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IN THE HIGH COURT OF BOMBAY AT GOA

STAMP NUMBER MAIN NO.1148 OF 2020 (F)
AND
MISC. CIVIL APPLICATION NO.9 OF 2023

ALLAHABAD BANK, REP.
BY ITS CHIEF EXECUTIVE ....APPELLANTS
OFFICER AND ANR. /APPLICANTS

Versus

HANUMNA MAHADEO
NARVEKAR @ SHIRODKAR
(DEC) AND 2 ORS. ....RESPONDENTS

Mr Raunaq Rao, Advocate *for the Appellants/Applicants.*
Mr S.D. Lotlikar, Senior Advocate with Mr T. Sequeira, Advocate *for the Respondents.*

CORAM: M. S. SONAK, J.

DATE : 14th JULY 2023

ORAL ORDER :

1. Heard Mr R. Rao for the applicants/appellants and Mr S.D. Lotlikar learned Senior Advocate, who appears along with Mr T. Sequeira for the respondents.

2. There is an application for condonation of delay in instituting this Second Appeal. Considering the reasons in the Civil Application, the delay is condoned.

3. At the request of and with the consent of the learned Counsel for the parties, the Second Appeal is taken up for consideration immediately.

4. The appellants are the original defendants, and the respondents are the original plaintiffs in Special Civil Suit No.180/1997/B instituted to seek the appellants' eviction from the suit premises admeasuring 1240.74 sq. ft. on the ground floor and 656.25 sq. ft. on the mezzanine floor at Mapusa-Goa.

5. The respondent, vide Lease Deed dated 30.11.1985, had leased out the suit premises to the appellants effective 01.03.1985. By notice, this lease was terminated effective from 30.09.1997.

6. Despite notice, the appellants declined to vacate the suit premises forcing the respondents to institute the suit for eviction and mesne profits. In the suit, the appellants raised the plea of statutory tenancy, even though the respondents had pleaded that the building was less than 15 years old and even the rents were over those entitling the respondents to any statutory protection.

7. The Trial Court, by decree dated 30.04.2003, found favour with the appellants' plea and dismissed the suit for want of jurisdiction. The landlord appealed vide First Appeal No.182/2003 to this Court.

8. By a detailed judgment and order dated 12.02.2004, this Court reversed the Trial Court and ordered the appellants' eviction. The matter was remanded to the Trial Court to inquire and determine mesne profits.

9. Despite the eviction decree dated 12.02.2004, the appellants resisted the execution, and it was only in 2009 that the respondents could secure possession of the suit premises. This is relevant because now the appellants seek some reduction in the mesne profits determined by the Trial Court and confirmed by the appellate Court. Mr Rao's star argument is that mesne profits should be determined from 12.02.2004 and not earlier.

10. The Trial Court had determined the mesne profits at ₹30,000/- per month effective from 01.10.1997 when the appellant's possession in the suit premises became wrongful. The appeal Court has confirmed the Trial Court's finding.

11. Mr Rao submits that no order for payment of mesne profits could have been made effective from 01.10.1997 because the appellants' possession became wrongful (if at all) effective from 12.02.2004. He relies on ***Harry Kempson Gray and Anr. V/s. Bhagu Mian and Ors.***[1] in support of this proposition.

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1 AIR 1930 Privy Council 82

12. Based upon the above contention, Mr Rao urges the consideration of the following substantial question of law :

> *Whether the Trial Court, as well as the First Appellate Court, have fallen into an error in misconstruing that appellants were liable to pay mesne profits from 01.10.1997 having lost sight that this Hon'ble High Court in its order dated 12.02.2004 or did not render any finding that the possession of the appellant was wrongful?*

13. Mr Lotlikar, learned Senior Advocate for the respondents, contests the above position and submits that no substantial question of law is involved in this appeal. He submits that if the appellants' contention is to be accepted, then no mesne profits would become payable during the pendency of proceedings, which is not the case. Mr Lotlikar further submits that the two Courts have spared the appellants by pegging the mesne profits of ₹30,000/- per month when the evidence on record shows that the suit premises were in the heart of Mapusa city and respondents had to spend considerably for acquiring alternate premises to undertake their business. Mr Lotlikar, therefore, submits that this appeal may be dismissed.

14. The rival contentions now fall for my determination.

15. *Harry Kempson Gray and Anr.* (supra) relied upon by Mr Rao does not support the proposition he canvasses. The portion he relied upon states that the test set by the statutory definition of mesne profits is not what the plaintiff has lost by his exclusion but what the defendant had or might reasonably have made by his "*wrongful possession*". The decision does not say that the possession becomes wrongful only from the date of the eviction decree and never earlier.

16. This Court, in this judgment and decree dated 12.02.2004, after holding that the plea of statutory tenancy raised by the appellants was incorrect, further held that the termination of the lease effective from 30.09.1997 was proper. This means that from 01.10.1997, the appellants were in wrongful possession of the suit premises. Thus, even following the Privy Council decision, the two Courts have correctly held that mesne profits had to be assessed from 01.10.1997. There is no error, much less any, warranting the formulation of a substantial question of law as proposed in this appeal.

17. Besides, there is no reasonable explanation why suit premises were not handed over by the appellants to the respondents soon after this Court's judgment and decree dated 12.02.2004. The decree-holder was forced to adopt a lengthy execution process. Under these circumstances, there is no error in the determination of mesne profits or the date from which such determination is applied.

18. Crucially, the appellants did not even bother to lead any evidence on the quantum of mesne profits. The evidence led on behalf of the respondents has been evaluated and assessed by the two

Courts adopting the correct legal principles. These are findings of fact, and there is no perversity pointed out.

19. For the above reasons, this appeal has no merit and must be dismissed. As proposed, the substantial question of law does not arise and, in any case, must be answered against the appellants. Accordingly, this appeal is dismissed.

20. Upon a mercy plea by Mr Rao on behalf of the appellants, Mr Lotlikar, learned Senior Advocate for the respondents, based on instructions from the respondents, states that the respondents would forego 10% of the decretal amount in case 90% of the decretal amount is paid by the appellants to the respondents within six weeks from today, however, in case, the amount is not paid within six weeks, and the respondents have to resort to execution, this statement will not stand.

21. The above statement is accepted, and the parties should act consistently.

22. The appeal is accordingly disposed of in the above terms without any cost order.

M. S. SONAK, J.

NITI K HALDANKAR

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