

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2328 OF 2019
(for withdrawal)
in
FIRST APPEAL NO.625 OF 2018

1. Nathuram Kondiram Konde Deshmukh
since decd thr.LRs ..Applicants

IN THE MATTER BETWEEN

Bharat Petroleum Corporation .. Appellant
vs

1. Nathuram Kondiram Konde Deshmukh
since decd thr.Lrs .. Respondents

Mr.Rahul S.Kate for Applicant in CA 2328/2019
and for Respondent no.1A to 1D,2A to 2C & 3 in FA 625/2018
Mr.S.R.Page for Respondent in CA 2328/2019
and Appellant in FA 625/2018

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CORAM : SMT.ANUJA PRABHUDESSAI,J

DATE : 9th OCTOBER, 2019

P. C.

1. The applicant/Respondent has sought withdrawal of an amount of Rs.2,14,68,004/- deposited by the appellant before the C.J.J.D.Bhor, Pune as per the impugned judgment and decree dated 17.5.2017 in Misc.Civil Application No.12 of 2012.

2. The applicant herein was the plaintiff in Regular Civil Suit No.148 of 1993 for recovery of possession and mesne profit. The said suit was decreed in favour of the plaintiff by judgment and decree dated 10.4.2012. Regular Civil Appeal No.353 of 2012 filed by the appellant herein, was dismissed vide judgment dated 26.6.2015. The appellant had not challenged the said judgment as a consequence thereof, the said judgment has attained finality.

3. In Execution application being Regular Darkhast No.29 of 2012, filed by the appellant, possession of the suit property has already been delivered to the applicant.

4. The trial Court conducted an inquiry for mesne profit under Order XX Rule 12 (c) of the Code of Civil Procedure, 1908 and by the impugned judgment dated 17.5.2017 directed the appellant herein to pay rent of Rs.2/- per sq.feet per month from 1.5.1993 to 12.10.2012.

5. The appellant has challenged this judgment, mainly on the ground that the mesne profit, computed by the trial Court is

erroneous and exorbitant. By order dated 4.10.2018 this Court had stayed execution of the impugned judgment subject to deposit of Rs.2,14,68,004/- of compensation. Pursuant to the said order, the Appellant-Insurance Company has deposited an amount of Rs.2,14,68,004/- before C.J.J.D.Bhor. By this Application the applicant has sought withdrawal of the said amount.

6. A perusal of the impugned judgment indicates that the trial court has relied upon two agreements which are at Exhibit 26 to 28 to determine the mesne profit. The trial court has held that the property mentioned in the said agreements fetched rent between Rs.3.07/- to 10.33 per sq.foot per month. The trial Court has considered the fact that these agreements were executed in the year 2010 whereas mesne profit, was being computed for the period from 1.5.1993 i.e. from the date the possession had become unauthorized and illegal. The trial Court has also considered the fact that the suit property had commercial potentiality and would have fetched higher rent as compared to land which was the subject matter of the agreements at Exhibit 26 to 28.

7. Having considered the location and potentiality of the land, the trial Court has assessed mesne profit at Rs.2/- per sq.ft. Prima facie, the assessment is not erroneous or exorbitant. The applicant who had been deprived of possession of the land is entitled to withdraw the amount deposited as mesne profit.

8. Hence, application is allowed. The applicant is permitted to withdraw 50% of the amount deposited by the appellant before C.J.J.D.Bhor, Pune subject to an undertaking that he shall refund the said amount in the event, the appellant succeeds in the appeal. The balance amount of 50% is allowed to be withdrawn subject to giving security or bank guarantee.

9. Application stands disposed of.

(Smt.Anuja Prabhudessai, J)