

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

**INTERIM APPLICATION NO. 17432 OF 2022
IN
CIVIL REVISION APPLICATION NO. 648 OF 2019**

Sunil Niranjana Jhaveri

.... Applicant

v/s.

Bharat Petroleum Corporation Ltd.,
Mumbai

.... Respondents

Mr. Nachiket Khaladkar for the Applicant.

Mr. Girish Godbole, Sr. Advocate a/w. Mr. Gaurav Jain i/b. The Law
Point for the Respondent (BPCL).

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 17th NOVEMBER, 2022.

P. C. :-

. The Applicant herein has sought withdrawal of the amount deposited by the Respondent – Corporation as per the order of the Appellate Court dated 25/06/2019 in Miscellaneous Appeal No.148/2016.

2. Heard Mr. Khaladkar, learned counsel for the Applicants and Mr. Girish Godbole, learned Senior counsel for the Respondent – Corporation. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. By judgment and decree dated 12/06/2003, the suit filed by the Respondent was decreed and the Applicant – Corporation was directed to handover vacant possession of the suit premises on or before 10/09/2003. In compliance with the said order, possession of the suit premises has been handed over. Inquiry as regards mesne profits was conducted and by judgment dated 26/10/2015, the Trial Court directed the Applicant – Corporation to pay mesne profits @ Rs.45/- p.sq.ft.p.m. from 24/01/2001 to 31/12/2005 and @ Rs.60/- p.sq.ft.p.m. from 01/01/2006 to 18/08/2009. The Appellate Court has modified the said order and directed the Corporation to pay mesne profits @ Rs.3,24,560/- per month from 24/01/2001 to 18/08/2009 with interest of 6% per annum on the amount due from the date of filing of the suit till its realization. This order has been challenged by the Corporation as well as by the original plaintiff.

4. Pursuant to the order dated 10/03/2022 in CRA/648/2019, this Court had directed the Corporation to deposit the amount as per Para 2(a) of the impugned judgment and order dated 25/06/2019. In compliance with the said order, the Corporation has deposited Rs.6,29,78,119/-. The original plaintiff has sought withdrawal of the said amount.

5. The fact that the Corporation is liable to pay mesne profits to the original plaintiff is not in dispute. The dispute is only as regards the quantum of the mesne profits as well as the interest as ordered by the Appellate Court. The interest of the Corporation can be secured by withholding 50% of the amount deposited before this Court. Considering this fact, the Applicant – original plaintiff is permitted to withdraw 50% of the amount deposited by the Corporation with proportionate interest accrued thereon.

6. Interim Application stands disposed of in above terms.

PREETI
H JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)