

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.39 OF 2018
WITH CA/3294/2020 IN SA/39/2018 WITH CA/662/2018 IN SA/39/2018**

- 1) The Union of India, through the
Chief Secretary, Government of
India, Sough Block, New Delhi.
- 2) The President of India, Through the
Secretary, Government of India,
Department of Posts, 10-E, G.A.,
Section, Dak Bhavan, Sansad Marg,
New Delhi- 110 001.
- 3) Chief Post Master, General,
Maharashtra Circle, Mumbai.
- 4) Post Master General,
Aurangabad Region, Aurangabad,
(CONTTT) Maharashtra- 431 002.
- 5) Senior Superintendent of Post Offices,
Dhule Division, Dhule – 424 001.

... **Appellants**
(Orig. Defendants)

VERSUS.

Sau. Bilqueesabai w/o Husainy Shahed,
Aged 70 years, Occ. Household,
R/o. C/o. Husainybhai, Advocate, Joshipura
Shahada, District Nandurbar 425 409.

... **Respondent**
(Orig. Plaintiff)

...
Advocate for Appellants : Mr. Kulkarni Bhushan B.
Advocate for Respondent : Mr. S. V. Natu.

CORAM : **MANGESH S. PATIL, J.**
DATE : **04.02.2022.**

PER COURT :

I have heard both the sides at the stage of admission.

2. This is a second appeal by the original defendants questioning the correctness of the assessment of damages by the first appellate court.

3. Admittedly, the postal department of the appellant was occupying the premises owned by the respondent who is the original plaintiff. Since the department continued to hold possession of the demised premises beyond the period of lease, which was vacated after filing of the suit on 31.05.2013, she filed a suit for damages on 13.04.2012. The trial court awarded the damages by indulging in an exercise of reassessment by taking the agreed rent of Rs. 9000/- per month as the basis and enhanced it to Rs. 10782/- per month and awarded it for the period 01.10.2007 till the premises was vacated on 01.06.2013 (sic. 31.05.2013).

4. The respondent was not satisfied with the rate at which the damages were assessed and preferred the appeal. Pertinently, though the trial court had awarded damages for a period beyond the period of three years next before filing of the suit, the appellants did not challenge the judgment and decree nor did it file any cross objection in the appeal preferred by the respondent seeking enhancement of the damages.

5. The bone of contention of the advocate Kulkarni for the appellants is that the appellate court has in spite of having noticed the fact that the damages were awarded for a period beyond the period of three years next before filing of suit, perpetuated the error in continuing to award the damages thereby confirming the finding of the trial court while assessing the compensation in paragraph No. 27 of the judgment under challenge.

6. Mr. Natu learned advocate for the respondent points out that apart from the fact that the appellants had not challenged the judgment and decree of the trial court, the appellate court has not awarded something new that was not there in the judgment of the trial court. It is only by way of a clarification, while working out the damages in paragraph No. 27 that it has referred to the period between 01.10.2007 to 12.04.2009. Even without

there being any necessity just to point out the calculations that the appellate court has mentioned that period, which is already a part of the decree passed by the trial court.

7. After having considered the rival submissions and after perusing the judgments of both the courts, it is apparent that there is no dispute about the facts that is, the date of filing of the suit and the date on which the possession was delivered back to the respondent. The damages were calculated by the trial court taking note that the original rent was Rs. 9000/-. It enhanced it to Rs. 10782/-. The difference being Rs. 1782/-per month. The trial court awarded the compensation at this rate for a period 01.10.2007 to 12.04.2009. This is what has been confirmed by the first appellate court. It has enhanced the compensation/damages for the period of three years next before filing of the suit, which were assessed by the trial court at Rs. 10,782/- per month, to Rs. 13,500/- per month. The appellate court has not granted or enhanced that compensation for a period prior to 13.04.2009.

8. If this be so, it is quite apparent that the appellate court has not granted something new which was not there in the decree passed by the trial court. It is only by way of abundant caution that it has given the calculations in paragraph No. 27 of the judgment.

9. No substantial question of law arises for determination of this Court in this second appeal. It is dismissed in limine.

10. Pending Civil Applications are disposed of.

(MANGESH S. PATIL, J.)

mkd/-