

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

CIVIL APPLICATION NO.9893 OF 2018 IN
SECOND APPEAL NO.37 OF 2018

Bhagirathibai Hiralal Taksali,
Died through L.Rs.
Vimalkishor S. Singhanian & anr. ...APPLICANTS

VERSUS

The Director, Government Printing and
Stationery Depot & ors. ...RESPONDENTS

.....
Shri R.R. Kakani, Advocate for applicants
Shri G.O. Wattamwar, Advocate for respondents
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CORAM: A.M. DHAVALÉ, J.

DATED : 11th December, 2018.

ORAL ORDER :

1. In Second Appeal, the State challenges the mesne profits awarded to the respondents of Rs.12,73,550/- with interest @ 7% p.a. The disputed amount has been deposited in the Court. This Civil Application is filed for withdrawal of the deposited amount. Heard learned Advocate Mr. Kakani for the applicant and learned A.G.P. for respondents.

2. The premises admeasuring 900 sq.ft., situated in Gandhi Chowk, Shahgunj, Aurangabad was taken on rent of Rs.64.50 per month by the Government for Government Book Depot. The decree of eviction was passed and was confirmed, and during enquiry for mesne profits, the owner claimed damages @ Rs.20/- per sq.ft. per month. There was no contest by the Government. The landlord did not lead any evidence about the market rate prevailing in that area. He produced valuation certificate indicating that the property was worth Rs.24,000/- per sq.mtr. The learned trial Judge assumed that the premises would fetch rent at 1% of the market value. He calculated the mesne profits @ Rs.20,000/- per month.

3. It is pertinent to note here that, this was not the value claimed even by the claimants. According to him, he had claimed damages @ Rs.18,000/-. The mesne profit is claimed for the period from 1.9.2000 to 31.12.2005. The learned trial Judge granted damages of Rs.12,80,000/- @ Rs.20,000/- per month for 64 months. This order was challenged before the District Judge by way of Regular Civil Appeal No.454/2012 and he maintained the same.

4. There is no evidence as to what was the market rent at the relevant time for the similar premises from the same area.

The assumption of 1% rent of the market value is wrong. In the past, in 1960s and 1970s it was assumed that the market value would be 150 times the rent, but there is soaring rise in prices of real estate and it is common knowledge that the value of the property has gone high, but there is no corresponding rise in the rent. Considering the facts, the rent can be assumed as 0.25%. Prima facie, the amount awarded by the Courts below in spite of no challenge by the Government is on excessive and on higher side. It needs to be reconsidered. After hearing the arguments, in my opinion, only 25% of the amount awarded would have been given, but the Court has already awarded 40% and, therefore no order can be passed for payment of further amount. Hence, the Civil Application is rejected.

5. Second Appeal be placed for admission on 18th December 2018.

(A.M. DHAVAL)
JUDGE

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