in my opinion, the decree of the lower appellate Court needs to be modified thereby ordering that the appellant would be entitled to the mesne profits from the date of filing of the suit.

10. So far as the second contention as regards the entitlement of mesne profits at the rate of Rs.50/- or Rs.100/- per month by the landlord is concerned, this Court will be very slow in re-appreciating the evidence and recording a finding that the appellant would be entitled for mesne profits at

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the rate of Rs.50/- or Rs.100/- per month, as the findings of Rs.30/- as are recorded by the lower appellate Court are based on appreciation of evidence as was brought before the Court by both the parties.

11. In the aforesaid background, this second appeal needs to be partly allowed. It is declared that the appellant is entitled for mesne profits from the date of filing of the suit together with interest at the rate of 6% p.a. However, rest of the order of the lower appellate Court stands confirmed.

Second Appeal stands disposed of accordingly in the above terms.

In the circumstances, there shall be no order as to costs.

(N.W. SAMBRE, J.)

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