

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

**SECOND APPEAL NO.114 OF 2021 WITH
CIVIL APPLICATION NO.2287 OF 2021**

Jawahar s/o Satyapal Rathor

... APPELLANT

VERSUS

Syed Arifuddin s/o Syed Ziyuddin
and others

... RESPONDENTS

.....
Shri V.D. Hon, Senior Counsel, instructed by
Shri A.V. Hon, Advocate for appellant
Shri A.D. Hande, Advocate for respondent No.1
.....

CORAM : R. G. AVACHAT, J.

DATE : 8th APRIL, 2021

ORDER :

Heard Mr. Hon, learned Senior Counsel for the appellant and Mr. Hande, learned counsel for respondent No.1/ Caveator.

2. Issue notice before admission to the respondents returnable on 6th May 2021. Mr. Hande, learned counsel appearing on Caveat filed for and on behalf of respondent No.1, waives service of notice for respondent No.1.

3. The challenge in this Second Appeal is to the judgment and decree dated 30/1/2017, passed by the Court of Civil Judge, Senior Division, Biloli in R.J.E. No.11/2014 and modified by the District Judge-1, Biloli in Regular Civil Appeal No.22/2018.

4. In short, the challenge in this appeal is to the decree, determining future mesne profits at the rate of Rs.10,000/- per month from the date of the suit. The appellant herein is in possession of the land admeasuring 15 R, situated at Degloor, District Nanded. He runs a petrol pump thereon. The respondent No.1 filed a suit, being Special Civil Suit No.32/2007 for possession of the said land. The suit had been decreed, directing the appellant to hand over possession of the said land. Directions had also been given for determination of past and future mesne profits. The appeal preferred against the judgment and decree passed in Suit No.32/2007 is pending before the District Judge. There is stay to the execution of the decree to the extent of delivery of possession only.

5. Shri V.D. Hon, learned Senior Counsel appearing for the appellant would submit that, since first appeal is pending against the judgment and decree passed in Suit

No.32/2007, there cannot be final determination of mesne profits. The decree impugned in this Second Appeal is, therefore, liable to be set aside.

6. It was a suit for possession of the land given on lease for commercial purpose. The petrol pump is being run on the said land. The suit is governed by the provisions of the Transfer of Property Act and not Maharashtra Rent Control Act. One, therefore, need not make further observations regarding merits of the appeal filed against the decree in Special Civil Suit No.32/2007. It is, however, desirable to grant stay to the execution of the decree determining future mesne profits, on condition of the appellant depositing 50% of the amount of mesne profits payable till the end of 31st March 2021 and shall go on depositing the sum of Rs.10,000/- per month towards future mesne profits pending admission of this Second Appeal. On compliance of this order, there shall be stay to the execution of the decree determining mesne profits. The amount that would be deposited in this Court be kept in Fixed Deposit with any of the Nationalised Banks.

7. The learned District Judge, Biloli is requested to decide Regular Civil Appeal No.36/2013 at the earliest.

8. Civil Application No.2287/2021 stands disposed of.

**(R. G. AVACHAT)
JUDGE**

fmp/-