

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 8 OF 2017

1. Government of Karnataka,
through the Secretary,
Information, Tourism & Youth
Services Department,
Government of Karnataka,
Dr. Ambedkar Road,
Bangalore – 560 001.

2. The Director of Tourism,
Government of Karnataka,
1st Floor, F- Block,
Caveri Bhavan,
Bangalore – 560 009.

... Appellants
(Original Defendants)

V/s.

Shri Oswaldo Jose Coelho Velho,
son of late Aleixo Pitagoras Veho,
married, of full age, landlord,
residing at 1st Floor,
Velho Building,
Panaji, Goa.

... Respondent
(Original Plaintiff)

Mr. Gaurish Nagvenkar, Advocate for the Appellant.
Mr. R. G. Ramani, Advocate for the Respondent.

Coram :- F. M. REIS, J

Date : 09th March, 2017.

ORAL JUDGMENT:

Heard Shri. G. Nagvenkar, learned Counsel appearing for the Appellant
and Shri R. G. Ramani, learned Counsel appearing for the Respondent.

2. The challenge in the above Appeal is the fixing of the mesne profits directed by this Court in a Suit for restoration of possession filed by the Respondents against the Appellants in terms of Order 20 Rule 12 of the Code of Civil Procedure. It is not in dispute that after the Decree for possession based on the Judgment passed in the Suit, the possession of the suit premises was delivered by the Appellant to the Respondents on 13.09.2011. The learned Counsel appearing for the Appellants submits that the Judgment and Decree passed by the learned Trial Judge while disposing the Special Civil Suit No. 67 of 2002 was challenged before this Court wherein the impugned Judgment passed by the learned Judge for eviction was stayed subject to the Appellants depositing in this Court a sum of Rs.16,000/- per month. Learned Counsel appearing for the Appellants further pointed out that in terms of the Agreement, depending upon the rental rates, the rent agreed to be paid by the Appellant was a sum of Rs.26,821/- per month. The learned Counsel further pointed out that considering the said terms the learned Judge was not justified to fix an enhanced rate as according to him the fair rent of the said premises would be the said sum of Rs.26,821/-. The learned Counsel further pointed out that considering the amount fixed by this Court whilst granting the stay of the impugned Judgment passed in the Civil Suit, the learned Judge was not justified to fix the amount more than the said sum of Rs.16,000/- fixed by this Court for such period. The Learned Counsel further points out that there is no

justification for the learned Judge to fix the mesne profits for the period from 01.01.2004 to 31.12.2008 @ Rs.50,000/- per month and a sum of Rs.76,430/- per month from 01.01.2009 to 13.09.2011. The learned Counsel has thereafter taken me through the Judgment passed by the learned Trial Judge as well as the lower Appellate Court to point out that there is no justification for fixing such amounts by the Courts below. It is further pointed out that during the pendency of the Appeal before this Court, the Appellants have deposited a sum of Rs.16,000/- per month from April 1999. The learned Counsel further pointed out that the Appellants have also deposited before the lower Appellate Court an amounts as fixed by the learned Trial Judge by the Impugned Order dated 02.03.2012. The learned Counsel further pointed out that all such amounts deposited alongwith interest accrued thereon, if any, have to be deducted from the amounts payable to the Respondents.

3. On the other hand, Mr. R. G. Ramani, the learned Counsel appearing for the Respondents submits that the mesne profits fixed by the learned Judge is based on the PWD rates applicable at the relevant time as reflected in the Lease Agreement executed between the State Government and the Respondents in respect of similar premises in the same building which was occupied by the Respondent located on the 4th floor whereas, the subject premises were located on the 2nd floor. The learned Counsel further pointed

out that the area of the subject premises are much bigger than the premises leased out to the Court. The learned Counsel further pointed out that as the mesne profits have been fixed based on reliable evidence on record, there is no substantial question of law which arises for consideration in this Appeal. The learned Counsel further submits that though the Respondents were claiming interest @12% per annum, the learned Judge by the impugned Order has fixed the rate @6% from the date of the passing of the Order from 02.03.2012.

4. I have considered the submissions of the learned Counsel and I have also gone through the records. On perusal of the Judgment passed by the Courts below, the mesne profits fixed by the Courts in terms of an inquiry under Order 20 Rule 12 of CPC is based on authentic and reliable Lease Agreement executed between the Respondents and the State Government in connection with the premises located in the same building situated on the 4th floor of the subject building. It is not disputed that the subject premises were located on the 2nd floor of the same building. In such circumstances, considering that it is also contended by the Respondents that the area of the subject floor is bigger and that the subject premises are better located than the premises leased out for the Court premises by the Respondents, I find that the reliance by the Courts below on the Lease Agreement executed between the Respondents and the State Government cannot be faulted. Apart from that, it

is also not disputed that the rates fixed in the Lease Agreement with the State Government is based on the PWD rates which have been duly notified. As the findings of the Courts below whilst fixing the mesne profits is based on reliable evidence on record, I find that there is no perversity in such findings which requires consideration by this Court in a Second Appeal under Section 100 of the CPC.

5. With regard to the contention of the learned Counsel appearing for the Appellant that the amounts have been deposited in this Court as well as before the learned District Judge, have to be considered while calculating the amounts payable to the Respondent based on the impugned Order passed by the Courts below, I find that the said contention in fact has not been disputed by the learned Counsel appearing for the Respondents. The Appellants will have the benefit of getting the amounts deposited in this Court as well as before the learned District Judge alongwith accrued interest thereon adjusted whilst computing the amounts payable to the Respondents based on the impugned Orders passed by the Courts below fixing the mesne profit. As already pointed out hereinabove, the amounts fixed by the learned Judge as well as by this Court will not carry any interest as the interest awarded in the impugned Order would be payable from the date of the Order passed by the learned Trial Judge, which is 02.03.2012 on the mesne profits so fixed from the year 2002. All

these aspects would be examined by the Executing Court in accordance with law.

6. Subject to the above, the Appeal stands rejected.

F. M. REIS, J.

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