

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

**INTERIM APPLICATION NO. 8488 OF 2025
IN
FIRST APPEAL NO. 20 OF 2022**

Sanjeev Preetam Chugani

.. Applicant

In the matter between

Mohammed Shafi Shaikh Ahmad (deceased)
through legal heirs

.. Appellants

Versus

Preetam Ramchand Chhugani (deceased)
through legal heirs

.. Respondents

Mr. Ziyad Madon a/w Mr. Sujit Lahoti, Haaris Koradia i/b Sujit Lahoti & Associates, Advocates for the Applicant.

Mr. Ajay Bhise a/w Ms. Deepali Kedar for Respondent No.1(c).

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: JULY 11, 2025.

P. C.

1. The above Interim Application is filed seeking an order to allow the Applicant to withdraw the amount of Rs.6 lakhs deposited in this Court by the Orig. Appellant towards mesne profits, along with any additional interest / profits. This Application has been moved by the Applicant (Original

Respondent to the First Appeal) because the above First Appeal now stands disposed of vide order dated 24th January 2023. By this order, the Appellant was directed to deposit the arrears of mesne profits as fixed by this Court, failing which the Appeal would stand dismissed. Since the arrears of mesne profits were not deposited within the time stipulated, the Appeal came to be dismissed. It is in these circumstances that the amount of Rs.6 lakhs deposited by the Original Appellant is sought to be withdrawn by the Applicant (Original Respondent in the First Appeal).

2. The learned Advocate appearing on behalf of the Original Appellant submitted that the Applicant ought not to be permitted to withdraw the amount deposited in this Court because the conditional order passed on 24th January 2023 was challenged before the Hon'ble Supreme Court by filing a Special Leave Petition (SLP). That SLP was dismissed for non-removal of office objections. To restore the said SLP, the original Appellant herein has filed a Miscellaneous Application and it is still pending. In these circumstances, he submitted that the Applicant ought not be allowed to withdraw any amount till the disposal of the Miscellaneous Application.

3. We have heard the learned Counsel for the parties and we have also perused the papers and proceedings in the above Interim Application. It is not in dispute that the amount of Rs.6 lakhs deposited by the Appellant herein is the amount that was payable to the Applicant as mesne profits under the decree passed by the Trial Court. In the First Appeal, there was an order passed on 24th January 2023 in which, this Court fixed mesne profits at Rs.3,50,000/- per month and which was to be paid from the date of the decree. Since there were arrears of Rs.1,22,50,000/- [calculated @ Rs.3,50,000/- per month from the date of the decree till 15/2/2023], the Appellant was directed to clear the same within a period of 4 weeks, failing which the above Appeal would stand dismissed without further reference to the Court. It is not in dispute that no part of the arrears have been cleared by the Original Appellant. The Appeal has therefore stood dismissed.

4. Once the Appeal is dismissed and the amount of Rs.6 lakhs is admittedly payable to the Respondent [the Applicant abovenamed] pursuant to the decree passed by the Trial Court, we have no hesitation in allowing the Applicant to withdraw the aforesaid amount together with the accrued interest, if any. We are unable to accept the argument of the learned Advocate appearing on behalf of the Original Appellant that merely because the Miscellaneous Application [seeking restoration of the SLP filed by the

Original Appellant] is pending, we should defer this Application and not allow the Applicant to withdraw the aforesaid amount of Rs.6 lakhs (with accrued interest, if any). As narrated earlier, the SLP filed by the Original Appellant was dismissed for non-removal of office objections. He thereafter filed a Miscellaneous Application for restoration of the said SLP, and which has not been moved till date. There is no order staying the operation of the order dated 24th January 2023 [by which the above Appeal was dismissed]. In these circumstances, we do not find any merit in the argument canvassed by the learned Advocate for the Original Appellant. It is therefore rejected.

5. In view of the aforesaid discussion, the above Interim Application is allowed in terms of prayer clause (a), which reads thus :-

“(a) The Hon’ble Court be pleased to issue an order / direction thereby granting permission to the Applicant to withdraw the amount of Rs.6,00,000/- (Rupees Six Lakhs only) Mesne Profits along with additional interest/profits deposited by the Respondent/Original Appellant with this Hon’ble Court vide order dated 11th January 2022.”

6. The Registrar of this Court shall immediately allow the Applicant to withdraw this amount on the production of this order. It is needless to clarify that in the event the SLP filed by the original Appellant before the

Supreme Court is restored, the withdrawal made by the Applicant under this order shall abide by any further orders passed by the Hon'ble Supreme Court.

7. The Interim Application is disposed of in the aforesaid terms. However, there shall be no order as to costs.

8. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]