

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 427 OF 2007

Corporation Bank	 Applicant
VERSUS	
Byranganalli Koressiddappa	
Manjunath & Ors.	 Respondents

ALONG WITH
CIVIL APPLICATION NO.93 OF 2008
IN
CIVIL REVISION APPLICATION NO. 427 OF 2007

Byranganalli Koressiddappa	
Manjunath	 Applicant
VERSUS	
Corporation Bank & Ors.	 Respondents

Adv. Rakesh Singh a/w. Ms. Heena Shaik i/b. M. V. Kini & Co., for
the Applicant/Bank in C.R.A. No.427 of 2007.
Adv. V. Y. Sanglikar for the Respondents.

CORAM : RAJESH S. PATIL, J.

DATED : 13 MARCH 2024

PC.:

1. This Civil Revision Application is filed by the obstructionist in an eviction proceedings filed by the respondent No.1 landlord (Byranganalli Koressiddappa Manjunath).
2. Respondent No.1 had filed suit for eviction under section 41

of the Presidency Small Cause Act, 1882 on the ground of “*Subletting*” against the respondent nos.2 and 3. In the said suit, consent terms were filed, pursuant to a decree of admission on 2 February 2001. After obtaining decree on the basis of consent terms, the respondent no.1 filed execution application which were obstructed by the applicant herein i.e., Corporation Bank now known as Union Bank of India.

3. Hence, the respondent no.1 filed obstructionist notice No.41 of 2021 for possession and for mesne profit payable at the rate of Rs.2,00,000/- per month from 1 June 2001. Evidence was lead by the applicant bank and also by respondent no.1. After the evidence was over the Trial Court heard both the parties and by its judgment and decree dated 3 January 2003, the Trial Court dismissed the obstructionist notice No.41 of 2021.

4. The Respondent No.1 challenged the dismissal of obstructionist notice by filing an appeal before the Appellate Bench of the Small Causes. After hearing both the sides the Appellate Bench by its judgment and decree dated 2 March 2006 allowed the Appeal of the Landlord (Respondent No.1). The said judgment and decree passed by the Appellate Court is being challenged by the obstructionist (bank) by way of Civil Revision Application filed

under Section 115 of the Code of Civil Procedure.

5. Mr. Singh, learned counsel appearing for the applicant (bank) submitted that even though the Civil Revision Application challenges the judgment and decree passed by the Appellate Court, it is an admitted fact that on 10 December 2004 the possession of the suit premises was handed over to the landlord. He submits that mesne profit if at all payable would stop on 10 December 2004. He submits that without having any proper evidence on record the Appellate Court as fixed the mesne profit at rate of Rs.1,00,000/- per month for premises situated at Lamington Road, Mumbai. He submitted that the premises are admeasuring 1500 sq. ft.. He submitted that the Trial Court by a well reasoned order dismissed the obstructionist notice. He therefore, submitted that the Civil Revision Application should be allowed, and the judgment and decree passed by the Appellate Court of Small Causes should be quashed and set aside and decree passed by the Trial Court should be confirmed.

5. Mr. Sanglikar, learned counsel appearing for the respondent no.1/landlord submits that on 5 December 2002, the evidence was recorded of the landlord wherein the ready reckoner

of the subject premises was produced wherein after calculation it can be seen that the value of the suit premises, which is situated in a commercial area in central business locality of South Mumbai would have easily fetched Rs.10,000 per sq.ft. He submitted that municipal assessment bill and repairs bill was produced on record. He submitted that therefore, the landlord had claimed compensation of Rs.2,00,000/- per month. He further submits that much later after 5 December 2002, only on 10 December 2004 the possession of the handed over to the landlord, hence, according to him, the mesne profit should have been at the higher side then Rs.2,00,000/- per month. He submitted that the Appellate Court even though considered the evidence produced by the landlord have taken up an average and have arrived at figure Rs.1,00,000/- per month as mesne profit payable per month. He submits that even though the landlord is challenging the quantum of which mesne profit has been fixed however, the landlord has not challenged the order passed by the Appellate Bench of the Small Causes. He therefore, submitted that the rate fixed by the Appellate Bench of the Court of Small Causes, should be confirmed by this Court. He submits that the applicant bank has not produced any document on record to prove that the rate fixed by the

Appellate Bench is on higher side. He submits that since the notice was issued on 19 April 2000 and the period to hand over was after one month. The rate should calculate from 1 June 2000 till handing over the possession, i.e., 10 December 2004. He submitted that even though the claim of the landlord was from 1 June 2000 the Court has granted the mesne profit from 11 April 2001 till the date of handing over the possession, i.e., 10 December 2004.

6. He submitted that the amount which was deposited by the bank in this Court, 50% of the said amount has already been withdrawn by the landlord pursuing to the order dated 15 April 2014. He submitted that the balance amount deposited along with accrued interest should be allowed to be withdrawn by the landlord.

ANALYSIS AND CONCLUSION

7. I have heard both the sides and have also considered the documents on record.

8. It is admitted fact that the possession of the suit premises has been handed over by the obstructionist on 10

December 2004, when the Appeal of the landlord was pending in the obstructionist proceedings. Therefore, the issue of challenging the consent decree obtained by the landlord against the original defendant would have no bearing on this matter. The issue about the mesne profit, in the only issue in there proceedings.

9. Though the claim of mesne profit is from 1 June 2000, the Court has granted mesne profit to the landlord from 11 April 2001 i.e., the date when the landlord attempted to execute the decree and the same day the applicant bank cause obstruction.

10. There is no challenge by the landlord to quantum of the rate fixed by the Appellate Bench of the Court of Small Causes neither there is challenge to the date from which the mesne profit is being calculated, i.e., 11 April 2001.

11. The Court has considered the ready reckoner produced by the landlord. The said ready reckoner appears to have been produced on 5 December 2002. According to ready reckoner, the market rate of the suit premises is around Rs.10,000/- per sq. ft. The suit premises is a commercial premises at a centrally business locality of South Mumbai, admeasuring around 1500 sq. ft. The

Court has considered all these facts even though as per the evidence lead by by the landlord, the figures of the suit premises for mesne profit arrives much higher rate. The Court has granted rate of Rs.1,00,000/- per month as an average to the landlord.

12. The Applicant bank was not able to produce documents on record to show that the rate for considering the calculation of the mesne profit should be much lower than of Rs.1,00,000/- per month. Hence, there is no reason to interfere with the order passed by the Appellate Court.

13. Therefore, there is no merit in this Civil Revision Application. The Civil Revision Application must fail and is dismissed.

(RAJESH S. PATIL, J.)