

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

Writ Petition No.14941 of 2024

Saraswat Co-operative Bank Limited
A Co-operative Bank incorporated and registered
under the Bombay Cooperative Societies Act 1925
having office at:

i) Saraswat Bank Bhavan,

953 Appasaheb Marathe Marg,
Prabhadevi, Mumbai 400 025.

ii) Mittal Court, A Wing, First Floor,

Vidhan Sabha Road, Nariman Point,
Mumbai- 400 021.

iii) F.C.Road Branch, 917/1 Shivajinagar,

British Library Building,
Fergusson College Road,
Pune-411 004.

... Petitioner

V/s.

Prashant Yeshwant Gokhale
Lalit, 1182/1/6, Shivajinagar,
Pune 411 005.

... Respondent.

Mr. Durgaprasad Sabnis a/w. Ms. Rajani Yadav	Advocate for the Petitioners.
Mr. Tejas Dande a/w. Mr. Sarvesh Deshpande i/b.Mr. Bharat Gadhavi	Advocate for Respondent.

CORAM : S.M. MODAK, J

DATE : 26 November 2024.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. Heard learned Advocate Mr. Sabnis for the petitioner-defendant/judgment debtor and learned Advocate Shri Dande for the respondent-plaintiff/deGREE holder.

3. The only issue involved in this petition is “about the right of a lessor or decree holder to insist for inspection of suit premises prior to accepting the possession particularly when the lessee has expressed their desire in so many words to hand over the possession”. In fact the keys of the premises are with the Nazar of District Court, Pune as per the order dated 11 October 2023 passed by the appellate Court, Pune which is at Page No.33-A of the compilation filed today.

4. In fact, the lessee/judgment debtor has asked for direction from the appellate Court against the lessor/deGREE holder to accept the possession. Though the order dated 11 October 2023 does not mention about giving those directions, it directed the Nazar to accept the keys. On this background, the issue of inspection has cropped up before the appellate Court.

5. As per the order dated 3 September 2024, District Judge, Pune in Misc. Application No.626/2023 has allowed the application which is on Page No.9 of the compilation and permitted inspection

of the suit premises through one Devendra Patekar who is Engineer and the approved valuer. He was asked to inspect the premises in the presence of the parties and their Advocate and to submit report to the appellate Court. The said appeal is filed by the the present petitioner who is defendant/judgment debtor/lessee.

6. The correctness of this order is challenged by the lessee-judgment debtor on following grounds:-

- (i) Similar application was filed when the suit was pending and it was rejected as per the order dated 6 January 2016 (Page-127).
- (ii) This order was not challenged by the lessor-plaintiff.
- (iii) If the order is sustained then it will amount to correction of evidence and for the same reason it was rejected earlier.
- (iv) The keys were already handed over as per the order dated 11 October 2023 and much period has elapsed so even the lessee-judgment debtor is not aware about the present situation of the suit premises and they cannot be held responsible if anything has happened after keys were handed over.

7. The learned Advocate Shri Dande supported the said order and he made the following submissions:-

- a. He invited my attention to the averments in the plaint in respect of carrying out alteration in the suit premises and the

relevant paragraph is Para No.6 of plaint on Page-115 of the compilation.

- b. According to him even though the inspection was refused by the trial Court, the plaintiff has adduced evidence on the point of alterations.
- c. And this inspection is required on the basis of subsequent development of desire expressed by the judgement debtor to hand over the possession.
- d. He invited my attention to the claim of Rs.36 lacs made by way of additional damages as per Para No.13 (cc) of the plaint at Page-153.
- e. He invited my attention to certain observations by the trial Court and one of them is Para No.37 of the trial Court judgment (Page-96 of the compilation).
- f. The issue framed by the trial Court about the damages is issue No.2 and Issue No.3 pertains to the compensation claimed by the plaintiff (Page No.82).
- g. The plaintiff-lessor has got every right to take inspection of the suit premises prior to accepting the possession of the suit premises.

Consideration

- 8. It is true the appellate Court while allowing the application has not elaborated on what ground the Engineer is supposed to inspect those premises. Even when application was filed before the appellate Court for inspection, there are no elaborate reasoning about the

scope of inspection. Mr. Dande is not disputing this position.

Right of lessor to inspect the premises

9. The right of lessor to insist for inspection of the premises cannot be disputed. If there could have been a consensus amongst both sides on the point of handing of possession, in an ordinary course, inspection must have been taken in the presence of the parties. In this case even though the lessee-judgment debtor have expressed their wish to hand over the possession, the lessor-decree holder has not accepted that request. It may be for the reason of inspection or any other reason. It is also true that lessor has made it clear about his right to inspect the premises and also send notice. It is a part of averment of the application for inspection.

10. It is true as per the Maharashtra Rent Control Act, 1999 there is a newly added provision for inspection of the premises by the landlord. Mr. Sabnis submitted that relationship was not governed as per the provisions of aforesaid Act of 1999 but it is governed as per the provisions of Transfer of Property Act. Be that as it may, there cannot be any challenge about right of lessor to insist for inspection. Even the provisions of Section 108 (m) of the Transfer of Property Act mandates the lessee to keep the premises in good condition and on termination of the lease to restore the property in good condition with certain rights. When the lessor/decree holder wants to ascertain the condition of the leased premises prior to accepting possession,

then he has every right to insist for inspection, **The order cannot be faulted.**

Evidence collection

11. The apprehension of the lessee-judgment debtor about use of inspection report by lessor in a pending appeal needs to be addressed.

It is true even though the issue of handing of possession can be resorted, still the appeal would be continued because the issue of mesne profit, damages and other issues will be decided by the appellate Court on the basis of the evidence adduced before the trial Court. If the valuer will only inspect the premises on the basis of what he will notice on the date of inspection, this Court feels that interest of both the parties will be protected.

12. Trial Court during pendency of suit has already rightly/wrongly rejected the application of lessor/plaintiff to inspect the premises. It is not the case of lessor/decreed holder that there is challenge to this order. Atleast it is not submitted by Mr. Dande. So if the Commissioner after inspection will give opinion on the basis of his observations, then it may adversely affect the rights of parties who are litigating in the pending appeal. The present commissioner can only inspect the premises and he is not expected to opine whether there are alteration/any damage. There is one more reason for this restriction. He has not visited the premises originally. So it is clarified that the Commissioner is only supposed to inspect the premises and note down what he has noticed/observed/seen. **He is not expected to give any opinion as to how those changes, alterations**

if any, were done/made, at what time and by whom.

13. It is made clear that the remaining issues in the appeal will be decided by the appellate Court on the basis of the evidence which is already adduced before the trial Court. The Commissioner to submit the report to the appellate court. Litigating parties can address the appellate court in respect of the observations by the Commissioner and it can be decided by that Court. All contentions of parties to argue the appeal vis a vis this report are kept open.

About possession

14. Now the key is with the Nazar of the District Court. Nazar may be informed about date of inspection in advance and he is directed to open the premises with the keys possessed by him. On the basis of instructions, learned Advocate Shri Dande has submitted that his client is ready to accept the possession on the same date once the inspection will be over. Nazar to hand over the keys to the respondent-lessor/decreed holder by completing the formalities and to give report to the appellate court. It is for the appellate court to give detail directions. The appellate court to decide the effect of handing over possession on the remaining issues in the appeal.

15. With these observations, the following order is passed :--

ORDER

a The Court Commissioner while inspecting the suit premises is

directed not to give any opinion as to how those changes, alterations if any, were done/made, at what time and by whom.

- b. The decree holder is directed to seek further orders from the appellate court about the procedure to be followed by the court commissioner.
- c. The appellate Court to give those directions in the light of observations made herein before.
- d. If any of the parties have any issue about the procedure of handing over possession or any issue has cropped up during the inspection and handing over possession, concerned party is at liberty to approach the appellate court and the court to decide about the same and issue necessary directions.
- e. The Writ Petition is disposed of.

(S.M. MODAK, J.)