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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 599 OF 2019
WITH
INTERIM APPLICATION NO. 1341 OF 2019
IN
SECOND APPEAL NO. 599 OF 2019**

Bharat Petroleum Corporation Limited ... Appellant/Applicant

VS.

Shri Balasaheb Gopalrao Kadam and Ors ... Respondents

Mr. S.R. Page a/w. Ms. Archana Joglekar for Appellant/Applicant.

Mr. Shantanu Patil i/b. Mr. Shrikrishna Ganbavale, for Respondents.

CORAM : GAURI GODSE, J.

DATED : 31st JULY 2024

ORDER:

1. Heard learned counsels for the parties. This second appeal is filed by the original defendant to challenge the concurrent judgments and decrees determining mesne profits and directing the appellant to pay an amount of Rs. 21,537/- monthly from 6th January 2003 to 20th December 2010. The inquiry of mesne profits was conducted in terms of the original decree for possession dated 13th January 2009.

2. Learned counsel for the appellant submitted that the impugned decree for mesne profits is passed by relying upon the ready reckoner, which cannot be a basis for arriving at a figure for the grant of mesne profits. He further submits that except for the ready reckoner, no other material is produced on record to justify the amount quantified towards mesne profits. He thus submits that both courts did not follow the procedure required under the law for determining mesne profits. He further submits that various judgements laying down the legal principles regarding inquiry for mesne profits were relied upon by the appellant before the First Appellate Court. However, none of the decisions were considered by the First Appellate Court. He submits that the amount of mesne profits as decreed is not supported by sufficient evidence and, thus, is not justified. He, therefore, submits that the Second Appeal would require consideration on the question of law regarding the procedure followed for determining mesne profits.

3. Learned counsel for the respondents supports the impugned decree on the ground that sufficient material was produced on record to determine the property's market value. He submits that the determination of the mesne profits is not based only on the ready reckoner. He further submits that after examining all the materials on

record, a concurrent finding was recorded to determine the rate of mesne profits. He, thus, submits that the Second Appeal does not raise any substantial question of law.

4. I have considered the submissions made by the parties. I have perused the papers of the Second Appeal. A perusal of the reasons recorded by both the courts indicates that apart from the ready reckoner, the evidence produced on record by the respondents was also considered for determining the rate to quantify the amount of mesne profits. The evidence of PW-3 and PW-4 has explicitly been referred to and discussed by the courts to determine the rate of mesne profits. The agreement at Exhibit – 43 is also produced on record for ascertaining the accepted loan to determine the rate for quantifying the amount of mesne profits.

5. After examining all the evidence on record, the trial court has recorded detailed findings by giving reasons for arriving at a conclusion regarding the rate of mesne profits. The First Appellate Court, in paragraphs 13 and 14, has in detail again discussed the evidence relied upon by the respondents in support of their claim for mesne profits. The First Appellate Court has clearly examined the evidence of the respondents' witnesses. The oral evidence of the respondents has remained intact, and there was no rebuttal

evidence. The First Appellate Court has also referred to the appellant's evidence as well as the admissions given by the appellant's witnesses regarding the location of the suit property. Thus, both the courts have in detail examined the evidence on record while determining the entitlement of the respondent for the mesne profits.

6. So far as the legal principles relied upon by the appellant by producing various decisions of this court are concerned, all the decisions have been referred to by the First Appellate Court. Thus, after considering the evidence on record as well as after applying all the legal principles regarding determination of the mesne profits, the First Appellate Court has confirmed the findings recorded by the trial court.

7. On perusing the reasons recorded by both courts, it is clear that the rate of mesne profits is not determined only on the basis of the ready reckoner. However, both courts have referred to various oral and documentary evidence produced on record. Hence, I do not find that the ground raised on behalf of the appellant would require any consideration by this court.

8. The second appeal does not raise any substantial question of

law. Hence, the Second Appeal is dismissed. In view of the dismissal of the Second Appeal, Interim Application No. 1341 of 2019 is dismissed as infructuous.

(GAURI GODSE, J.)