

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

WRIT PETITION NO. 10067 OF 2024

Indian Bank

.. Petitioner

Versus

1. Mr. Manoj Hariyant Lal Thanawala
(deceased)

2. Mrs. Pratima Manoj Thanawala

.. Respondents

...

Mr. Anuj Desai i/b Ms. Fatima Lakdawala. for Petitioner.

Mr. Gaurav Lele a/w Mr. Vaibhav R. Shah, Mr. Aditya Lele and Tahir Siddiqui, for Respondent No.2.

Mr. Anand K., Senior Manager Law & Debolina Mandal, Branch Manager, Malad West Branch present.

...

CORAM : SANDEEP V. MARNE J.

DATE : 29 JULY 2024.

P.C. :-

1) By present Writ Petition, Petitioner – Bank has challenged order dated 5 March 2024 passed by the Appellate Bench of Small Causes Court rejecting the application for condonation of delay in filing the appeal against decree dated 12 September 2023 passed by the Small Causes Court in L.E. Suit No. 111 of 2015.

2) On 24 July 2024 this Court passed the following order:-

1) *The petition challenges order dated 5 March 2024 passed by the Appellate Bench of the Small Causes Court rejecting the application filed by the Petitioner seeking condonation of delay in lodging the Appeal against the decree dated 12 September 2023 passed by the Small Causes Court in L.E. Suit No. 115/2015.*

2) *After arguing the petition for some time, Mr. Desai, the learned counsel appearing for the Petitioner would submit that the Petitioner-Bank is willing to handover possession of the suit premises to the Respondent-Plaintiff within a period of 6 months from today. He would submit that the Authorised Officer of the Bank is willing to submit an undertaking for vacation of the suit premises within 6 months.*

3) *It appears that the decree is passed on 12 September 2023 and therefore even if the present petition was to be allowed by permitting the Petitioner-Bank to prosecute the Appeal against the decree of eviction, the Petitioner-Bank would be under obligation to deposit the amount of interim compensation representing the amount of loss suffered by the decreeholder on account of delay in execution of the decree as per the judgment of the Apex Court in **M/s. Atma Ram Properties (P.) Ltd. V/s. M/s. Federal Motors Pvt. Ltd.**¹ In that view of the matter, the learned counsel appearing for the Petitioner, after taking instructions from his client, would submit that the compensation @ Rs.199/- per sq.foot in respect of the suit premises from 12 September 2023 till the date of vacation of the suit premises shall be paid by the Petitioner-Bank to the Respondent-Plaintiff.*

4) *Mr. Lele, the learned counsel appearing for Respondents/Original Plaintiffs would draw my attention to the fact that Petitioner-Bank has not paid the license fees in respect of the premises since January 2022. Mr. Desai, is quick enough to respond that the payment is not made on account of refusal by the Plaintiffs to raise invoices. Be that as it may. The Petitioner is under obligation to pay license fees in respect of the period from January 2022 as well. Mr. Lele would draw my attention to 'Without Prejudice Offer' made to the Plaintiffs for continuation of the licensed premises by paying license fees at the rate of Rs.199/- per sq.foot for the period commencing from 1 April 2020. Mr. Lele would therefore submit that the license fees for the period from January 2022, as per the offer made by the Petitioner-Bank will have to be at the rate of Rs.199/- per sq.foot. Mr. Desai*

¹(2005) 1 SCC 705

would dispute factum of making such offer. It must however be borne in mind that the license fees in respect of the premises were fixed at the time of execution of Agreement and the same was liable to be enhanced with passage of time. Though the 'Without Prejudice Offer' document appears to be signed by Constituted Attorney of Plaintiffs, the same is based apparently on internal decision taken by the Officers of the Bank.

5) Mr. Desai, appearing for the Petitioner submits that as of now there are no instructions for payment of license fees @ Rs.199/- per sq.foot from January 2022. To test the bonafides of the Petitioner-Bank, Mr. Desai may seek appropriate instructions from the Authorised Officer for payment of license fees at the rate of Rs.199/- per sq.foot from January 2022 till the date of delivery of possession of the suit premises.

6) List the petition for further consideration on 29 July 2024, high on board.

3) Mr. Desai the learned counsel appearing for Petitioner would submit, after taking instructions from the Officers of the Petitioner – Bank who are present before the Court that the Bank is willing to pay license fees at the rate of Rs.199/- per sqft to the Respondents / Plaintiffs from January 2022 till vacation of the suit premises on 30 January 2025. He would further submit that the Petitioner – Bank shall vacate the suit premises and hand over its possession to the Respondents / Plaintiffs on or before on 30 January 2025. Both the statements are accepted as undertakings given to this Court.

4) Mr. Lele the learned counsel appearing for Respondents, after taking instructions from his clients, who are personally present before the Court, accords his agreement to the above arrangement. He would however submit that this arrangement would be without prejudice to the entitlement of Respondents / Plaintiffs to claim and recover mesne profits from the Petitioner by conduct of inquiry under order 20 Rule 12 of the Code of Civil

Procedure, 1908 as directed in the decree dated 12 September 2023.

5) In view of the agreement arrived at between the parties, nothing would survive to be adjudicated in the Petition. Accordingly, Petitioner shall hand over possession of the suit premises to Respondents / Plaintiffs on 30 January 2025 and shall pay to Respondents / Plaintiffs, compensation at the rate of Rs. 199/- per sqft in respect of the period from 1 February 2022 till 30 January 2025 within a period of two weeks from today.

6) With the above directions, Writ Petition is disposed of.

[SANDEEP V. MARNE J.]

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by GAYATRI
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