

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.790 OF 2025

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Coal India Ltd.
through their Authorized Signatory
Dr. Manjiri Kush Tapas

...Petitioner

Versus

Neelam Man Singh Chowdhary w/o. Pushvinder
Singh Chowdhary & Ors.

...Respondents

Mr. Gandhar Raikar, Advocate, i/b. Iyanah Prabhoo, for the
Petitioner.

Mr. Vishal Kanade a/w. Ms. Tanaya Patankar and Mr. Rajesh
Satpalkar, Advocates, i/b. Mulla & Mulla and Craigie Blunt &
Caroe, for the Respondent Nos.6 and 7.

CORAM: MADHAV J. JAMDAR, J.
DATED : 28th JANUARY 2025

P. C.:

1. Heard Mr. Gandhar Raikar, learned Counsel appearing for
the Petitioner and Mr. Vishal Kanade, learned Counsel appearing
for the Respondent Nos.6 and 7.

2. The challenge in this Writ Petition filed under Article 227 of
the Constitution of India is to the order dated 2nd September 2024
passed by the Division Bench of Small Causes Court, Mumbai in
Revision Petition No.135 of 2023 as well as to the order dated 19th

January 2023 passed by the learned Judge, Small Causes Court at Mumbai below Exhibit-33 in Mesne Profit Application No.728 of 2013 in T.E. Suit No.185/228 of 2008. The said Exhibit-33 Application has been filed by the present Petitioner i.e. the Defendant No.2 seeking permission to file additional written statement as per Order VIII Rule 9 of Code of Civil Procedure, 1908 (“CPC”). The said Application has been rejected by the impugned order dated 19th January 2023 and challenge to the same in Revision has been rejected by the impugned order dated 2nd September 2024.

3. It is the main contention of Mr. Gandhar Raikar, learned Counsel appearing for the Petitioner that earlier preliminary objections filed in the nature of written statement dated 28th August 2014 specifically seeks leave of the Court to file a detailed reply to the Application for Mesne Profit and the valuation report, in future, if the need arises. It is the further contention of learned Counsel appearing for the Petitioner that the said leave has been sought as the Petitioner’s Application and thereafter Appeal being Misc. Appeal No.502 of 2016 was pending and where the contention raised is that the Respondents i.e. the Plaintiffs are not

entitled for the mesne profit. He submitted that the said Appeal was disposed of on 22nd June 2022 by holding that the Petitioner is liable to pay mesne profits and immediately Application dated 30th August 2022 bearing Exhibit – 33 has been filed seeking permission to file additional written statement.

4. The learned Trial Court has held that as per the provisions of Order VIII Rule 9 of the CPC, there is no provision for filing preliminary written statement and final written statement and merely leave has been sought doesn't mean that leave has been granted and therefore, the Application has been rejected. Learned Revisional Court confirmed the said order *inter alia* holding that in the absence of proposed additional pleadings, the issues involved in the enquiry into mesne profit can be easily tried, heard and decided and the order impugned does not suffer from any infirmity and deserves to be confirmed.

5. In this background of the matter, it is required to be noted the following observations of the learned Appellate Court in the order dated 22nd June 2022 passed in Miscellaneous Appeal

No.502 of 2016 filed by the present Petitioner. Paragraph No.11 of the said order reads as under:

“11. It is clear from the reply filed by the appellant on overleaf of application (Ex.66) that it did not admit claim of mesne profits but keeping these contentions open that they are not liable to pay mesne profits it gave no objection/consent for ordering inquiry into mesne profits. The appellant seems to have given consent for adjudication of claim of mesne profits. Now, the appellant is making submission against their written reply. Furthermore, there will be no harm either to the appellant or respondents, if such inquiry is conducted on merit keeping the defence of appellant open. Considering all these aspects, appeal is liable to dismissed. Hence, we answer all points accordingly and we pass the following order--

:ORDER:

- 1. Misc. Appeal No.502 of 2016 is dismissed.*
- 2. Costs in cause.”*

6. Thus, there is substance in the contention raised by the Petitioner that as the Appeal was pending with respect to the aspect whether Respondents can sought mesne profit and therefore, leave has been sought to file detailed reply. Both the Courts are right in contending that there is no such provision. However, the fact remains that the said issue whether the Respondents are entitled to claim mesne profit was the subject

matter of Miscellaneous Appeal No.502 of 2016 and finally the said Miscellaneous Appeal has been decided on 22nd June 2022. The written statement has been filed on 28th August 2014, when the said issue was pending before the learned Trial Court. Thus, it is clear that the reason given by the Petitioner is genuine reason, as can be seen from the record.

7. After arguing the matter for some time, Mr. Gandhar Raikar, learned Counsel appearing for the Petitioner on instructions submitted that the Petitioner is not insisting in filing additional written statement and the following paragraphs be allowed to be added in the earlier written statement dated 28th August 2014 and that he will delete paragraph No.10 of the said written statement dated 28th August 2014. He has submitted that paragraph Nos.8(h) (partly), 8(l), 8(n) and 8(p) will be added as additional paragraphs. The said paragraphs read as under:

“h. With reference to the veracity and contents of paragraph 6 of the said Application, the same are denied. It is denied that the Defendant No. 2 was ever in possession of the garage. Further, as on date the Plaintiffs have already recovered possession of the said garage from a third party and the same is recorded in the Order dated June 28, 2022 passed by the Appellate Bench of this Hon'ble Court in

Revision Petition No. 75 of 2016. Further, it is clarified that Defendant No. 2 handed over possession of the said 12 rooms to the Ld. Sole Arbitrator pursuant to the settlement between the principal tenant i.e. Defendant No. 1 and the Plaintiffs. The Defendant No. 2 craves leave of this Hon'ble Court to refer to and rely upon the said Order dated June 28, 2022 as and when required.”

“l. With reference to the veracity and contents of paragraph 9 of the said Application, the same are denied. It is denied that the said valuers have submitted a detailed authentic Valuation Report as to the purported Mesne Profits receivable for the abovementioned period. The Report submitted by Shrinivas Kini & Company is either based on extraneous considerations without having regard to the actual on-going market rate for hotels in the area during prevalent time or simpliciter on ready-reckoner rates. It is denied that in the said Report, it has been stated that various rooms which were in possession of Defendant No. 2 could have fetched market rent on daily basis from July 1, 2008 to December 31, 2012 at a particular rate and for the year 2013 at a different rate. The contents of the Valuation Report dated May 8, 2013 are thus denied in toto particularly with regard to its authenticity, manner & basis of computation. Further, as stated hereinabove, no amount whatsoever is payable by the Defendant No. 2 for Mesne Profits.”

“n. With reference to the veracity and contents of paragraph 11 of the said Application, the same are denied. It is denied that interest is an integral part of a decree for Mesne Profits. It is denied that the Plaintiffs are entitled to receive interest @ 18% per annum or at such rate as may be fixed by this Hon'ble Court on the amount of Mesne Profits for the entire period from July 1, 2008 onwards till payment of decretal amount by the Defendant No.2.

Pertinently, as stated hereinabove, the Plaintiffs are not entitled to Mesne Profits in the present case and consequently, they are not entitled to any interest whatsoever.”

“p. With reference to the veracity and contents of the prayers of the said Application are same are denied in toto. It is hereby reiterated that the Hon'ble Court has neither come to a finding that the Defendant No. 2 was in wrongful possession of the said 12 rooms nor that the Plaintiffs are entitled to Mesne Profits for the same in view of claim of Mesne Profits being expressly waived by the Plaintiff against the principal tenant. Further, the Plaintiffs have waived off their claim for Mesne Profits for Defendant No. 1 in view of the settlement between Defendant No. 1 and the Plaintiffs, pursuant to which, this Defendant also handed over possession of the said 12 rooms to the Ld. Sole Arbitrator. Since, the Plaintiffs have admittedly waived off their claim for Mesne Profits against the principal tenant i.e. Defendant No. 1, consequently, the claim for Mesne Profits against the sub-tenant of Defendant No. 1 i.e. this Defendant would also stand extinguished. Further, since Mesne Profits cannot be claimed by the Plaintiffs in the present case, question as to interest thereon would not even arise. In view of the aforesaid, it is submitted that no reliefs as prayed for by the Plaintiffs ought to be granted by this Hon'ble Court.”

8. In view of the said statement, it is required to be noted that paragraph 8(h) is concerning subsequent events, on the basis of the order dated 28th June 2022 passed below Exhibit-1 in Revision Petition No.75 of 2016. As far as other paragraphs are concerned, they are regarding valuation report.

9. Thus, in the facts and circumstances of this case and in the interest of justice, said paragraphs needs to be incorporated in the written statement. In view of this position and as the Petitioner has restricted his reliefs, Mr. Kanade, learned Counsel appearing for the Respondent Nos. 6 and 7 states that no elaborate reasons are required to be recorded for granting leave to incorporate above paragraphs in the written statement dated 28th August 2014.

10. Accordingly, the impugned order dated 19th January 2023 passed below Exhibit-33 in Mesne Profit Application No.728 of 2013 in T.E. Suit No.185/228 of 2008 as well as the impugned order dated 2nd September 2024 passed by the Division Bench of Small Causes Court, Mumbai in Revision Petition No.135 of 2023 is quashed and set aside. The said Application bearing Exhibit-33 in Mesne Profit Application No.728 of 2013 in T.E. Suit No.185/228 of 2008 is granted by directing that the paragraph Nos.8(h)[part], paragraph 8(l), 8(n) and 8(p) as set out above, be added as additional paragraphs in the written statement dated 28th August 2014 and paragraph No.10 of the said written statement dated 28th August 2014 be deleted.

11. The Writ Petition is disposed of in above terms with no order as to costs.

12. As the Mesne Profit Application is pending since 2013, concerned Court is requested to dispose of the Mesne Profit Application expeditiously.

[MADHAV J. JAMDAR, J.]