IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 20499 OF 2022
IN
CIVIL REVISION APPLICATION NO. 17 OF 2020

Bajpe Shivram Shetty ..... Applicant

IN THE MATTER BETWEEN

IDBI Bank Ltd. ..... Applicant
VERSUS
Bajpe Shivram Shetty ..... Respondent

Mr.S.G.Deshmukh a/w. Mr.S.P.Kanuga for the Applicant.

Mr.Rakesh K. Singh a/w. Mr.Meet Vithalani for the IDBI.

CORAM: RAJESH S. PATIL, J.

DATE : 5 JANUARY, 2024

P.C. :-

This interim application is filed by the original plaintiff/landlord, seeking to withdraw the amount deposited by the original defendant/bank in this Court.

2. It is the case of the applicant that he had filed a suit for eviction under the Transfer of Property Act against the bank as the lease period had ended. In the said suit, a decree of possession was granted, therefore the defendant/bank filed an

appeal before the District Court. During the pendency of the appeal, the parties agreed that the possession of the suit premises be handed over back to the plaintiff. And the issue of mesne profit be decided by the Trial Court.

3. Accordingly it is admitted that the possession of the suit premises was handed over to the present applicant/original plaintiff on 27 November, 2007.

4. Thereafter an application for mesne profit was decided by the Trial Court on 27 July, 2016, thereby fixing the mesne profit at the rate of Rs.1,68,000/- per month from 1 October, 2000 to 27 November, 2007.

5. An appeal of the bank against the said order passed by the Trial Court was also rejected. Therefore, the bank has preferred Civil Revision Application under section 115 of the Code of Civil Procedure, 1908 before this Court which is pending for admission.

6. In the meanwhile, the bank deposited the entire amount along with interest as directed by this Court which is around Rs.2,68,51,983/- by way of two pay orders i.e. one dated 3 September, 2022 of Rs.1,74,95,934/- and second pay order dated 15 November, 2022 of Rs.93,56,049/-.

7. The applicant in the present interim application seeks to withdraw the amount deposited by the bank on such terms and conditions as this Court may deem fit.

8. It is the case of the applicant that the applicant cannot be deprived at the fruits of the decree which has been passed by the two Courts.

9. The present interim application is opposed by the bank on the ground that the Lower Court did not consider the documents in appropriate prospective.

10. I have considered the submissions made by both the sides. In the interim application, suffice will be the purpose if the

applicant is allowed to withdraw 50% of the amount deposited by the bank along with accrued interest, on furnishing an undertaking that in case the civil revision application is answered in favour of the original defendant/bank, they will return back the amount as directed by this Court. The undertaking should be filed by the applicant within a period of one week from today.

11. Interim application is disposed of in the aforesaid terms.

12. The parties to act on the authenticated copy of this order.

13. Civil Revision Application is fixed for hearing on 6 February, 2024 at 2.30 p.m.

14. The parties are at liberty to file a short synopsis and proposition of law along with the judgments on which they rely upon.

[RAJESH S. PATIL, J.]