IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.17 OF 2020

IDBI Bank Ltd. … Applicant

V/s.

Shri Bajpe Shivram Shetty … Respondent

WITH
CIVIL REVISION APPLICATION (ST) NO.3563 OF 2021
WITH
INTERIM APPLICATION NO.1487 OF 2021

Shri Bajpe Shivram Shetty … Applicant

V/s.

IDBI Bank Ltd. … Respondent

Adv. Rashid Khan a/w Adv. Meet Vithalani I.by Mr. Rakesh K. Singh for IDBI Bank, for Applicant in CRA/17/2020 & for Respondent in CRA(ST)/3563/2021.
Adv. S. G. Deshmukh a/w Adv. S. P. Kanuga for Respondent in CRA/17/2020 & for Applicant in CRA(ST)/3563/2021.

CORAM : RAJESH S. PATIL, J.

DATED : 22 FEBRUARY 2024

P.C.:

CIVIL REVISION APPLICATION (ST) NO.3563 OF 2021

1. Mr. Deshmukh appearing for the Applicant original plaintiff on instructions of his client submits that he has instruction not to press for the present Civil Revision Application.

2. This Civil Revision Application is disposed of, as not pressed.

CIVIL REVISION APPLICATION NO.17 OF 2020

1. This Civil Revision Application is filed by original Defendant / Bank challenging the concurrent findings recorded by the Trial Court and the Appellate Court.

2. The Respondent (original plaintiff) had filed an eviction suit being T.E. & R. suit in the Court of Small Causes under Section 41 of the Presidency Small Causes Court Act, thereby seeking vacant and peaceful possession of the premises being premises bearing No.72 and 73, Star Apartment, situated at S. V. Road, Borivali (West), Mumbai – 400 092 (for short "suit premises"). For sake of brevity the parties are referred as per their nomenclature before the Trial Court.

3. The said eviction suit filed under Section 41 of Presidency Small Causes Court Act. The said suit was decreed on 25 July 2023 thereby, directing the defendant to vacate the suit premises. So also an order was passed for holding an inquiry as regards mesne profits under the provisions of Order 20, Rule 12(c) of Civil Procedure Code.

4. Being aggrieved by the said judgment and decree the original defendant / bank filed an appeal before the Appellate Bench of Court of Small Causes. The said Appeal preferred by the bank was withdrawn by the original defendant / bank on 3 October 2007.

5. Immediately thereafter on 27 November 2007 possession of

the suit premises were handed over by original defendant / bank to the plaintiff.

6. The plaintiff / decree-holder thereafter preferred viz Mesne Profit Application No.3 of 2009 before the Trial Court.

7. The evidence was lead on behalf of the plaintiff, by the plaintiff himself entering into the witness box so also the plaintiff examined his architect Mr. Jogalekar, as PW No.2.

8. The defendant / bank thereafter lead evidence by examining Mr. Dharmesh Ghandhi, the branch head of defendant / bank. So also the defendant examined one Mr. Ravi Kiran Ashtaputre, as defendant witness no.2, who was a valuer. The defendant also produced on record the registered lease deed dated 31 December 2007.

9. After the evidence was lead by the parties. The Trial Court heard both the parties on the mesne profit application and by an Order dated 27 July 2016 the mesne profit application of plaintiff / decree-holder was allowed. Taking into consideration the lease deed document produced by the defendant.

10. Being dissatisfied with the judgment and Order dated 27 July 2016 passed by the Trial Court the original defendant / bank preferred an Appeal before the Appellate Bench of the Court Small Causes Court. The said Appeal was heard by the Appellate Bench by judgment and decree dated 15 June 2019. The Appeal filed by the defendant / bank was rejected.

11. The present Civil Revision Application challenges the

impugned Judgment and decree passed by the Trial Court on 25 July 2016 and as confirmed by impugned Judgment and decree passed by the Appellate Bench on 15 June 2019.

12. Mr. Rakesh Singh made his submissions on behalf of the Applicant bank (original defendant).

(i) Mr. Rakesh Singh submitted that there was an error committed by both the Courts by fixing the amount of mesne profit from the date of termination i.e. on 1 October 2000. He submitted that the amount payable as mesne profit at the most can be from the date of the passing of the decree. He relied upon the judgment of ***State Government of Maharashtra Vs. Super Max*** reported in ***(2009) 9 SCC 772***.

(ii) Mr. Rakesh Singh further submitted that both the Court have erroneously fixed the rate of rent per month of Rs.1,68,000/-. He submitted that the valuation report produced on record by the defendant / bank which has calculated the rate of Rs.15,17 per sq. ft. for built up area.

(iii) Mr. Rakesh Singh further submitted the valuation report produced by the plaintiff is without any basis and on much higher side which is Rs.11,000 per sq. ft for built up area.

13. Mr. Deshmukh appearing on behalf of the original plaintiff / decree-holder, made his submissions.

(i) Mr. Deshmukh submitted that the original defendant have themselves produced on record the copy of registered lease deed dated 31 December 2007 (Exhibit-24).

(ii) Mr. Deshmukh submitted that the said document is the registered document, whereby the original plaintiff has entered into an lease with ICICI bank with regard to the suit premises immediately within a period of one month, of defendant vacating the suit premises.

(iii) He submitted that therefore, the rate at which the original plaintiff had entered into a lease with another bank which is ICICI bank is the best proof of evidence to fix the mesne profit. He further submitted that since the calculation has to be made from the date of determination of the lease i.e. on 1 October 2000 till 27 November 2007, the best way to arise at a figure would be on the basis of escalation of 5% per annum.

(iv) Mr. Deshmukh further submitted that plaintiff has examined two witnesss in order to prove his case of mesne profit. He submitted that the plaintiff himself had entered the witness box and has also examined Mr. Arun Joglekar (architect) for determining the market rate.

(v) Mr. Deshmukh supported his submissions on the basis of the judgment of the Supreme Court in the case of ***Fatehchand Vs. Balkrushnddas*** reported in ***AIR 1963 Supreme Court 1405.***

(vi) Mr. Deshmukh submitted that no infirmity can be seen in the concurrent findings recorded by both the Courts, hence, the present Civil Revision Application should not be entertained and the same should be dismissed with cost.

<u>ANALYSIS AND CONCLUSION</u> :-

(14) I have heard both the counsel and I have gone through the documents on record. There is no dispute that the original defendant have themselves vacated the suit premises on 27 November 2007. It is also not in dispute that against the original eviction decree passed by the Trial Court, the defendant had preferred an Appeal before the Appellate Bench of the Court of Small Causes. However, during the pendency of the Appeal before the Court of Small Causes, the defendant / bank have themselves withdrawn said Appeal.

(15) Hence, as far as the eviction decree and handing over possession is concerned there is no dispute between the parties.

(16) As regards the calculation of mesne profit is concerned the original decree-holder had preferred an Application being mesne profit application no.3 of 2009. The original plaintiff examined two witness in order to prove their case of calculation of mesne profit. The plaintiff himself had entered the witness box and had also examined one witness Mr. Arun Joglekar who was an architecture. The report of Mr. Joglekar was produced on record and for marked as exhibit Mr. Joglekar had also proved the report submitted by him. The defendant / bank had examined their valuer and also their Branch Manager to prove their case. The defendant themselves had produced on record the lease deed dated 31 December 2007 (Exhibit-24), which was entered into between the original plaintiff and the new lessee of the original plaintiff i.e. ICICI Bank. The said document is produced on record by the original defendant / bank, and the plaintiff has not disputed the said document. Therefore, the same was taken on record and

marked as (Exhibit-24). Both the Courts have held that the said document is a best peace of evidence as the document is produced by defendant and is not disputed by the plaintiff.

(17) The said document is pertaining to the suit premises. The said document is executed between the original plaintiff and new lessee immediately within a period of one month after the possession was handed over by original defendant. The said document is entered into between the parties whereby the rent is fixed at the rate of Rs.2,10,000/- per month from 1 January 2008 to 31 December 2010. The Trial Court and the Appellate Court has considered that figure and have thereafter reduced the amount by 5% per annum to arrive at a figure till the date of termination of lease i.e. on 1 October 2000. Thereafter the Courts have taken up an average from the year 2000 and 2007 which works out to approximately of Rs.1,68,000/- per month. The Trial Court and Appellate Court had adopted this pattern, which according to me is a possible view. No fault can be found in the findings recorded by both the Courts. The Trial Court and as confirm by the Appellate Court, the interest on such figure is taken at the rate of 6% per annum. Even though the original plaintiff was not satisfied with the quantum of interest fixed by the Trial Court and as confirmed by the Appellate Bench, a Civil Revision Application filed challenging the interest component has been withdrawn by the Applicant.

(18) Therefore, I find no perversity in the impugned judgment and decree passed by the Trial Court and as confirmed by the Appellate court.

(19) Since the Applicant has already withdrawn 50% of the amount deposited by the defendant / bank, which was deposited in this Court, the original plaintiff / respondent herein is permitted to withdraw the balance amount along with accrued interest thereon.

(20) This Civil Revision Application is accordingly dismissed. No cost.

(21) All parties to act on an authenticated copy of this order.

(RAJESH S. PATIL, J.)