

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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**WRIT PETITION NO.5593 OF 2018
WITH
WRIT PETITION NO.5880 OF 2018
WITH
INTERIM APPLICATION NO.1248 OF 2024
WITH
WRIT PETITION NO.5601 OF 2018**

Food Corporation of India ... Petitioner

V/s.

Lachax Commercial Co. ... Respondent

Adv. G. L. Bajaj a/w Adv. Raunak Bajaj, Advocate for the Petitioner.

Mr. Santosh Singh a/w Adv. Vimal Khandare, Advocate for the Respondent in both.

CORAM : RAJESH S. PATIL, J.

DATED : 8 FEBRUARY 2024

P.C.:

WRIT PETITION NO.5593 OF 2018

1. This Writ Petition challenges the Judgment and Decree dated 30 October 2017, passed by the Appellate Bench of the Court of Small Causes, confirming the Judgment and Decree dated 3 May 2005, passed by Single Judge of the Court of Small Causes in T.E. & R. suit. Admittedly both the Courts have passed a decree possession against the Petitioner herein.

2. There is no dispute that the possession of the suit premises was handed over by the Petitioner to the Respondent on 9

February 2006. Possession receipt to that effect has been annexed at page no.272 Exhibit-A to the affidavit-in-reply of the Respondent.

3. The plaint was filed before the Small Causes Court in the year 2001 seeking two prayers “(a) to hand over vacant and peaceful possession of the suit premises, (b) defendant to pay mesne profit from the date of termination of monthly tenancy”.

4. Hence, it can be seen that prayer clause (a) has been satisfied as after passing of the concurrent decree by the Trial Court and the Appellate Bench, the Petitioner has handed over possession of the suit premises to the respondent (original plaintiff). As regards mesne profit it is submitted by Mr. Singh, appearing for the Respondent (original plaintiff) that an application for mesne profit was filed before the Trial Court and the same was allowed by the Trial Court.

5. Subsequently the petitioner herein (original defendant) filed an appeal before the Division Bench of the Court of Small Causes. The said appeal of the petitioner was also dismissed.

6. Mr. Singh further submits that a separate Civil Revision Application bearing No.11 of 2022 was filed by the petitioner (Food Corporation of India), which was heard and decided by this Court on 2 February 2024. However, the order to that effect has not been uploaded as of now.

7. Mr. Bajaj submits that the issue of mesne profit decided by this Court in Civil Revision Application No.11 of 2022 was only as regards to quantum and the said mesne profit proceedings were

not decided on merits. Mr. Bajaj submits that the legality and validity of the decree of the Trial Court, is not decided on legal aspects.

8. Therefore, according to me as regards the second prayer regarding mesne profit, the issue has been put to rest by this Court.

9. According to me, mesne profit inquiry has been separately decided by the Small Causes Court and the Appellate Bench of the Small Causes Court and judgment and decree passed in the said application challenged by petitioner has been decided in a separate Civil Revision Application by this Court. I can't go into the issue about mesne profit.

10. There is no merit in this Writ Petition. Hence, Writ Petition is dismissed. No cost.

WRIT PETITION NO.5880 OF 2018

1. This Writ Petition challenges the Judgment and Decree dated 30 October 2017, passed by the Appellate Bench of the Court of Small Causes, confirming the Judgment and Decree dated 3 May 2005, passed by Single Judge of the Court of Small Causes in T.E. & R. suit. Admittedly both the Courts have passed a decree possession against the Petitioner herein.

2. There is no dispute that the possession of the suit premises was handed over by the Petitioner to the Respondent on 9 February 2006. Possession receipt to that effect has been annexed

at page no.272 Exhibit-A to the affidavit-in-reply of the Respondent.

3. The plaint was filed before the Small Causes Court in the year 2001 seeking two prayers “(a) to hand over vacant and peaceful possession of the suit premises, (b) defendant to pay mesne profit from the date of termination of monthly tenancy”.

4. Hence, it can be seen that prayer clause (a) has been satisfied as after passing of the concurrent decree by the Trial Court and the Appellate Bench, the Petitioner has handed over possession of the suit premises to the respondent (original plaintiff). As regards mesne profit it is submitted by Mr. Singh, appearing for the Respondent (original plaintiff) that an application for mesne profit was filed before the Trial Court and the same was allowed by the Trial Court.

5. Subsequently the petitioner herein (original defendant) filed an appeal before the Division Bench of the Court of Small Causes. The said appeal of the petitioner was also dismissed.

6. Mr. Singh further submits that a separate Civil Revision Application bearing No.264 of 2021 was filed by the petitioner (Food Corporation of India), which was heard and decided by this Court on 2 February 2024. However, the order to that effect has not been uploaded as of now.

7. Mr. Bajaj submits that the issue of mesne profit decided by this Court in Civil Revision Application No.264 of 2021 was only as regards to quantum and the said mesne profit proceedings were not decided on merits. Mr. Bajaj submits that the legality and

8. Therefore, according to me as regards the second prayer regarding mesne profit, the issue has been put to rest by this Court.

9. According to me, mesne profit inquiry has been separately decided by the Small Causes Court and the Appellate Bench of the Small Causes Court and judgment and decree passed in the said application challenged by petitioner has been decided in a separate Civil Revision Application by this Court. I can't go into the issue about mesne profit.

10. There is no merit in this Writ Petition. Hence, Writ Petition is dismissed. No cost.

WITH
WRIT PETITION NO.5601 OF 2018

Food Corporation of India

... Petitioner

V/s.

Kartik Enterprises

... Respondent

1. This Writ Petition challenges the Judgment and Decree dated 30 October 2017, passed by the Appellate Bench of the Court of Small Causes, confirming the Judgment and Decree dated 3 May 2005, passed by Single Judge of the Court of Small Causes in T.E. & R. suit. Admittedly both the Courts have passed a decree possession against the Petitioner herein.

2. There is no dispute that the possession of the suit premises

was handed over by the Petitioner to the Respondent on 9 February 2006. Possession receipt to that effect has been annexed at page no.272 Exhibit-A to the affidavit-in-reply of the Respondent.

3. The plaint was filed before the Small Causes Court in the year 2001 seeking two prayers “(a) to hand over vacant and peaceful possession of the suit premises, (b) defendant to pay mesne profit from the date of termination of monthly tenancy”.

4. Hence, it can be seen that prayer clause (a) has been satisfied as after passing of the concurrent decree by the Trial Court and the Appellate Bench, the Petitioner has handed over possession of the suit premises to the respondent (original plaintiff). As regards mesne profit it is submitted by Mr. Singh, appearing for the Respondent (original plaintiff) that an application for mesne profit was filed before the Trial Court and the same was allowed by the Trial Court.

5. Subsequently the petitioner herein (original defendant) filed an appeal before the Division Bench of the Court of Small Causes. The said appeal of the petitioner was also dismissed.

6. Mr. Singh further submits that a separate Civil Revision Application bearing No.40 of 2022 was filed by the petitioner (Food Corporation of India), which was heard and decided by this Court on 2 February 2024. However, the order to that effect has not been uploaded as of now.

7. Mr. Bajaj submits that the issue of mesne profit decided by this Court in Civil Revision Application No.40 of 2022 was only as

regards to quantum and the said mesne profit proceedings were not decided on merits. Mr. Bajaj submits that the legality and validity of the decree of the Trial Court, is not decided on legal aspects.

8. Therefore, according to me as regards the second prayer regarding mesne profit, the issue has been put to rest by this Court.

9. According to me, mesne profit inquiry has been separately decided by the Small Causes Court and the Appellate Bench of the Small Causes Court and judgment and decree passed in the said application challenged by petitioner has been decided in a separate Civil Revision Application by this Court. I can't go into the issue about mesne profit.

10. There is no merit in this Writ Petition. Hence, Writ Petition is dismissed. No cost.

(RAJESH S. PATIL, J.)