



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 CIVIL APPLICATION NO. 11428 OF 2023
IN SA/114/2021

SYED ARIFUDDIN SYED ZIYUDDIN
VERSUS
JAWAHAR SATYAPAL RATHOR AND OTHERS

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Advocate for Applicant : Mr. Hande Avinash D.
Sr. Advocate for Respondents : Mr. V. D. Hon for Orig. Appellant in SA

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CORAM : Y.G. KHOBRAGADE, J.
DATE : 25.04.2024

PC.:-

1. Heard advocate Mr. Hande the learned counsel appearing for the applicant and Mr. Hon, the learned senior counsel a/w. advocate Mr. Sonkawade the learned counsel appearing for the non-applicant no.1. None present for the other non-applicants.
2. The applicant / original-plaintiff moved the present application and prayed for permission to withdraw the entire amount deposited by the non-applicant no.1 in pursuance of order dated 08.04.2021 passed by this Court.
3. The learned counsel appearing for the applicant canvassed that the present applicant/original plaintiff in Special Civil Suit No.32/2007

prayed for decree of recovery of possession of the land which is subject matter of the second appeal and also prayed for inquiry into mesne profit on the ground that the suit property was leased out initially to M/s. Manikchand Babulal Rathor Partnership Firm of which the present applicant no.1 is the partner. The said lease was granted for a period of 25 years which expired on 23.05.1983 but the defendant in the suit failed to vacate the premises ultimately the decree of possession and inquiry into mesne profit is sought.

4. On 10.09.2013 the learned trial Court decreed the Special Civil Suit No.32/2007 and directed inquiry into mesne profit. Being aggrieved by the said judgment and decree the original defendant filed RCA No.36/2013 which is pending for final adjudication, however, in the meantime the appellant filed the proceeding RJE No.11/2014 for grant of mesne profit. Accordingly, on 30.01.2017 the learned C.J.S.D., Biloli passed the decree of mesne profit. The operative part of the order dated 30.01.2017 reads as under:

“ORDER

- 1- Instant petition is allowed with cost.*
- 2- The respondent no.1, 1-A, 1-D and 1-H are hereby directed to pay an amount of Rs.1,50,000/- jointly to petitioner as rent for the period from 17/01/2004 to 16/01/2007 i.e. period of 3 years @ of 50,000/- per year. They are also directed to pay the rent @ Rs.10,000/- per month from 17/01/2007 till date of this order within one month. If they fail to comply with the order they will be*

liable to pay simple interest @ 6% per annum on the above said amount.

3- The respondent no.1, 1-A, 1-D and 1-H are hereby directed to jointly pay Rs.10,000/- per month as rent from the date of this order till handing over possessing suit land to the petitioner. For the said rent amount the petitioner is entitled to file application annually till realization of possession. He is entitled for simple interest @ 6% per annum if the amount claimed in the application is not paid by the said respondents within one month from the date of its filing.

4- Decree be drawn up accordingly”

5. Being aggrieved by said judgment and decree, the non-applicant no.1 filed RCA No.22/2018 before the First Appellate Court. On 29.02.2020, the learned First Appellate Court allowed the appeal holding that original petitioner/applicant is entitled for future mesne profit as already granted vide judgment and order dated 30.01.2017 passed in RJE No.11/2024. Being aggrieved by said order the original defendants filed second appeal.

6. Needless to say that on 08.04.2021 this Court passed the order holding that petrol pump is being run and the suit property is governed under the Transfer of Property Act and granted stay to the execution of the decree for determination of future mesne profit on the condition that the appellant (present non-applicant no.1) shall deposit 50% of the amount of mesne profit payable till the end of the 31.03.2021 and shall go on depositing the sum of

Rs.10,000/- per month towards future mesne profit pending admission of the second appeal.

7. The learned senior counsel appearing for the non-applicant no.1 canvassed that the present non-applicant no.1 is the owner of some portion of the land out of gut no.60/2, new gut no.297. The non-applicant no.1 has already filed amendment application Exh.77 and prayed for amendment to the pleadings in his written statement and said amendment permitted by this Court vide order dated 13.10.2023 passed in Writ Petition No.6499/2016. Therefore, in case, if the non-applicant no.1 is declared as owner and the present applicant is permitted to withdraw the amount in that event the non-applicant will face difficulty to recovery the said amount, hence prayed for rejection of the application.

8. Needless to say though the non-applicant no.1 claimed about ownership of some portion of land arising out of survey no.60/2 (new gut no.297) in pursuance of the sale-deed, however as on today the non-applicant no.1 has not been declared as owner of the land.

9. Per contra as per the findings recorded by the trial Court the present applicant is owner and non-applicant no.1 is the lessee who runs petrol pump and doing commercial activities on the said land. Since, the

applicant being land owner he is entitled to receive the rental amount towards leasing out his land. Therefore, considering the dispute it would be just and proper to permit the present applicant to withdraw 50% of the deposited amount on furnishing solvent surety and remaining 50% of the deposited amount on furnishing undertaking to the satisfaction of the Registrar (Judicial) of this Court, with an undertaking that in case if the appeal of the non-applicant no.1 is allowed and the present applicant is directed to re-deposit the entire amount in that event he shall re-deposit the entire amount within a period of eight weeks therefrom.

10. In view of the above, the present civil application is disposed off.

[Y.G. KHOBRADE, J.]