



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

WRIT PETITION NO.9295/2019

PUNJAB & SINDH BANK ..PETITIONER
VS.
LABH SINGH S/O. DAYA SINGH & ORS. ..RESPONDENTS

Adv. Sujeet G. Kurup for the petitioner.
Adv. P. V. Nelson Rajan, AGP for the State.

CORAM : RAJESH S. PATIL, J.

DATE : MAY 6, 2024.

P.C. :

1. This writ petition filed by the bank (original defendant) challenging the judgment and order passed by the Appellate Bench of the Small Causes at Mumbai, in the proceeding arising out of Section 41 of the Presidency Small Causes Court Act.

2. The respondents herein are admittedly the owners of the suit premises admeasuring 2101 sq.ft. situated at the ground floor in Vikas Vaibhav Building, Pedder Road, Mumbai - 400 026. After issuance of termination notice, the landlords/owners of the suit premises filed an eviction suit under Section 41 of the Presidency Small Causes Court Act

being T.E. & R. Suit for eviction and for mesne profits. During pendency of the suit, the defendant/bank surrendered the possession of the suit premises to the plaintiffs on 31/1/2007. Therefore, the only issue to be determined was of mesne profits.

3. The trial Court by its judgment and decree dated 18/11/2011 passed an eviction decree against the defendant/bank and also passed an order of holding separate enquiry to determine the mesne profits.

4. Being aggrieved by the said judgment and decree passed by the trial Court, the defendant/bank filed an appeal before the Appellate Bench of the Small Causes Court. The Appellate Bench of the Small Causes Court after hearing both the sides, by judgment and decree dated 19/1/2019 dismissed the appeal filed by the defendant/bank and has confirmed the judgment and decree passed by the trial Court.

5. The present writ petition challenges the impugned judgment and order passed by the Appellate Bench of the Small Causes Court.

6. Mr. Kurup appearing for the defendant/bank, submits

that even after the notice was issued by the landlords, the defendant/bank continued to be in possession and also accepted the rent paid by the defendant/bank, hence the tenancy continued though there was a notice for termination.

7. I have heard Mr. Kurup and with his assistance I have gone through the documents on record.

8. It is a matter of record that the possession of the suit premises has already been handed over to the landlords/owners on 31/1/2007. A mere acceptance of an amount by the landlords/owners from the defendant/bank, after issuance of termination notice, will not amount to continuation of the tenancy. Just because the defendant/bank did not vacate the suit premises and the landlords/owners did not object to the same, would not mean that the tenancy is continued.

9. Hence, according to me, there is no merit in the submissions made by Mr. Kurup. The mesne profit is to be calculated for the period from date of notice i.e. 1/4/2003, till the defendant/bank vacated the suit premises i.e. 31/1/2007.

10. The writ petition is dismissed.

11. No costs.

(RAJESH S. PATIL, J.)