

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.6682 OF 2018

Bank of Baroda	]	Petitioner
Vs.		
Kalyanji Meghji Chheda	]	Respondent

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Mr. A.R. Bamne i/b A.R. Bamne & Co., for Petitioner.
Mr. R.A. Thorat, Sr. Advocate i/b P.J. Thorat, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 25TH JUNE, 2018.

P.C:

Heard Mr. Bamne, learned Counsel for the petitioner and Mr. Thorat, learned Sr. Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 2nd April, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai below Exhibit 12 in Exhibit 7 in Misc. Appeal No.267 of 2017. By that order, the Appellate Court substituted the words;

“payable from the date of decree i.e 15/6/2004”

by the words;

**“payable from the date of termination of
tenancy i.e 28/07/2000 till handing over
possession on 30/12/2006”.**

Similarly, the Appellate Court substituted the words;

**“from the date of decree i.e 03/05/2017 till today and
continue to deposit the same till further order”**

by the words;

**“payable from the date of termination of tenancy i.e
28/07/2000 till handing over possession on 30/12/2006”**

3. Rule. Learned Counsel for the respondent waives service. Having regard to the narrow controversy raised between the parties and at the request and by consent of the learned Counsel for the parties, rule is made returnable forthwith and Petition is taken up for final hearing.

4. In support of this Petition, Mr. Bamne invited my attention to prayer clause (b) of the suit. By that prayer, the respondents, hereinafter referred to as 'plaintiffs' sought direction against the defendants to pay mesne profits in respect of the suit premises for the period from **date of the suit till the plaintiffs receive possession in respect of the suit premises**. It is not in dispute that the suit was instituted on 3rd October, 2000. It is also not in dispute that the defendants have handed over possession of the suit premises to the plaintiffs on 30th December, 2006. He submitted that the only question is whether the defendants are liable to pay mesne profits from the date of termination of tenancy i.e 28th July, 2000 or from the date of filing of the suit i.e from 3rd October, 2000.

5. Mr. Bamne submitted that the plaintiffs did not challenge the decree dated 15th June, 2004. He, therefore, submitted that the Appellate Court was not justified in directing to pay mesne profits from 28th July, 2000 being date of termination of tenancy.

6. Mr. Thorat fairly did not dispute the said submission and also submitted that the plaintiffs did not challenge clause (b) of the operative part of the trial Court's decree dated 15th June, 2004. Mr. Bamne assures that the petitioners will comply the modified order within two weeks from today.

7. In view thereof, Petition is allowed in the following terms;

[1] defendants shall pay mesne profits from the date of the suit i.e from 3rd October, 2000 till handing over possession of the suit premises i.e till 30th December, 2006 within two weeks from today. Rest of clause (2) of the operative part remains as it is.

[2] Rule is made absolute accordingly with no order as to costs.

[R.G. KETKAR, J.]