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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.2517 OF 2015

Canara Bank

..Petitioner.

V/s.

Rashmikan Gardi & Ors.

..Respondents.

Ms.Sandhya Nanavare i/b. M.Janardhan for the Petitioner.

Mr.Vineet Naik, Senior Advocate with Mr.Ayaz Bilalwala and

Ms.Minal Parab i/b. Bilawala & Co. for the Respondents.

CORAM : N.M.Jamdar, J.

DATED : 9 February, 2017

P.C. :-

The Petitioner-bank has challenged the order passed by the learned Small Cause Court Judge, Mumbai and the Appellate Bench of the Small Cause Court, Mumbai whereby the Petitioner-bank is directed to pay *mesne* profits at a particular rate.

2. The Respondent instituted suit No.CNR/438/459/2001 in the Small Cause Court, Mumbai. The suit was in respect of the premises admeasuring 3,200 sq. mtrs. (18) on the first floor of building known as Gardi Mansion, Mama Parmanand Marg (New Queens Road), Mumbai.

3. The learned Small Cause Court Judge, after considering the pleadings and arguments came to the conclusion that the Respondents were entitled to a decree as sought for and accordingly decreed the suit by judgment and order dated 1 November, 2004. Thereafter, Mesne Profit Application No.1/2006 was filed by the Respondents in the Small Cause Court. An inquiry was conducted in view of the judgment and decree passed on 1 November, 2004. The learned Small Cause Court judge determined the *mesne* profit at the rate of Rs.81.20 per sq. ft. per month on the area of 3,200 sq. ft. for the period from 1 June, 2001 to 4 October, 2005 along with interest. The *mesne* profit application was accordingly disposed of on 27 October, 2010. Thereafter, Misc. Appeal No.74/2012 was filed before the Appellate Bench of the Small Cause Court. The Appellate Bench by the judgment and order dated 27 October, 2014 dismissed the appeal.

4. The sole contention advanced by the learned counsel for the Petitioner is that when the suit was decreed only the prayer for handing over the delivery of possession was granted and rest of the prayers were dismissed and, therefore, *mesne* profits could not have been sought from the Petitioner. This argument was advanced before both the Courts and has been negated. Both the Courts have taken note of the observation made by the learned Small Court Judge in the judgment and decree dated 1 November, 2004 in paragraph 12. Though it is correct that in the operative part, it is stated by the

learned judge that rests of the prayers of the Plaintiff are dismissed, in paragraph 12, the learned Small Cause Court Judge, after noting the rival contentions regarding the quantum of *mesne* profit, categorically held that it is appropriate that an inquiry will have to be held. Therefore, while not accepting the prayer of the Respondents in respect of specific *mesne* profits to be paid, the learned Small Cause Court Judge has found it appropriate that a separate inquiry needs to be made. Therefore, the reading of the judgment dated 1 November, 2004 clearly indicates that the learned Judge has found it fit not to grant any *mesne* profit as a part of the judgment and decree, but found it appropriate that it should be done by way of a separate inquiry. If both the Courts have construed the judgment and decree dated 1 November, 2004 in the above manner, it cannot be said that any perversity or illegality has been committed by holding that *mesne* profit application was maintainable.

4. No other contention was advanced. In the circumstances, the writ petition cannot be entertained and is accordingly rejected.

(N.M.Jamdar, J.)