

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 944 OF 2018**

Mr. Meghraj Goyal

.. Petitioner

Vs.

Gopal Das Jagat Ram Pvt. Ltd.
& Anr.

.. Respondents

Mr. Nagendra S. Dube for petitioner.

None for respondents.

CORAM : N.J. JAMADAR, J.

DATE : 16TH OCTOBER 2019

P.C.

1. None present for the respondents.

2. The challenge in this petition is to judgment and order dated 10th October 2017 passed by the learned Judge, City Civil Court, Greater Bombay in Chamber Summons No.1785 of 2016 in S.C.Suit No. 7015 of 2003 (H.C. Suit No. 2787 of 2003), thereby dismissing the Chamber Summons taken out by the plaintiff-defendant No.1 for expunging the paragraph Nos.5 to 29 from the affidavits-in-lieu of examination in chief dated 27th January 2015 and 22nd August 2015 tendered on behalf of the petitioner-respondent No.1.

3. The defendant No.1 had taken out the aforesaid chamber summons for the following reliefs :-

“(a) That this Hon’ble Court may be pleased to pass an Order of expunging the paragraph Nos. 5 to 29 from the Affidavit In lieu

of Examination in Chief dated 27.01.2015 filed at Ex. 17 by Mr. Satprakash Goyal, the Director of the Plaintiff.

(b) That this Hon'ble Court may be pleased to pass an Order of expunging the paragraph Nos. 4 to 17 from the Affidavit In lieu of Examination in Chief dated 22-08-2015 filed at Exh. 21 by Mr. Satprakash Goyal, the Director of the Plaintiff."

4. In the affidavit-in-support of the Chamber Summons, in paragraph No.9, the defendant No.1, endeavoured to offer justification as to why the aforesaid paragraphs are required to be deleted from the affidavits in lieu of examination-in-chief. The learned Judge was of the view that the affirmations in the affidavits in the aforesaid paragraphs were necessary for the determination of the issues framed in the suit.

5. The learned counsel for the petitioner would urge that in view of the provisions contained in Order XX, Rule 12 of the Code of Civil Procedure, 1908 ('CPC'), the issue of *mesne* profit (issue No.8) ought not have been framed and the plaintiff could not have been permitted to lead evidence in support of the claim of *mesne* profit. Inviting the attention of the Court to the provisions of Rule 12 Order XX of CPC, as amended by this High Court, it was submitted that unless a finding is recorded that the defendant No.1 is in a wrongful occupation of the suit premises, the determination of the issue of *mesne* profit is unwarranted, and therefore, the assertions in paragraph Nos.5 to 29 in the affidavits-in-lieu of examination in chief were made at a pre-mature stage.

6. From the perusal of the issues framed by the learned Judge, it becomes clear that apart from the question of the entitlement of the plaintiff to the possession of the suit premises, i.e., Unit No.3, A to Z, Industrial Estate Co-operative Society Ltd., the issue as to whether the defendant No.1 is in illegal use, occupation and possession of the suit premises has been framed. The question of the nature of the possession of the defendant No.1 and whether the plaintiff establishes that the defendant No.1 is in wrongful possession thereof are the matters for trial. The entitlement of *mesne* profit hinges upon the finding that the defendant has been in wrongful occupation of the immovable property. This, however, does not imply that an issue of *mesne* profit is not required to be framed, when a prayer for recovery possession coupled with *mesne* profit is made. In the event, the Court comes to the conclusion that the defendant is in a wrongful occupation, it may direct an enquiry as to *mesne* profit.

7. In this view of the matter, the learned Judge was justified in dismissing the Chamber Summons. No perversity is noticed in the impugned order warranting interference in exercise of the writ jurisdiction. The petition thus does not deserve to be entertained.

8. Hence the petition stands dismissed.

[N.J. JAMADAR, J.]