**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.83 OF 2023

Arun Ramrao Chavan,
Age : 64 years, Occu.: Pensioner,
R/o.: Plot No.4, Gut No.29,
Nivrutti Nagar, Near Swami
Smarth Temple, Jalgaon,
District : Jalgaon .... **APPLICANT**

VERSUS

Bhanudas Laxman Patil,
Age : 69 years, Occu.: Pensioner,
R/o.: Plot No.1, Flat No.3,
Usha Kiran Apartment,
Shrikrushna Colony, Jalgaon,
District : Jalgaon .... **RESPONDENT**

...

Mr. V. B. Patil, Advocate for the Applicant
Mr. S. V. Dixit, Advocate for the Respondent

....

**WITH
CIVIL REVISION APPLICATION NO.85 OF 2023**

Arun Ramrao Chavan,
Age : 64 years, Occu.: Pensioner,
R/o.: Plot No.4, Gut No.29,
Nivrutti Nagar, Near Swami
Smarth Temple, Jalgaon,
District : Jalgaon .... **APPLICANT**

VERSUS

Bhanudas Laxman Patil,
Age : 69 years, Occu.: Pensioner,
R/o.: Plot No.1, Flat No.3,
Usha Kiran Apartment,
Shrikrushna Colony, Jalgaon,
District : Jalgaon .... **RESPONDENT**

...

Mr. V. B. Patil, Advocate for the Applicant
Mr. S. V. Dixit, Advocate for the Respondent

....

WITH
CIVIL REVISION APPLICATION NO.4 OF 2024

Bhanudas Laxman Patil,
Age : 69 years, Occu.: Pensioner,
R/o.: Plot No.1, Flat No.3,
Usha Kiran Apartment,
Shrikrushna Colony, Jalgaon,
District : Jalgaon .... **APPLICANT**

VERSUS

Arun Ramrao Chavan,
Age : 62 years, Occu.: Pensioner & Agril.,
R/o.: B.S.N.L. Quarter, 7-C,
Near Telephone Office Jalgaon.
Present : Plot No.4, Gut No.29,
Nivrutti Nagar, Near Swami
Smarth Temple, Jalgaon,
District : Jalgaon .... **RESPONDENT**

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Mr. S. V. Dixit, Advocate for the Applicant
Mr. V. B. Patil, Advocate for the Respondent

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 05/08/2024
PRONOUNCED ON : 06/08/2024

JUDGMENT :

1. Out of the aforesaid civil revision applications, Civil Revision Application Nos.83 of 2023 and 85 of 2023 are filed by the original respondent / defendant i.e. the tenant in Civil Miscellaneous Application No.1 of 2014 for determination of mesne profits,

whereas Civil Revision Application No.4 of 2024 is filed by the original respondent / applicant-plaintiff i.e. the landlord in the same application. To avoid ambiguity, the parties are referred as per their original status in the Civil Miscellaneous Application No.1 of 2014. The respondent / tenant has filed Civil Revision Application No.83 of 2023 challenging the common judgment and order passed by the learned District Judge-4, Jalgaon i.e. the learned first appellate court in Regular Civil Appeal Nos.6 of 2020 and 7 of 2020. Regular Civil Appeal No.6 of 2020 has been preferred by the original applicant / landlord for enhancement of the amount of mesne profits, whereas Regular Civil Appeal No.7 of 2020 has been filed by the respondent / tenant being aggrieved with the determination of amount of mesne profit to the extent of Rs.1000/- per month by the Joint Civil Judge (Junior Division), Jalgaon i.e. the learned trial court. As against this, Civil Revision Application No.4 of 2024 has been filed by the original applicant / landlord being dissatisfied with the quantum of mesne profits determined by the learned first appellate court and also by the period for which it is granted. Since all these applications are in respect of grant of mesne profit in respect of the suit premises, they are taken for disposal through a common judgment.

2. Background facts are as under :

The applicant / landlord i.e. the original plaintiff had filed Regular Civil Suit No.59 of 2000 for eviction of respondent / tenant from the suit premises i.e. Flat No.3, in Usha Kiran Apartment, situated at Shrikrushna Colony, Jalgaon. The said suit was decreed by the concerned trial court and the respondent / tenant was directed to handover the possession of the suit flat to the applicant / landlord. The trial court had also fixed standard rent in respect of the suit premises at the rate of Rs.600/- per month. The defendant / tenant had filed Civil Appeal No.118 of 2003 before the appellate court, whereas applicant / plaintiff had also challenged the fixation of said rent at the rate of Rs.600/- per month vide Civil Revision Application No.10 of 2003. However, the learned first appellate court not only dismissed the appeal filed by the respondent / tenant, but also dismissed the civil revision application of the applicant / landlord by confirming the standard rent at the rate of Rs.600/- per month. The respondent / tenant challenged the dismissal of his appeal before this court vide Civil Revision Application No.173 of 2007, but same was dismissed on 01/09/2007. Then the respondent / tenant had also filed Special Leave to Appeal No.23324 of 2007 before the Hon’ble Supreme Court, but ultimately the Hon’ble Apex Court dismissed the said special leave petition. Accordingly, the applicant / landlord got the possession of the suit house on 04/07/2011 and thereafter he filed Mesne Profits Application No.1 of 2014. On 29/11/2019 the learned trial court partly allowed the said civil miscellaneous application and granted mesne profits at the rate of Rs.1,000/- per month to the applicant / landlord for the period May-2003 to 03/07/2011. The defendant / tenant challenged the said order by filing Regular Civil Appeal No.7 of 2020, but it was ultimately dismissed, where as Regular Civil Appeal No.6 of 2020 filed by the applicant / landlord for enhancement of the amount of mesne profits was granted and the amount of mesne profits was enhanced to the rate of Rs.2,500/- per month. As such, all these civil revision applications are filed by the rival parties for challenging the common judgment and order passed by the learned first appellate court in the aforesaid appeals.

3. The learned counsel for the respondent / tenant submitted that the trial court had fixed standard rent of Rs.600/- per month by considering each and every aspect and therefore, the learned trial court should not have granted mesne profits at the higher rate. It was brought to the notice that the landlord had also challenged the fixation of said standard rent but the learned first appellate court confirmed the said amount of standard rent. He

further submitted that the learned first appellate court unnecessarily enhanced the amount of mesne profits from Rs.1,000/- to Rs.2,500/- per month without taking into consideration the amount of earlier standard rent of Rs.600/- per month granted by the trial court. He pointed out that the learned first appellate court also unnecessarily increased the rate of interest from 4% p.a. to 6% p.a. without adjusting the amount of Rs.600/-, which was regularly deposited by the respondent / tenant. Thus, according to him, the respondent / tenant is only liable for paying an amount of Rs.400/- per month alongwith the 4% p.a. interest towards the mesne profits. He pointed out that the learned first appellate court erroneously relied on the report of valuer, which was prepared without giving any prior notice to the respondent / tenant. In the alternative, he submitted that the amount of mesne profits be determined at the rate of Rs.1,000/- per month but with an adjustment of amount of standard rent deposited earlier.

4. On the contrary, the learned counsel for the applicant / landlord i.e. original plaintiff, vehemently argued that the learned first appellate court should have granted amount of mesne profits from the date of suit and not from the date of decree of the suit. He

pointed out that no evidence was led by the respondent / tenant to disprove the contents of valuer's report produced by the landlord. He also claimed that the mesne profits should have been granted by the learned trial court from the date of termination notice whereby the landlord / tenant relationship between the parties had come to an end. He further submitted that the amount of mesne profits granted by the learned first appellate court is required to be increased by considering the concept of permitted increase, which is to be added at the rate of 4% per year. As such, he prayed for rejection of the civil revision applications filed by the respondent / tenant. In support of his submissions, he relied on following judgments:

A) ***Ratilal Thakordas Tamkhuwala and another vs. Tithaldas Magandas Gujarathi, AIR 1985 Bombay 134 &***

B) ***Chandrakant Dhanu and another vs. Sharmila Kapur and others, 2009(2) AIR BOM R 458.***

5. Heard rival submissions. Also perused the entire documents on record alongwith the impugned judgments.

6. Admittedly, the quantum of mesne profits determined by both the learned courts below is depending upon the valuer's report i.e.

AW-2 Suryakant Shankarrao Wakalkar, who was examined by plaintiff / landlord. The learned trial court has granted mesne profits at the rate of Rs.1,000/- per month, whereas the learned first appellate court has enhanced it at the rate of Rs.2,500/- per month. The learned counsel for the defendant / tenant vehemently argued that when the standard rent at the rate of Rs.600/- per month has already been determined by the trial court, then the amount of mesne profits determined by both the learned courts below more than that, is definitely erroneous. However, this aspect has already been dealt by this court in the case of ***Ratilal Thakordas Tamkhuwala and another (***supra) and both the learned courts below have relied upon the same and discussed in their respective judgments. Therefore, the observation of this court in the aforesaid case that measure of mesne profits would not be standard rent but value of possession at the date when possession becomes wrongful appears quite proper. As such, the submission of the learned counsel for the defendant / tenant to that effect has no force.

7. On the contrary, the learned counsel for the plaintiff / landlord is also not satisfied with the quantum of mesne profits granted by the first appellate court, which is admittedly Rs.2,500/-

per month. The learned counsel for the plaintiff / landlord contended that it should have been granted from the date of termination notice and not from the date of decree of eviction. However, this aspect is also properly decided by the learned trial court in the light of observation of this court in the case of ***Ratilal Thakordas Tamkhuwala and another*** (*supra*). Therefore, there is no need of further discussion on this aspect. So far as quantum of mesne profits is concerned, the learned counsel for the plaintiff / landlord strongly raised objection that the learned first appellate court while enhancing the rate of mesne profits from Rs.1,000/- per month to Rs.2,500/- per month, should have taken into consideration the permitted increase at the rate of 4%. However, in the instant case, it is not disputed that the plaintiff / landlord is entitled for mesne profits from the date of decree till he received possession. Therefore, period of mesne profits is now ascertained. Only it is to be seen that the learned first appellate court has properly considered the evidence on record. It is significant to note that there is no contrary evidence by the defendant / tenant against the report of valuer relied by the plaintiff / landlord through AW-2 Suryakant Shankarrao Wakalkar. The said report is at Exhibit-44. Contents thereof are proved by this witness AW-2.

8. On going through the said report it is clearly evident that valuer- Suryakant Wakalkar has relied on various factors as mentioned therein. Further, it appears that he had also made local enquiries about the prevailing rate of rent in the vicinity of the suit premises. Further, this witness is an expert witness and therefore, it is only this piece of evidence can be relied to ascertain the mesne profits in respect of disputed tenanted premises. Though the learned counsel for the plaintiff / landlord claimed for higher rate of mesne profits, but on going through the evidence of this valuer – Suryakant Wakalkar and the valuation report Exhibit-44, it is evident that when he visited the tenanted premises in the year 2018, the prevailing rate of rent was Rs.7045/- per month. He has also deposed that in the year 2002-2003 the rate of said rent ought to have been Rs.2,500/- to Rs.3,000/- per month. That means there is increase around Rs.250/- per year in the rent. This court is determining the mesne profits for the period from May-2003 to 03/07/2011. Therefore, for such period average rent amount prevailing in the year 2003 and rent amount prevailing in the year 2011 needs to be taken to determine the same. On such calculation, it appears that the average rent for the said period comes to Rs.3,800/-. However, considering the fact that the suit premises has subsequently come into the jurisdiction of

Corporation, the learned first appellate court ought to have decided the mesne profits at the rate of Rs.3,500/- per month. As such, it would be proper to discard the submission of the learned counsel for the defendant / tenant and to allow the increase in the amount of mesne profits as per the submission of the learned counsel for the landlord / plaintiff up to Rs.3,500/- per month.

9. The learned counsel for the defendant / tenant submits that the tenant has already deposited the amount of standard rent at the rate of Rs.600/- per month for the period from May 2003 to July 2011, but both the learned courts below did not consider the same and granted amount of mesne profits in addition to the aforesaid deposited amount of standard rent. He claimed that when the court has determined the amount of mesne profits, then the aforesaid deposited amount at the rate of Rs.600/- per month for the aforesaid period, has to be deducted from the entire amount of mesne profits. Obviously, the amount already deposited by the defendant/tenant during the period for which mesne profits has to be adjusted in total amount of mesne profits. Therefore, considering all these aspects Civil Revision Application No.4 of 2024 filed by the plaintiff / landlord is partially allowed and the mesne profits for the period from May 2003 up to 03/07/2011 is

determined to the extent of Rs.3,500/- per month alongwith interest at the rate of 6% p.a. till its realization. Civil Revision Application Nos.83 of 2023 and 85 of 2023 filed by the defendant / tenant, are hereby dismissed. However, amount of Rs.600/- per month if deposited by the defendant / tenant for the period from May 2003 to 03/07/2011 be deducted while calculating the mesne profits. The civil revision applications are accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-