

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 633 OF 2024

Bharat Petroleum Corporation Ltd.

....*Applicant*

: *Versus* :

Altos Exports LLP

....*Respondent*

Mr. Pankaj Sawant, Senior Advocate with Mr. Roop Basu, for the Applicant.

Mr. Ramesh D. Soni for the Respondent.

CORAM: SANDEEP V. MARNE, J.

Dated: 16 DECEMBER 2024.

P.C. :

1) Leave granted to amend the Revision Application for incorporating a challenge to the order dated 9 June 2023 passed in Review Application No.1/2023. Amendment to be carried out forthwith.

2) The revisionary jurisdiction of the Court under Section 115 of the Civil Procedure Code is invoked for setting up a challenge to the judgment and decree dated 5 December 2022 passed by the Appellate Bench of the Small Causes Court by which the Appeal preferred by the Revision Applicant (Misc. Appeal No.23/2022) has been dismissed and the Appeal preferred by the Plaintiff-decreeholder (Misc. Appeal

No.190/2021) has been partly allowed. The Appellate Court has enhanced the amount of mesne profits fixed by the Trial Court in respect of the period from 1 September 2005 to 26 September 2013 from Rs.41,197/- to Rs.81,650/- (Rs.100 per sq.ft.per month x 816.50 sq.ft carpet area).

3) I have heard Mr. Sawant, learned Senior Advocate appearing for the Revision Applicant and Mr. Soni for the Plaintiff/decreeholder.

4) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the suit premises comprise of a residential Flat admeasuring 816.50 sq.ft carpet area on 10th floor of the building known as Hanuman Sharan Co-operative Housing Society Ltd., Bomanji Petit Road, Mumbai-400 036. The suit premises are situated inside a lane of Bhulabhai Desai Road, (Warden Road). Considering the location of the building in which the suit premises are located, which happens to be one of the plush locations in Mumbai city, the mesne profits fixed at Rs.100/- per sq.ft. does not appear to my mind to be so excessive so as to warrant interference by this Court in exercise of revisionary jurisdiction. In my view, the monthly mesne profits of Rs.81,650/- appears to be quite reasonable for a 2 Bedroom Apartment situated in the lane of Warden Road in Mumbai. Therefore, I am not inclined to interfere in the quantum of mesne profits determined by the Appellate Court.

5) Coming to the rate of interest awarded by the Trial and the Appellate Courts, it appears that the suit premises were let out for residential use by the Revision Applicant. This Court has already taken

a view in *M/s. Forbes Gokak Ltd V/s. Bharat Petroleum Corporation Ltd.*¹ that under the provisions of Section 34 of the Code, interest in respect of the residential premises cannot exceed 6%. This Court has taken a view that the transaction of securing the premises on tenancy/rent basis does not arise out of a commercial transaction between the parties. Applying the ratio of the judgment in *M/s. Forbes Gokak Ltd.*, I am of the view that the rate of interest awarded by the Trial and the Appellate Courts is required to be reduced from 9% to 6%.

6) The Civil Revision Application accordingly partly succeeds. The quantum of mesne profits ascertained by the Appellate Court is not disturbed. However, the rate of interest payable in respect of the mesne profits shall stand reduced from 9% to 6%. The rest of the order passed by the Appellate Court as modified by the order passed in review on 9 June 2023 shall remain undisturbed.

7) It is clarified that while computing the liability of the Revision Applicant-BPCL, the amount of deposit made in the Small Causes Court together with interest accrued thereon shall act as a set-off against the liability of Applicant-BPCL.

8) With the above directions, the Civil Revision Application is disposed of.

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[SANDEEP V. MARNE, J.]

¹ Civil Revision Application No. 424/2024 decided on 10 September 2024