IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12652 OF 2024

Dena Bank since amalgamated now
As Bank of Baroda **....Petitioner**
V/s.
M. D. Choksey Construction Company
Pvt. Ltd. **....Respondent**

Ms. Niyati Merchant *i/b MDP and Partners, for the Petitioner.*

CORAM : SANDEEP V. MARNE, J.

Date : 10 SEPTEMBER 2024.

P.C. :

1) The Petitioner-Bank challenges Judgment and Order dated 6 May 2024 passed by the Appellate Bench of Small Causes Court by which the Trial Court's order dated 3 May 2023 has been modified by directing 9% interest on the amount of mesne profits with further direction to pay Rs. 10,47,865.86/- towards property taxes and repair cess along with interest @ 9%.

2) I have heard Ms. Merchant the learned counsel appearing for Petitioner – Bank. Her main grievance is about direction of the Appellate Bench to pay interest on the amount of mesne profits. The second grievance is about direction by the Appellate Court to award interest at the rate of 9%, which according to her is excessive. The third grievance is about direction of the

Appellate Court to pay property taxes and repair cess and more importantly award pf 9% interest thereon.

3) I have considered the submissions canvassed by Ms. Merchant. In support of her contention that no interest could have been awarded on the amount of mesne profits, she has relied upon observations of the learned Judge of Small Causes Court in paragraph No. 21 of the Judgment and order dated 3 May 2023, in which there are clear findings that no prayer was made by the Plaintiff for payment of interest on the amount of mesne profits. She would also highlight the findings of the learned Judge wherein the amount of mesne profit was computed in such a manner that it also included interest. She would accordingly submit that in absence of any prayer by the Plaintiff for award of interest, the learned Appellate Bench has erred in awarding interest on the amount of mesne profit.

4) The term mesne profit has been defined under Section 2(12) of the Code of Civil Procedure 1908 as under:-

> (12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by person in wrongful possession.

5) Thus, the definition of the term mesne profit encompasses within itself even interest payable on such profits. In my view therefore, it was not necessary for the Plaintiff to make a separate prayer for payment of interest on the amount of mesne profit. Mesne profit in relation to a property essentially

represents the profits which the person in wrongful possession of the property has actually received or might have received, together with interest thereon.

6) In that view of the matter, no error is committed by the Appellate Bench in awarding interest on the amount of mesne profit in absence of any specific prayer to that effect. The learned Judge of the Small Causes Court has committed a glaring error by holding that the amount of mesne profit fixed at Rs.2,23,750/- per month included interest in the same. The Judgment of the Trial Court does not indicate, in any manner, as to how the factor of interest is also considered while determining the quantum of mesne profits @ Rs.2,23,750/-. The Appellate Bench has rightly corrected the said error on the part of the learned Judge by awarding interest on the amount of mesne profits.

7) Coming to the second contention of Ms. Merchant about award of rate of interest (9%) on mesne profits, provisions of Section 34 of the Code read thus :-

> **34. Interest .-**
> (1)Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, [with further interest at such rate not exceeding six per cent. per annum, as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:
> [Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum,

but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation.-In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation II.-For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]

(2)Where such a decree is silent with respect to the payment of further interest [on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

8) Thus, under Section 34, when the decree is for payment of money, the Court is empowered to award interest not exceeding 6% on the principal amount. When the Court makes a decree for payment of mesne profits, the said decree is obviously for payment of money and in that view, provision of Section 34 of the Code would get attracted. Under proviso to sub-Section 1 of Section 34 where the liability in relation to the sum determined by the Court arises out of commercial transaction, the Court is empowered to award interest exceeding 6%. Under Explanation II, it is clarified that a transaction is to be treated as a commercial transaction if it is connected with industry, trade or business of the party incurring the liability. In the present case, the party incurring the liability is the Petitioner-Bank. The premises were taken on rent by the Petitioner-Bank for the purpose of operating its branch. In that view of the matter, the liability incurred by the Petitioner-Bank is connected with its industry, trade and business. In that view of the matter, the

Court was empowered to award interest exceeding 6% under Section 34 of the Code. In that view of the matter, I do not find any palpable error on the part of the Appellate Bench in awarding interest @ 9% on the amount of mesne profit.

9) Coming to the aspect of payment of municipal taxes and repair cess, Petitioner-Bank has not produced the plaint on record so as to verify whether there was any prayer for payment of municipal taxes and repair cess. Perusal of the findings recorded by the Appellate Bench would indicate that the liability for payment of municipal taxes and repair cess rested on the Petitioner – Bank. Nothing is brought on record to indicate that under the agreement between the parties, liability for payment of municipal taxes and repair cess was on the Plaintiff-landlord. In that view of the matter, no error can be found in the order passed by the Appellate Bench in directing Petitioner-Bank to pay Rs. 10,47,865.68 towards property taxes and repair cess.

10) After the considering the overall conspectus of the case, I do not find any error on the part of the Appellate Bench in passing the Judgment and order dated 6 May 2024.

11) Writ Petition is devoid of merits and is dismissed without any order as to costs.

[SANDEEP V. MARNE, J.]