

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

**CIVIL APPLICATION NO.461 OF 2018
IN
CIVIL REVISION APPLICATION NO.166 OF 2015
WITH
CIVIL APPLICATION NO.459 OF 2018
IN
CIVIL REVISION APPLICATION NO.165 OF 2015
(NOT ON BOARD)
AND
CIVIL APPLICATION NO.460 OF 2018
IN
CIVIL REVISION APPLICATION NO.166 OF 2015
(NOT ON BOARD)**

Mohit Suresh Harchandani

And Others

... Applicants
(Org. Respondents)

Versus

Central Bank of India

... Respondent
(Org. Petitioner)

.....

Mr. Haresh Jagtiani a/w Yashpal Jain, Royden Fernandes and
Mitchelle Almeida i/b Haresh Jagtiani & Associates for the Applicant/
Original Respondents.

Mr. Birendra Saraf i/b T.N. Tripathi for the Respondents.

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CORAM : S.C. GUPTE, J.

DATE : 9 OCTOBER 2019

P. C. :

. This Civil Application seeks withdrawal of money deposited by the civil revision petitioner (original defendant) in pursuance of a decree of mesne profits, which has since been confirmed by the

Appellate Bench of the Court of Small Causes at Mumbai. The Petitioner's case before the Court was that mesne profits should be determined at the rate of about Rs.65 per sq.ft., whereas it was the case of the Respondents (original plaintiffs, who were the landlords of the suit property) that the rate should have been about Rs.138 per sq.ft. The mesne profits ordered by the trial court were at the rate of Rs.168 per sq.ft. The rate granted by the trial court and affirmed by the Appellate Bench has been assailed in this Civil Revision Application (CRA) on various grounds. Firstly, it is submitted that the rate granted was well above what was applied for. Secondly, it is submitted that sale as well as rent cases cited by the Petitioner, whilst opposing the application for mesne profits, have not been duly considered by the court. The CRA has been admitted and yet to come up for hearing. The present application for withdrawal from deposits made in Court has been filed in pursuance of the order of the court which *inter alia* required the Petitioner to deposit the decretal amount of mesne profits with liberty to the Respondents to apply for withdrawal of the amount.

2 Considering the controversy between the parties, this Court is of the view that in the interest of justice, the Respondents should be allowed to withdraw mesne profits at the rate of at least Rs.65 per sq.ft. unconditionally, since it is the Petitioner's own case that mesne profits ought to have been computed at that rate. So far as the balance amount is concerned, the Respondents may be permitted to withdraw it only subject to securing the amount by furnishing a

suitable bank guarantee. Needless to add that whilst computing this amount, credit would have to be given for the amount, which has already been withdrawn in terms of the order passed by the Appellate Bench of the Court of Small Causes on 21 December 2011.

3 Accordingly, the Civil Application is disposed of in terms of the following order :

: O R D E R :

i) The Respondents shall be entitled to withdraw from the amount deposited by the Petitioner a sum equivalent to mesne profits computed at the rate of Rs.65 per sq. ft. unconditionally ;

ii) As for the balance amount deposited by the Petitioner, the Respondents shall be entitled to withdraw the same against furnishing a suitable bank guarantee acceptable to the Registry ;

iii) Whilst computing the amounts, as above, credit shall be given for the amount already withdrawn by the Respondents in pursuance to the order passed by the Appellate Bench of Court of Small Causes at Mumbai on 21 December 2011. It is, however, clarified that in case the amount

already withdrawn is over and above the amount computed at the rate of Rs.65 per sq.ft., the Respondents do not have to give any bank guarantee for any portion the amount already withdrawn by them.

4 The hearing of the Civil Revision Application is expedited. The Respondents shall be entitled to apply for fixing a date of hearing before the learned Single Judge hearing CRAs in the second half of November 2019.

5 In the light of the order passed as above in the Civil Application, the two companion civil applications, namely, Civil Application No.459 of 2018 in Civil Revision Application No.165 of 2015 and Civil Application No.460 of 2018 in Civil Revision Application No.166 of 2015, are disposed of.

(S.C. GUPTE, J.)