

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 742 OF 2014

Berger Paints India Limited

...Applicant

Versus

Steelcrete Private Limited

...Respondent

Mr. N.V. Walawalkar, Senior Advocate, a.w Mr. Mayur Bhojwani,
i/b Mr. Manilal Kher Ambalal & Co., for the Applicant.

Mr. Ashish Kamat, a/w Mr. Kunal Mehta, i/b Crawford Bayley &
Co., for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 16 February 2017

ORAL ORDER :

By this Revision Application, the Applicant has challenged the orders passed by the Appellate Bench of the Small Causes Court and the learned Small Causes Court Judge, Mumbai directing the Applicant to pay the mesne profits of Rs. 2,54,29,148/- from 1 February 2011 with interest as specified in the impugned order.

2. The Applicant was the tenant of the Respondent. On 1 June 2001, notice was issued by the Respondent terminating

the tenancy. Thereafter, the Suit was filed bearing T.E. & R. Suit No. 482/509 of 2001 by the Respondent for eviction of the Applicant from the suit premises. On 4 December 2002 the learned Small Causes Court, Judge decreed the Suit and directed the Applicant to hand over the possession. An Appeal filed by the Applicant before the Appellate Bench was dismissed on 31 March 2008. Thereafter, the Writ Petition was filed in this Court which was dismissed on 23 June 2008 and Special Leave Petition filed by the Applicant was dismissed on 29 September 2008. On 30 March 2009 the Applicant vacated the suit premises.

3. Proceedings were taken out by the Respondent for fixing the mesne profits and for appropriate direction to the Applicant. On 21 February 2011 the Miscellaneous Application No. 18 of 2005 was allowed by the learned Small Causes Court, Judge. The learned Small Causes Court, Judge directed the Applicant to pay the amount. Miscellaneous Appeal No. 65 of 2011 was filed by the Applicant, which was dismissed. Thereafter, the present Revision Application is filed.

4. Mr. Walavalkar, the learned Senior Advocate for the Applicant submitted that the Trial Court, having discarded the evidence of the Plaintiff, which could not have merely relied on the statement of the Architect of the Applicant and ought to have conducted an independent enquiry. He submitted that the

Appellate Bench before whom the matter was again open for reconsideration did not apply its mind and has mechanically confirmed the orders passed by the Small Causes Court. Mr. Walavalkar relied upon the decision of the Apex Court in the case of State of Rajasthan Vs. Harphool Singh (Dead) Through His LRs.¹ to contend that an order passed by the Appellate Court, which is a final Court of facts, without application of mind will be perverse and will result in non exercise of jurisdiction and therefore, the order will have to be interfered within the revisional jurisdiction.

5. That the Applicant was in occupation of the premises and is liable to pay the mesne profits in law, is not disputed and cannot be disputed. The Respondent had filed an Application for fixing the mesne profits at the particular rate and had sought an amount based on the locality and measurement of the premises and the facilities available. In the reply filed to this Application, the Applicant has not given any counter figure and has primarily disputed the liability to pay, whereas the position was that the Applicant was liable to pay mesne profits. The learned Small Causes Court, Judge had to undertake the exercise of fixing the correct compensation. Both the parties had led their evidence. The Plaintiff placed on record its Architect's Report and also had examined its witness. Having found that the evidence led by the Plaintiff could not be accepted in toto to arrive at a correct

¹ (2000)5 SCC 652

figure, the learned Judge then turned to the material which was available on record and produced by the Applicant. Thereafter, the learned Judge relying on the Report of the Architect submitted by the Applicant, fixed the suitable rate and the resultant quantum. The learned Judge also took note of the location of the premises, the parking facilities available and found that the rate indicated by the Architect of the Applicant was fair. There was no illegality committed by the learned Small Causes Court, Judge in basing its findings on material supplied by the Applicant itself. Therefore, the contention raised by Mr. Walavalkar for the Applicant that the learned Small Causes Court, Judge is in error in fixing the amount of mesne profits, cannot be accepted.

6. As regards the contention of the learned Counsel for the Applicant, based upon the decision in case of **State of Rajasthan Vs. Harphool Singh** (supra), the case before the Apex Court arose from a Second Appeal disposed by the High Court. The Apex Court found that the District Court had mechanically confirmed the order passed by the Trial Court and the High Court had also summarily dismissed the Second Appeal. Thereafter, the Apex Court considered the merits of the matter and found that such approach was not warranted in view of the various questions of law that were involved in that matter. In the present case, firstly, it cannot be said that the Appellate Bench dismissed the Appeal with no discussion at all. Mr.Kamat, Sharayu.

the learned counsel for the Respondent has drawn my attention to the paragraph 23, where the Appellate Bench has noted that the Trial Court accepted the Report of the Applicant and has adverted to the reasoning of the Trial Court. In the present case, there was nothing further for the Appellate Court hold and record. The only contention that is advanced on merits is that the learned Small Causes Court, Judge could not have relied on the report of the Applicant. This as held, was not impermissible. Nothing is indicated as to what would have been argued before the Appellate Court, which the Appellate Court ought to have applied its mind. Therefore, in the facts of the present case, in the absence of any cogent and substantial ground made out, the order of the Appellate Bench cannot be mechanically set aside. In the circumstances, there is no error of jurisdiction committed by both the Courts. The Civil Revision Application cannot be entertained and is accordingly, rejected.

6. At the request of the learned Counsel for the Applicant, an ad-interim order is extended for a period of eight weeks from today. If by the end of eight weeks period, no contrary order is passed, the Respondent is permitted to act upon the ad-interim order in respect of withdrawal of the amount.

[N.M. JAMDAR, J.]