

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

**CONTEMPT PETITION st. NO.21829 OF 2019  
WITH  
CIVIL APPLICATION NO.2652 OF 2019  
IN  
FIRST APPEAL NO.398 OF 2018**

Hanumant D. Jagdale

... Petitioner

Vs

Arun Prakash Kamble

... Respondent

Ms.D.P. Gupte for the Applicant in CAF/2652/2019 and for Appellant in FA

Mr.P.K. Dhakephalkar, Senior Advocate, for Petitioner in CP(stamp)/21829/2019 and for Resp. in FA/398/2018

**CORAM: AKIL KURESHI &  
S.J. KATHAWALLA, JJ.**

**DATED: AUGUST 2, 2019**

**P.C.:**

1. These proceedings arise out of a common order. The contempt petitioner complains that the respondent, who is a Senior Manager (Legal) of MTNL, has not abided by his undertaking dated 7.9.2018 given to this Court for handing over the vacant and peaceful possession of the suit property within one year i.e., on or

before 31.7.2019. The MTNL has filed the Civil Application seeking extension of time for vacating the premises.

2. The learned Counsel for the Contempt Petitioner pointed out that the clear undertaking was filed before this Court on the basis of which the Court had prevented the petitioner from recovering the possession of the premises in question. The respondent has not vacated the premises. In the meantime, the petitioner has entered into negotiations for sale of the property and if the property is not vacated, the petitioner's deal may fall through.

3. On the other hand, the learned Counsel for respondent submitted that despite best efforts, alternate site could not be taken on lease. It was, therefore, not possible for MTNL to vacate the premises. Suitable extension may, therefore, be granted.

4. During the course of hearing of these proceedings, we learnt that after the trial Court passed the decree, MTNL has not paid any mesne profits to the owner of the premises i.e., the Contempt Petitioner, nor deposited any sum before this Court by way of mesne profits. We notice that the trial Court had wayback in the year 2014 computed monthly compensation payable to the owner

at Rs.200/- per sq.ft., per month. The learned Counsel for the MTNL, however, submitted that as per the assessment of MTNL, such amount could not exceed Rs.145/- per sq.ft. per month. Whatever be the dispute of computation, MTNL cannot continue to enjoy the possession of the premises in question without paying any mesne profits whatsoever. More than a year has passed since the owner has not received any amount under this head.

5. Considering the facts and circumstances of the case, both the proceedings are disposed of with the following directions:

i) As stated by the learned Counsel for the MTNL, the said Department shall pay to the contempt petitioner directly a sum equivalent to the mesne profits for the entire period from the date of decree till 1.8.2019 calculated at the rate of Rs.145/- per sq.ft. per month for the entire area of the premises within two weeks from today.

ii) The respondents shall file a fresh undertaking assuring that this Court that the premises shall be vacated within a period of three months ending with 31.10.2019, whether

alternate premises have been secured or not. It is clarified that there shall be no further extension.

iii) The MTNL shall pay similar amount of mesne profits as mentioned in clause (i) above for the said period of three months i.e., August, 2019, September, 2019 and October, 2019.

iv) The question of higher mesne profit as claimed by the petitioner would be decided in pending proceedings before the trial Court which the petitioner has already instituted. We have expressed no opinion on such computation and the entire amount to be paid under this order would be adjusted towards MTNL's final liability.

6. Contempt petition and the Civil Application are disposed of accordingly.

**(S.J. KATHAWALLA, J.)**

**(AKIL KURESHI, J.)**