

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.13637 OF 2023
IN
WRIT PETITION NO.5472 OF 2000

Nadeem Majid Oomerbhoy

...Applicant

Versus

Kumar Laxman Parkar

(Since Decd) Thru Lhrs

Dilip Kumar Parkar & Ors.

...Respondents

Mr. Kirti Munshi a/w Ganesh Ambekar i/b Thakare Jariwala &
Associates for the Applicant.

Mr. Nilesh Parte i/b S. B. Prabhavalkar for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : NOVEMBER 30, 2023

P. C. :

1. Interim Application has been preferred by the Applicant-Original Respondent seeking permission to withdraw the amount of mesne profit which was deposited by the Petitioner in this Court pursuant to the order dated 29th February, 2016. Apart from the said prayer, the Original Respondent also seeks enhancement of the amount of mesne profit from Rs. 5000/- to Rs. 20,000/-.

2. At this stage the relief, I am inclined to only consider prayer clause (a) which seeks permission to withdraw the amount which is deposited by the Petitioner pursuant to the order dated 29th February, 2016 and learned counsel for the Applicant fairly concedes that other reliefs are not pressed.

3. Learned counsel for the Respondent opposes the relief and submits that the order was passed in the year 2016 and in the year 2022 the Application is being moved seeking withdrawal of the amount. Apart from the said submission there is no serious opposition to the withdrawal of the amount of the mesne profit.

4. The foundation for the claim for mesne profit is the wrongful possession of the party and the same is to be granted to the person who suffers loss on account of the wrongful possession. The Original Respondent being a landlord is required to meet the expenses in respect of the suit property, which is in wrongful possession by the tenant, without receiving any benefit from the premises.

5. I see no reason to decline the landlord the relief of withdrawal of the said amount to which he has legally entitled. In that view of the matter, the Interim Application is allowed in terms of prayer clause (a).

(SHARMILA U. DESHMUKH, J.)