

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION NO.2210 OF 2019****IN****WRIT PETITION NO.3883 OF 2019****Shrenik Narendra Baldota****..... Applicant****V/s.****Central Warehousing Corporation and Anr.****..... Respondents**

Mr. Kedar B. Dighe i/b Mr. Vishal S. Khanavkar for the Petitioner in WP No.3883/2019 and for Applicant in CAW No.2210/2019.

Mr. Girish Godbole, Senior Advocate a/w. Mr. Shailendra Kanetkar, Mr. Manvendra Kane, Ms. Amruta Thakur i/b W.S. Kane & Co. for Respondent No.1 in CAW No.2210/2019.

CORAM : SHARMILA U. DESHMUKH, J.**DATE : 31st OCTOBER, 2023.****P.C.:**

1. The Civil Application has been preferred by the Applicant seeking permission to withdraw the sum of Rs.5,03,37,412/- (Rupees Five crores three lakhs thirty seven thousand four hundred and twelve only) along with accrued interest deposited by the Petitioner with the Registrar of this Court pending the disposal of the present Petition.

2. The Petition has been filed assailing the judgment dated 16/11/2018 passed by the Appellate Bench of the Small Causes Court in Misc. Appeal No.148/2018 in Mesne Profits Application No.452/2013 in

TE & R Suit No.154/202 of 2009, confirming the payment of mesne profits of Rs.3,48,51,306/- (Rupees Three crores forty eight lakhs fifty one thousand three hundred and six only) along with quarterly interest accruing from 1/5/2009 till the realization of mesne profits amount. This Court *vide* order dated 27/3/2019 stayed the execution proceedings subject to Petitioner depositing the mesne profits amount of Rs.3,48,51,306/- along with quarterly interest within a period of 8 weeks from the date of the Order. As per the Respondent, the total amount to be deposited by the Petitioner till 31/5/2019 amounted to Rs.6,62,98,457/- (Rupees Six crores sixty two lakhs ninety eight thousand four hundred and fifty seven only). The Petitioner filed a Review Petition seeking review of the order dated 27/3/2019 which came to be dismissed. *Vide* order dated 13/6/2019, this Court directed the Petitioner to deposit an amount of Rs.5,03,37,412/- being the decretal amount due within a period of 4 weeks from 13/6/2019, leaving the issue of calculation of due decretal amount open for consideration at the time of admission of the writ petition. On 8/7/2019 the Petitioner deposited the amount of which withdrawal is prayed.

3. Mr. Godbole, learned Senior Advocate appearing for the Applicant submits that the Applicant is entitled to the amount deposited by the Petitioner. He places reliance on the decision of this Court in the case of

Urmi Developers Private Limited and Ors. vs. Kanoria Brothers and Others, (2016) 5 Bom CR 650 which dealt with the issue of withdrawal of the amount deposited towards mesne profits or compensation by tenant. He would urge that the conditions which were set out in the said decision permitting the Respondent No.2 therein to withdraw the amount pursuant to the ad-interim order therein upon furnishing of Bank Guarantee in respect of the amount withdrawn plus 10% thereon may also be permitted in the present case.

4. *Per contra*, Mr. Dighe learned Advocate appearing for the Petitioner opposes the Application. He would submit that substantial amount is involved and if the same is allowed to be withdrawn, there would be no security or assurance of refund to the Petitioner, if he succeeds in the matter.

5. Considered the submissions and perused the record.

6. Upon being confronted with the decision in the case of *Urmi Developers Private Limited and Ors. vs. Kanoria Brothers and Others* (cited *supra*), Mr. Dighe fairly conceded that the apprehension which is expressed by the Petitioner can be taken care of by permitting the withdrawal subject to furnishing of Bank Guarantee in respect of the amount withdrawn plus

10% thereon. The decision in the case of *Urmil Developers Private Limited and Ors. vs. Kanoria Brothers and Others*, squarely applies to the facts of the present case. The amount of Rs.5,03,37,412/- has been deposited by the Petitioner in this Court and as such the Civil Application is to be allowed.

7. The Registry is directed to calculate the amount of the accrued interest on the sum of Rs.5,03,37,412/- upto 31/10/2023. The **Applicant** shall be at liberty to withdraw the amount of Rs.5,03,37,412/- along with interest accrued up to 31/10/2023 so determined by the Registry, upon furnishing Bank Guarantee of a Nationalized Bank which Bank Guarantee to remain in operation till disposal of Writ Petition No. 3883/2019. The Bank Guarantee shall be in respect of amount sought to be withdrawn plus 10% thereon.

7. Civil Application is allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)

(This order is corrected as per Speaking to the Minutes order dated 12th December, 2023)