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

SECOND APPEAL [STAMP] NO.32974 OF 2015
WITH
CIVIL APPLICATION NO. 15104 OF 2015 (stay)

M/s Surjitsingh and Company and others .. Appellants

versus

Belapur Budruk Vividh Karyakari Sahakari
(Vikas) Seva Sastha Ltd., Belapur .. Respondent

Mr. Vijaykumar D. Sapkal, Advocate for appellants
Mr. D. N. Patil Bankar, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 10th March, 2017

ORDER :

1. Heard learned counsel for parties for quite some length.

2. Till 18-08-1977, respondent-society had been running fuel pump over the property. The machinery had been installed by Indian Oil Corporation. The respondent entered into a lease agreement for the period from 18-08-1977 to 17-08-1984 at the rate of Rs. 500/- as monthly rent. The respondent had to institute proceedings for eviction of the appellant. Suit filed respondent bearing regular civil suit no. 293 of 1986 was decreed in 1992 directing appellant to handover possession to respondent and to pay mesne profits from the date of suit to the date of delivery of

possession. Proceedings against aforesaid decree failed all-through upto high court with dismissal of second appeal in 2000. In 2000, the appellant handed over possession of suit property to the respondent.

3. Subsequently, present respondent appears to have moved civil miscellaneous application no. 1 of 2000 before the Civil Judge (Junior Division), Shrirampur for ascertaining mense profits and the same was calculated to be Rs.9,00,000/- by trial court on 12-12-2003. Regular civil appeal no. 30 of 2004 at the behest of of present appellant questioning mesne profit granted was partly allowed on 30-09-2010. Second appeal no. 429 of 2001 by present respondent was allowed on 20-11-2014 setting aside order dated 30-09-2010 of the first appellate court and the matter was remanded to appellate court with direction to appellant herein to deposit a sum of ₹ 9,00,000/- in district court along with certain other directions. Pursuant to remand, District Judge-1, Shrirampur decided regular civil appeal no. 30 of 2004 on 29-04-2015 afresh and according to the decree after remand, mesne profits were calculated to be ₹ 8,11,000/- with interest @ 9 per cent per annum from 3-10-2000, allowing withdrawal of amount by respondent as referred to in operative order of said judgment and for balance of the amount, execution haS been let open. It is against this order, present second appeal has been filed.

4. After hearing learned counsel for parties, it appears, the courts have found that apart from recovery of mense profits, the calculation of rates of mesne profits was on the basis of profit earned from pump business and interest was also liable to be paid over the same.

5. Learned counsel for appellants strenuously makes submissions, however, one may have to consider, In the present case, the courts had taken into account that the mesne profits will have to be determined from 1992. The appellate court has observed as follows in paragraphs no. 20, 21, 22 and 23.

> *" **20]** Considering the oral as well as documentary evidence adduced on record, the trial Court has calculated the amount of commission of diesel sold during the period from 30-6-1986 to 30-6-1992 at Rs.86,400/-, commission of petrol sold at Rs.43,200/- and commission of petrol and diesel sold during June 1992 to June 2000 at Rs.17,75,598/- i.e. total Rs.19,05,198/-. Out of these amounts, the amount of Rs.86,400/- towards commission of diesel sold and amount of Rs.43,200/- towards commission of petrol sold during June 1986 to June 1992 has to be excluded because, applicant society is entitled to recovery agreed rent at the rate of Rs.500/- per month from the date of suit till decision of suit. Thus, an amount of Rs.17,75,598/- is the amount of commission earned by opponents by selling petrol and diesel for the period from 1992 to June 2000.*
>
> ***21]** The learned trial Court has considered Rs.4,000/- per month towards labour charges, Rs.1,000/- per month towards electricity*

bills and sales tax and other expenses at the rate of Rs.1,000/- per month. After deducting an amount of Rs.10,00,000/- towards servants salary, labour charges, light bill, sales tax etc. it has to be held that Rs.7,75,000/- must be the net profit earned by opponents during the period of their wrongful possession of suit property, which could have been earned by the applicant society if it had been put in possession of the suit property on the date of decree of eviction. In addition to this, applicant is entitled to recovery agreed rent at the rate of Rs.500/- per month for six years i.e. from June 1986 to June 1992 i.e. 500 x 72 = 36,000/-.

22] *So considering these facts and circumstances, the learned trial Court has rightly calculated the mesne profits on the basis of profit earned by opponents by doing business of petrol pump. However, an amount of Rs.7,75,000/- towards mesne profits for the period from 30-6-1992 to 30-6-2000 is arrived at as per calculations made above. In addition to said Amount, applicant society is entitled to Rs.36,000/- towards agreed rent for six years. So far As interest awarded by the trial court At the rate of 12% p.a. On Rs.9,00,000/-, as per order dated 12-12-2003, if that amount had been placed in fixed deposit with bank, the Applicant society would have earned about 8 to 10% interest on an average. As per definition of mesne profits, the amount payable is those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, togetherwith interest on such profits. For the period from the date of decree till possession was handed over, the opponents have held on to the money that was payable to the applicant society. The rate of interest at the rate of 12% from the date of application till actual realisation of Amount has to be reduced to 9% p.a. As observed in the case of Mridangraj Hiralal Suchak vs. Bank of Baroda in Civil*

Revision Application No. 790/2012 decided on 18-3-2015 by Hon.ble Bombay High Court. Hence, the order passed by the trial Court is legal and proper and it does not require interference at the hands of this Court except to the extent of reducing the rate of interest to 9% p.a. Accordingly, I answer point nos. 1 and 2 in the affirmative and point no. 3 partly in the affirmative.

23] *The Hon.ble High Court while restoring this appeal to the file of this court, directed opponents to deposit Rs.9,00,000/- in the Court and to keep said amount in Fixed Deposit. Accordingly, opponents have deposited Rs.9,00,000/- in the Court on 19-1-2015 and it is kept in Fixed Deposit in the account of RCA No. 30/2004. The record shows that opponents have deposited Rs.1,70,000/- in the trial Court on 22-12-2010. The Hon.ble High Court further directed to pass appropriate order in relation to amount of Rs.1,70,000/- deposited in the trial Court and Rs.9,00,000/- deposited in this Court. In the light of above discussion, said Amounts are required to be paid to the applicant society against order of mesne profits and interest thereon. The applicant society is at liberty to file Darkhast for recovery of remaining amount, if any, after calculations.*

6. Learned counsel for the appellant has not been able to impeach aforesaid observations by any convincing material.

7. Having regard to concurrent findings recorded by the two courts hitherto in respect of aforesaid and those having not been shown to be not adhering to evidence on record, it does not appear to be a case wherein it can be said that any question of law substantial in nature would arise.

8. As such, second appeal is not being entertained and is dismissed.

9. Civil application does not survive and stands accordingly disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd