IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.511 OF 2024

Canara Bank ***....Applicant***

V/s.

1. Mrs. Rukhsana Manzar Khan
2. Ms. Nargis Sabiz Sheikh
3. M/s. Jivesh Developers & Properties ***....Respondents***

Mr. Ranjeev Carvalho *with Mr. Shubham Kahite & Mr. Darshan Sahuji (through VC) i/b. Mr. Gajendra A. Rajput for the Applicant.*

Mr. Vineet Naik, *Senior Advocate with Mr. Parimal Shroff, Mr. D.V. Deokar and Mr. D. Parikh i/b. Parimal K. Shroff & Co., for Respondents.*

CORAM : SANDEEP V. MARNE, J.

Dated : 9 October 2024.

Order:

1) The Applicant-Bank has filed this Revision Application challenging judgment and decree dated 20 June 2024 passed by the Appellate Bench of the Small Causes Court at Bombay, dismissing M-Appeal No.12 of 2021 filed by it. The Appellate Court has confirmed the judgment and order dated 7 January 2020 passed by the learned Judge of the Small Causes Court in Mesne Profit Petition No.18 of 2013 directing the Applicant-Bank to pay amount of Rs. 4,00,06,613/- towards mesne profit together with interest @ 6% per annum from 6 March 2012 till final realization of the amount.

2) Two flats bearing Nos. 2 and 3 admeasuring 2080 sq.ft. carpet area situated on the ground floor of the building Rukhsana Apartments Co-operative Housing Society, Plot No.11, Dr. Ambedkar Road, Pali Hill, Bandra (West), Mumbai-400 050 are the **suit premises.** Plaintiffs (Respondent Nos.1 and 2) executed Leave and License Agreement dated 20 April 1999 with the Applicant-Bank granting license from 1 April 1996 to 31 March 2006 at license fees of Rs. 35,144/-. The license was terminated vide notice dated 26 December 2005 and Plaintiffs demanded possession of the suit premises from the Defendant-Bank as it failed to vacate the suit premises even after expiry of license, Plaintiffs filed L.E. & C. Suit No.9/10 of 2007 in the Court of Small Causes, Mumbai. During pendency of the eviction Suit, original Plaintiffs transferred the suit premises in favour of M/s. Jivesh Developers and Properties Pvt. Ltd. (Respondent No.3), who was consequently added to the Suit as Plaintiff No.3. During pendency of the Suit, Defendant-Bank handed over possession of the suit premises on 6 March 2012. The Suit was accordingly disposed of as decreed on 7 April 2012 directing conduct of enquiry into mesne profits from 1 April 2006 onwards. Accordingly, three Plaintiffs filed Mesne Profit Petition No.18 of 2013 before the Small Causes Court for determination of mesne profits in respect of the suit premises. The Application was resisted by the Defendant by filing reply. Plaintiffs examined Mr. Devan Shah (PW1), authorised person of Plaintiff No.3 and Mr. Harshad Maniyar (PW2), Architect and Valuer. Plaintiff also examined four witnesses viz. Sushil Sunder Amesur (PW3), Mr. Sushil Mirchandani (PW4), Mr. Maharaj Seth (PW5) and Ms. Archana Yadav (PW6), who are parties to various Leave and License Agreements relied upon by Plaintiff's valuer. Defendant-Bank examined its authorised officer Ms. Kanchan Srivastava and Mr. Sanjay Eknath Joshi, valuer. After considering the pleadings, documentary and oral evidence, the Trial

Court proceeded to determine mesne profits @ of Rs.224.30 for Group-I period from 1 April 2006 to 30 April 2008 (25 months) and Rs.322.72 per sq.ft. for Group-II period from 1 May 2008 to 6 March 2012. Accordingly, the mesne profits are determined at Rs. 1,12,99,112/- for Group I period and Rs.3,00,42,973/ for Group-B period and Applicant-Bank is directed to pay total mesne profits of Rs.4,00,06,613/- to the Plaintiffs alongwith interest @ 6% p.a. from 6 March 2012 till realisation of the amount. The Applicant-bank unsuccessfully tested order dated 7 January 2020 before the Appellate Bench of the Small Causes Court, which has dismissed the Appeal No.12 of 2021 by judgment and order dated 20 June 2024, which is subject matter of challenge in the present Petition.

3) I have heard Mr. Ranjeev Carvalho, the learned counsel appearing for the Applicant–Bank and Mr. Vineet Naik, the learned senior advocate appearing for Respondents. I have also gone through the findings recorded by the Trial and the Appellate Court as well as the oral and documentary evidence placed on record.

4) The main contention raised by Mr. Carvalho is about rejection of Bank's valuation report dated 2 October 2018 of Mr. Manoj Sharma of Universal Consultants & Valuers LLP. He would submit that the said valuation report dated 2 October 2018 was duly proved by examining Mr. Sanjay Eknath Joshi. He would submit that as per the said valuation report, the mesne profits payable would be as under:

Year	Rate per sq.ft of per month
2006	82.49
2007	95.99
2008	110.38
2009	110.38
2010	121.18

2011	169.77
2012	195.57

5) Mr. Carvalho has submitted that the mesne profits have been indicated by Applicant's valuer on the basis of 6% return on capitalized value of the suit premises determined as per the ready reckoner rates applicable at the relevant time. That 6% return on capital value of the property is an accepted norm for determination of mesne profits. He has accordingly submitted that the total principal amount of mesne profit as per the Bank's valuer would be Rs. 1,76,44,653/-.

6) I have considered the valuation report relied upon by Applicant-Bank. The Report proceeds on a fundamental flaw that the suit premises are for residential use. It appears that the Applicant's valuer has taken into consideration residential ready reckoner rates for determining the capital value of the suit premises. Mr. Naik has placed on record the Leave and License Agreement dated 20 April 1999, which clearly indicates that the license in respect of the suit premises was granted for conduct of banking business by the Applicant. Mr. Carvalho has fairly admitted that the Applicant has conducted banking business in the suit premises. In that view of the matter, there is fundamental flaw in the valuation report relied upon by the Applicant-Bank and mesne profits payable in respect of the suit premises cannot be determined on the basis of faulty valuation report of Applicant's valuer. On the other hand, Plaintiff's valuer Mr. Harshad S. Maniar had conducted in-depth exercise of determining the rental returns receivable in respect of the suit premises by dividing the period from 1 April 2006 to 6 March 2012 into two groups. In respect of Group-I from 1 April 2006

to 30 April 2008, Plaintiff's valuer has considered total four comparable instances in the nearby locality as under:

Sr No	Name of building	Date of license premises	Monthly compensation	Security deposit	Rate per sq.ft. per month
1.	Manju Villa Co.op. Hsg. Society, Shop No.1 admeasuring 656 sq.ft. at 246, Water Field Road, Bandra (West).	15/11/2006	1,00,000/-	11,00,000/-	232
2.	God's Gift Shop No.1, on ground floor admeasuring 1000 sq.ft. at 9B Hill Road, Bandra (West).	2/12/2006	1,60,000/-	19,20,000/-	183.65
	Notan Plaza Shop No.1 on 1st floor admeasuring 4000 sq.ft. at Turner Road, Bandra (West),	13/08/2007	9,00,000/- and 10,35,000/-	63,00,000/-	256.72
4.	Mangal Darshan Shop No.10 on ground floor admeasuring 330 sq.ft. at Water Field Road, Bandra (Wast)	18.12.2006	1,12,000/-, 1,33,000/- 1,56,000/-	16,00,000/-	331.95

7) The Trial Court has taken into consideration first three comparable instances indicated above where the applicable rate is 232.63, 183.65 and 256.72 respectively and has thereafter determined average of the three rates @ 224.30 per sq.ft. per month. The Trial Court's order does not reflect any particular reason for ignoring the 4th comparable instance of Mangal Darshan building where the rate is 331.95 sq.ft and if said instance was also taken into consideration, the average of the four instances would have been higher than 224.30 sq.ft. Since Plaintiffs have not challenged the Orders, it is not necessary to go into the error committed by the Trial Court in not considering the fourth instance of Mangal Darshan building.

8) In my view, therefore, the Trial Court has rightly determined the rental return of 224.30 per sq.ft. per month for Group-I period from 1 April 2006 to 30 April 2008. So far as Group –II period from 1 My 2008 to 6 March 2012 is concerned, the Trial Court has taken into consideration the comparable instance of the Applicant-Bank itself where it has secured license in building named-Sheth Building at Pali Hill admeasuring 1103 sq. ft. carpet area on ground floor and 407 sq. ft. on first floor at monthly compensation of Rs. 3,80,000/- in addition to security deposit of Rs. 22,80,000/-. Plaintiff's valuer has accordingly determined the monthly rental return of Rs. 322.72 per sq. ft. Accordingly in respect of Group-II period from 1 May 2008 to 6 March 2012, the Trial Court applied the same rate which the Applicant Bank is paying in respect of another premises at Rs.322.72 per sq.ft. per month. Obviously there cannot be any error in expecting the Applicant-Bank to pay mesne profits on same rate which it is actually paying in respect of another premises after vacating the suit premises.

9) Considering the overall conspectus of the case, I do not find any patent error in orders passed by the Trial and the Appellate Court for this Court to exercise revisionary powers under Section 115 of the Code of Civil Procedure, 1908. Revision Application filed by the Applicant-Bank is devoid of merits and is accordingly **dismissed.**

[SANDEEP V. MARNE, J.]