CNR NO. MHSCA 20041262010

Presented on	:	30.10.2010		
Registered on	:	18.11.2010		
Decided on	:	30.07.2026		
Duration	:	Years	Months	Days
		15	08	12

<u>IN THE COURT OF SMALL CAUSES AT MUMBAI</u>

MESNE PROFIT APPLICATION NO. 7 OF 2010

IN

T.E. & R. SUIT NO. 90/94 OF 2002

Prime Properties Private Limited]
a Company registered under Indian]
Companies Act, 1956 having registered]
Office at 111, Maker Chambers -IV,]
Nariman Point, Mumbai – 400 021.] ..**Plaintiff**

V/s.

The Khatau Makanji Spinning and]
Weaving Co. Limited, a Company registered]
under the Indian Companies Act, 1956]
and having its Registered office at Laxmi]
Building 2nd Floor, 6, Shoorji Vallabhdas Marg,]
Ballard Estate, Mumbai – 400 038]
and in possession of Godown No. 16 of]
N.M. Wadia Godowns, situate at C.S.No. 149]
and 4/148 of Parel – Sewree]
Division, Tokersi Jivraj Road,]
Sewree, Mumbai – 400 012.] ...**Defendant**

And

M/s. Arihant Trading Company, a proprietary	]	
and / or partnership concern through its	]	
proprietor and / or partner Mr. Padamsi Shyamji	]	
Shah claiming to be in possession of Godown	]	
No.16 of N.M. Wadia Godowns, situate at	]	
C.S. No. 149 and 4/148 of Parel- Sewree Division,	]	
Tokersi Jivraj Road, Sewree, Mumbai – 400 012.	]	...**Respondent**

Shri. Omprakash Vaishnav : learned advocate for Plaintiffs.
Shri. Rajesh P. Dwivedi : learned advocate for Defendant.
Shri. S.K. Vyas : learned advocate for Respondent.

Coram : S.K. Mule, Judge
C. R. No.16
Date : 30/07/2026

:<u>JUDGMENT</u>:

(Delivered on 30th Day of July 2026)

1. This is a mesne profits inquiry as per judgment and order dated from Appeal No.489 of 2007, dated 30.01.2010 (Hereinafter referred to as " Appeal") arising out of Judgment and Order dated 15.06.2007 from T.E. & R. Suit No.90/94 of 2002 (Hereinafter referred to as " T.E. Suit").

2. Plaintiff company have come with a case that they had filed T.E. Suit against the defendant for possession of the premises i.e. Godown No.16, admeasuring about 4300 sq.ft. known as N.M. Wadia Godowns, standing on the land bearing C.S. No. 149 and C.S. No. 4/148, Parel Sewree Division situate at

Tokersi Jivraj Road, Sewree, Mumbai - 400 012. (Hereinafter referred to as the "suit premises"). Said T.E. Suit came to be decreed by judgment dated 15.06.2007.

3. Plaintiff further contended that, being aggrieved by the Judgment and order from T.E. Suit defendant had preferred appeal before the Hon'ble Appellate Bench Court of the Small Causes Court, Mumbai. Said appeal came to be decided by the Judgment and Order as above and in that appeal direction regarding inquiry for mesne profit under Order XX, Rule 12(1)(C) of the Code of Civil Procedure, 1908 (Hereinafter referred to as " CPC") has been given. According to the plaintiff, defendant has not challenged the said judgment and order of the Appellate Court and now attended finality. Pursuant to the said decree the plaintiff filed an execution application before this court bearing No.321 of 2010. By order dated 02.8.2010, a warrant of possession had been issued by this Court to take the possession of the suit premises. When bailiff visited the suit premises for execution of warrant, the respondent through Mr. Anil Premji Thakkar on the instructions of one Mr. Padamsi Shyamji Shah (as per respondent correct name is 'Padmshi Shyamji Shah') obstructed the execution of warrant of possession. At that time respondent alleged they had been in possession of the suit premises since last 12 years, which is including the period of wrongful use and occupation.

4. According to plaintiff, both defendant and respondent are jointly and severally liable to pay to the plaintiff, mesne profit in respect of the suit premises from 1.8.2001 till

handover of possession. As per the plaintiff, defendant/respondent since 1.8.2001 have profited / benefited by making commercial use of suit premises. Plaintiff company has appointed Mr. Harshad S. Maniar a Chartered Engineer, Surveyor & Registered Valuer for evaluating the market rate of rentals or the mesne profits of the suit premises. Said surveyor and valuer has preferred report dated 8.10.2007. Plaintiff in their application also refereed other number of instances from the vicinity of the suit premises for the years 2002 to 2008. According to the plaintiff, those intentions are applicable to the present suit premises. Further the area of the suit premises is also similar to the area from those instances. Lastly the plaintiff company has claimed mesne profit at the rate of Rs.11/- per sq.ft. per month alongwith interest at 11.79% per annum from 1.8.2001 till handing over vacant possession of the suit premises.

5. Defendant filed their say at exhibit-9 and denied the contentions of the plaintiff in respect of claim of mesne profit. According to the defendant, they are not liable to pay the mesne profit. The rest of the contention of the defendant is of total denial. Defendant also denied that they parted with possession of the suit premises with the respondent in order to deny the plaintiff fruit of the decree. According to the defendant, they are not liable to pay mense profit and also plaintiff is not entitled to any claim.

6. The respondent has filed reply at Exhibit-13 and thereby denied the contentions of the plaintiff. According to the respondent, he was not the party neither to the T.E. Suit and nor

to the appeal and therefore he is not liable to pay mesne profit as claimed by the plaintiff.

7. It is pertinent to note that according to the respondent, he had rightly obstructed the execution taken out by the plaintiff. As respondent, he was in lawful possession of the suit premises. Respondent contended that he was in lawful possession of the suit premises from many years with the knowledge of the plaintiff and despite that plaintiff has not made respondent as party to the T.E. Suit. Respondent is not aware about the T.E. Suit and an appeal, as referred by the plaintiff. Further respondent has denied the contention in respect of instances as referred in the application and rate per square feet claimed by the plaintiff with interest. The sum and substance of contention of respondent is that he was in lawful possession of the suit premises with the consent and knowledge of plaintiff company since 15.4.2021 and as such he is not entitled to pay mesne profit as claimed by the plaintiff.

8. In order to prove the claim, plaintiffs have examined **Mehernosh Minoo Billimoria** as **P.W.1** by filing affidavit of examination-in-chief at **Exh.14, Shri. Harshad Sunderlal Maniar** as **P.W.2** by filing affidavit of examination-in-chief at **Exh.43** and Mr. Kamlesh Gaurishankar Pandya as **P.W. 3** at **Exh. 55.** In support of its contentions, plaintiff has filed documents as follows :

Sr. No.	**Details of documents**	**Exhibit**
1.	Photocopies of judgment and decree dated 15.06.2007	Exh. 19

2.	Photocopies of judgment and decree dated 30.01.2010.	Exh. 20
3.	Certified copy of the bailiff's report dated 06.08.2010	Exh. 21
4.	Certified copy of Index II	Exh. 22
5.	True extract of the resolution dated 4.09.2007	Exh. 23
4.	Original registered agreement dated 03.06.2004	Exh. 24
5.	Office copies of receipts	Exh. 25
6.	Certificate dated 29.09.2011	Exh. 26
7.	Report dated 08.10.2007	Exh. 46

9. Plaintiff has closed the evidence by filing pursis at **Exh. 57.**

10. In order to prove its case, defendant has examined **Smt. Panna Sunit Khatau** as **D.W.1** by filing affidavit of examination-in-chief at **Exh.60** and **Mrs. Aparna S. Khatau as R.W.1** by filing affidavit of examination in chief at **Exh. 77**. In support of it's case, the defendants have relied upon following documents:

Sr. No.	**Details of documents**	**Exhibit**
1.	Certified copy of resolution dated 02.03.2022	Exh. 64
2.	Certified copy of the resolution dated 10.01.2024	Exh. 81

11. Defendant has closed his evidence by filing pursis at **Exh. 85**. Respondent has closed his evidence by filing pursis at **Exh. 86**.

12. In the present matter, respondent has not adduced any evidence. Accordingly, matter was kept for final hearing by original defendant. Thereafter, an application Exh. 89 was taken out by defendant for direction that respondent be directed to take first hearing. Said application came to be decided on 31.07.2025 and again defendant was directed to take first hearing. After above order, defendant taken out an application Exh. 92 for amendment in their reply. Said application at Exh. 92 was rejected on 17.01.2026.

13. Learned Counsel Shri. R.L. Dube i/b learned advocate Shri. Rajesh P. Dwivedi for defendant submits that the present mesne profits inquiry has filed by the plaintiff prior to the decision on obstructionist notice taken out by plaintiff on obstruction by the respondent to the execution of warrant of possession. Respondent herein has caused obstruction to the execution of decree i.e. getting possession of the suit premises. According to him, this fact is much more clear to see who was in actual possession of the suit premises. He further submits that whether any person was party to the litigation or not, is not relevant to decide the liability to pay the mesne profits. A person who is in actual wrongful possession and use of the suit premises is liable to to pay mesne profits. According to him, joint and several liability to pay mesne profits in the present matter does not arise.

14. On the point of fixation of mesne profits and compensation, he submits that agreement in question under the suit was a lease agreement. However, decree holder / plaintiff has

placed on record copies of agreements as a comparative instances of leave and licence agreement, which is totally different from parameters of lease agreement. By referring oral evidence of defendant, he submits that defendant is and was not in use and occupation of the suit premises and on the contrary respondent was in possession and use of the suit premises. For this reason, according to him, no liability can be imposed upon the defendant to pay mesne profits.

15. On the point of defence by respondent, he submits that the said defence is not proper and maintainable in the eyes of law. Respondent cannot avoid their liability to pay mesne profits merely because he was not party to the suit and no decree has been passed against him.

16. By referring the reply of respondent, he submits that possession of the suit premises is admitted by him. Respondent has failed to show how his possession was lawful. He submits that reply of respondent made out that defendant is not a person who inducted and let out the premises to the respondent. He submits that in view of settled principle of law, if obstructionist was in possession of premises, he is liable and bound to pay mesne profits. According to him, who is liable to pay mesne profits, is the crux of this matter and answer to that is respondent firm was in possession of suit premises and so liable to pay mesne profits.

17. He further submits that on 16.08.2013 the possession of the suit premises obtained by plaintiff / decree holder through court procedure from respondent and not from this defendant. On the admissibility of evidence of Mr. Harshad Maniyar (A.W.2),

he submits that the said architect has not visited the actual site and therefore report prepared by him is not admissible in the evidence.

18. According to me, so far as this matter is concerned, comparison method is not suitable and proper method to decide mesne profits. As per him, interest rate calculated by the surveyor is on the average basis, which is contrary to the settled principles of law. The age of the building and location are the most important factors which affect the mesne profits. The oral testimony of A.W.3 witness is not admissible and reliable. He is the only signatory to the said document. The conditions of the building and necessity of any person to take out the premises also plays vital role in deciding the quantum of rent / compensation.

19. In respect of evidence of defendant, he submits that allegation of respondent that defendant has given possession of premises is not lawful and justifiable. Respondent has come with a case of payment of security amount and monthly rent to the defendant. However, he has not entered into witness box. This conduct of the respondent leads to draw inference against him. According to him, this defence of defendant is not relevant and tenable in the eyes of law.

20. A sum and substance of his submission is that, respondent has clearly admitted that he was in possession of the suit premises. In view of settled principle of law, a person who was in wrongful possession of property is liable for mesne profits. Decree holder has to show who was in possession of suit premises when the suit was decreed or appeal decided. It is the respondent

who is liable to pay the mesne profits. Respondent in his reply has not pleaded that he was occupying the premises under the control or authorization of defendant. Even the provision of Order XX Rule 12 of CPC also casted liability of paying mesne profits is only on the person who is in the possession of property. In support of his submission, he has relied upon following cases :

1. **Shri. Dnyandev Tukaram Kashirsagar v/s. M/s. Pyramid Corporation and Anr., Writ Petition No. 10003 of 2015.**
2. **Ms. Shabana Niyaz Ahemd Qureshi and ors v/s. Quresh Badruddin Ghadiyali (deleted)**
3. **Lucy Kochuvareed v/s. P. Mariappa, AIR 1979 Supreme Court 1214.**

21. Learned advocate Shri. S.K. Vyas for respondent by referring the main application Exh. 1 submits that cause of action to file present mesne profits is the decree from appeal. By referring the cause title of the decree, he submits that respondent is neither party to the suit nor to the appeal. Defendant has challenged the decree of Trial Court in appeal. In the judgment and decree of the Trial Court, there was no direction either for inquiry of mesne profits or payment of mesne profits. Respondent was not in picture anywhere neither in the suit nor in the appeal. As per the decree of the Hon'ble Appellate Bench of Small Causes Court, Mumbai direction of inquiry has given only against defendant and not against respondent. Respondents cannot be

sued only in mesne profits inquiry. He has raised legal point i.e. whether in absence as a party to the litigation, can respondent be made liable to pay mesne profits. Accordingly, he has prayed for dismissal of mesne profits and that too specially against the respondent. He has relied upon the legal principles from following cases :-

1. **Shiv Kumar Sharma v/s. Santosh Kumari, JT 2007 (11) SC 260.**
2. **Ganapati Madhav Sawant (dead) Through his Lrs v/s. Dattur Madhav Sawant, 2008(1) RCR 293.**
3. **Shankar Manikrao Waghmare & Anr. v/s. Bhaurao Bapurao Waghmare, 2012 (2) AIR Bom R 228.**
4. **M/s. Raptakos Brett and Co. Ltd. v/s. Ganesh Property, AIR 2017 Supreme Court 4574.**

22. Learned Counsel Shri. J. R. Trivedi i/b learned advocate Omprakash Vaishnava for plaintiff / decree holder submits that suit premises is a godown structure. Suit filed by the plaintiff against the defendant has been decreed by this Court. Said decree taken in appeal by the defendant, which has been dismissed. The Hon'ble Appellate Bench of Small Causes Court, Mumbai has given direction about mesne profits. Appeal is a continuation of suit. The order of the Hon'ble Appellate Bench has attained finality as none of the parties have challenged it.

23. On the point of period for fixation of mesne profits, he submits that from the date of issuance of termination notice, the possession of defendant has become wrongful and therefore, since that date, till handing over possession, mesne profits is payable. In respect of this matter, he submits that plaintiff through advocate has terminated the tenancy by notice dated 16.06.2001 and thereafter for mesne profits possession of suit premises has become unlawful from 01.08.2001 till handing over possession. Plaintiff has received possession of suit premises on 16.08.2013 through the Court. By referring the reply of defendant and respondent, he submits that now they both are avoiding their liability. Respondent has caused obstruction to the warrant of possession and thereafter plaintiff had taken out obstruction notice against the respondent. That too, after decision of the said obstruction notice, possession has received by the plaintiff. Therefore, now respondent cannot plead that as he was not party to the proceeding, not liable to pay mesne profits. According to him, obstruction notice taken out against the respondent is sufficient to hold that there is no question of adding him as a party to the suit or appeal.

24. On the point of possession, he further submits that respondent has claimed the possession of the suit premises with him. Whether that possession was legal or not, has already decided in the obstruction notice. Both defendants and respondent, except denial have not raised any specific defence.

25. On the point of comparable instances, he submits that all comparable instances are from the same locality. The

area of the suit premises and from comparable instances are also similar. A documents of comparable instances are registered documents and therefore more relevant to decide the rate of mesne profits.

26. By referring the report of valuer and other witnesses examined by the plaintiff, he submits that sufficient material has placed on record by the plaintiff for fixation of mesne profits. Both instances placed on record by the plaintiff have been proved with corroborating documents.

27. He further submits that previous defence of defendant was that they were in defence, however later on they changed and now they are denying. Both respondents have not placed on record any separate valuation report or other material to contradict the evidence lead by the plaintiff on this point. Therefore, best evidence available on record for fixation of mesne profits is the evidence and report of valuer placed on record by the plaintiff. Mrs. Aparna S. Khatau (R.W.1) is not a person having knowledge in respect of the valuation of properties. Further, she is also not a person having personal knowledge and information about present suit. Defendant has profiteered from the respondent and for this reason according to him, both respondents are jointly and severally liable to pay mesne profits. He has relied on legal principles from the following cases:

1. **Fateh Chand v/s. Balkishan Das, 1964 (1) SCR 515.**

2. **Shaik Salma and another v/s. Shaik Mahammad Abdul Kadar Umodi & Anr. AIR 1961 Andhra Pradesh 428.**

3. **Mahant Narayana Dasjee Varu and others v/s. Board of Trustees & Ors., AIR 1965 Supreme Court 1231.**

4. **Humayun Dhanrajgir & Ors. v/s. Ezra Aboody, 2009 (1) All MR 844.**

5. **M/s. Kaizen India and two others v/s. M/s. Rangoli Garments Private Limited, 2024: AHC: 113092.**

6. **Indian Oil Corporation Ltd. v/s. Sudera Realty Private Limited, 2022 SCC Online SC 1161.**

7. **Lucky Kochuvareed v/s. P. Mariappa Gounder and others, (1979) 3 Supreme Court Cases 150.**

8. **Smt. Shashikala Sriram Shetty v/s. 1. Jagannath Honnaya Shetty (deceased) & Ors., Writ Petition No. 18933 of 2024.**

28. Considering the nature of controversy and submission of both parties, points that arise for determination, together with my findings and reasons thereon are as under:

Sr. No.	Points		Findings
1.	Whether the present application for mesne profit inquiry is maintainable?		In the Affirmative.
2.	Whether the decree-holder prove that it is entitled to mesne profits for the period from 01.08.2001 to 16.08.2013?		In the Affirmative.
3.	What is the quantum of mesne profits?		Rs. 10/- per sq.ft. Per month i.e. monthly mesne profits Rs. 43,000/-.
4.	Whether the decree-holder is entitled to interest on the quantum of mesne profits, if yes at what rate?		Yes, @ 6 % per annum.
5.	Whom out of defendant and respondent, are liable to pay mesne profits?		Both defendant and respondent are jointly and severally liable.
6.	What order and decree?		As per final order.

: **<u>R E A S O N S :</u>**

<u>AS TO POINT NO. 1: -</u>

29. This point has arisen from the submission made by respondent. According to respondent, decree of Trial Court from eviction suit is silent about grant of mesne profits. Unless there is

plaint for mesne profits, plaintiff / decree holder is not entitled for the same. In the case of **Ganapati Sawant (supra)**, the Hon'ble Apex Court on the issue of granting mesne profits in absence of prayer held that, "*plaintiff did not pray for an inquiry relating to mesne profits in terms of Order XX Rule 12 of CPC and in absence of any specific prayer for any inquiry into that aspect, the same could not be granted."* The legal principles from other two cases i.e. **Shiv Kumar Sharma (supra)** and other two cases relied by the respondent are also on the same footing i.e. in absence of prayer, plaintiff is not entitled to mesne profits.

30. So far as present matter is concerned, there is no dispute between the parties that decree of Trial Court is silent about grant of mesne profits. Thus, it can be said that Trial Court has not granted the relief of mesne profits to the plaintiff herein. It is also an admitted position to parties that defendant herein has challenged the decree of Trial Court in the Appeal before the Hon'ble Appellate Bench of Small Causes Court, Mumbai. Photocopy of judgment and decree from Appeal (Exh. 20) is placed on record by the plaintiff. Relevant observation from para No. 41 of said judgment passed by the Hon'ble Appellate Bench of Small Causes Court, Mumbai are as under: -

> *"In this case the Trial Court had granted decree of eviction, but not stated anything about decree of mesne profit. Plaintiff is entitled to get decree of mesne profit as per Order 20 Rule 12 (1) (c) of Civil Procedure Code. This portion is not inserted in final part of order of judgment and that we are inserting it in this final order, even though we dismiss the appeal."*

31. It is not the contention of any parties that above decree from Appeal has been challenged before any Hon'ble Higher Court. Thus, it can be safely said that above decree from Appeal has attained finality. Now in such situation, this Court is not competent to deal with the issue of maintainability of mesne profits inquiry. Already mesne profits decree has been granted in favour of plaintiff and now in said inquiry, such issue like maintainability is not liable to be decided by this Court. Now the decree of the Hon'ble Appellate Bench of Small Causes Court, Mumbai has attained finality and now merged in the decree of the Trial Court. In view of aforesaid circumstances and facts being different, with great respect legal principle from the case of **Ganpati Sawant (supra)** cannot be made applicable to the present case. In the result, I hold that present mesne profits inquiry is maintainable. Accordingly, **<u>this point is answered in the Affirmative.</u>**

<u>AS TO POINTS NO. 2 TO 4: -</u>

32. The term 'Mesne Profits' has defined in Section 2(12) of CPC. According to said definition mesne profits means and includes -

i. those profits which the person in wrongful possession of such property actually received,
ii. or might with ordinary diligence have received therefrom
iii. together with interest on such profits,
iv. but such mesne profits shall not include profits due to improvements made by the person in wrongful possession.

33. The aforesaid definition given in the Court is very much clear to know the ambit and scope of mesne profits inquiry. On the point who was in wrongful possession of the suit premises, a separate issue has been framed and therefore that aspect has considered later on in this judgment.

34. After going through the pleading of the plaintiff from application, it made out that prior to getting possession of the suit premises present mesne profits inquiry has been initiated. In the pleading itself, there is reference of obstruction notice taken out by plaintiff against the respondent. It is pertinent to note that plaintiff has not placed on record date of possession of the suit premises in the nature of pleading. Mehernosh (P.W.1) in his affidavit – in -lieu of examination-in-chief particularly stated that suit premises is admeasuring about 4300 sq.ft. He has also referred the valuer report prepared by Mr. Harshad (P.W.2) in his affidavit-in-lieu of examination-in-chief. Lastly, he has claimed mesne profits at the rate mentioned in the valuation report Exh.46.

35. Both defendant and respondent have recorded lengthy cross-examination of this witness. Considering the nature of present inquiry, in my view whether Mehernosh (P.W.1) is competent to depose on behalf of plaintiff is not more relevant and going to affect the merit of the matter. The substantial cross-examination by both opposite side is on the point from whom possession of suit premises has received by the plaintiff. Relevant cross-examination of this witness by defendant is as under: -

> *"Whenever suit premises was open I went inside. For about 30 to 35 times I might have visited suit premises*

from inside. Representative of defendant was present at that time.
Plaintiff obtained possession of suit premises on 16.08.2013 through Court. It is true that when bailiff of the Court had been to suit premises respondent was in possession of suit premises. I accompaied the bailiff and aware of the report of the bailiff."

36. As stated by Mehernosh (P.W.1) 16.08.2013 the date of possession of the suit premises by plaintiff is not disputed by other side. Even cross-examination of this witness by respondent goes to show that possession of the suit premises received by the plaintiff. Thus now date of getting possession by plaintiff is 16.08.2013. After going through the decree of the Trial Court, the contention of plaintiff made out is that defendant being a company having capital more than 1 Crore, the provisions of Maharashtra Rent Control Act, 1999 were not applicable and accordingly, suit for eviction came to be filed under the general provisions of law, i.e. Transfer of Property Act, 1882. In set of these facts and as per settled principles of law, the possession of holder of suit premises becomes unlawful from the date of issuance of termination notice i.e. after expiration of time mentioned in the said notice.

37. In the present inquiry, plaintiff has come with a case that termination notice issued on 16.06.2001 and after expiration of time from said notice, the possession of holder of premises has become unlawful from 01.08.2001 till handing over said possession to the plaintiff. Aforesaid dates from notice in respect of termination of tenancy have not been disputed by other side

with corroborating material. In other words except aforesaid dates, other material has not come on record which shows that possession has become unlawful on other dates. Accordingly, I hold that since 01.08.2001 till 16.08.2013 the possession of the holder of the suit premises was unlawful.

38. Now the period of unlawful possession of suit premises has determined. The next question is to determine the mesne profits. In the case of **Shaik Salma (supra)**, the Hon'ble Andhra Pradesh High Court has observed as "*where the plaintiff says that he is entitled to mesne profits at a particular rate, it would mean profits which a person in occupation might with ordinary diligence have received. But profits actually received also are within the contemplation of mesne profits and the burden of proving profits actually received is upon the person who has been in possession of the property."* It is a matter of record that in the present case, except plaintiffs neither defendant nor respondent has lead any kind of evidence to prove actual profit received from the suit premises. Thus now the best evidence available to determine the mesne profits to the suit premises is of plaintiff.

39. Even though Mehernosh (P.W.1) has stated about the instances to determine the mesne profits, then also he not being expert, the evidence of Mr. Harshad Maniar(P.W.2) a Chartered Engineer Surveyor and Government Registered Estate Valuer is more relevant. Mr. Maniar (P.W.2) in his oral testimony placed on record his report Exh. 46. Both parties have recorded cross-examination of this witness. Except denial and facts about not

personally getting documents in respect of indicator No. 1 and 2, nothing has come on record which discard his report.

40. Relevant cross-examination of Mr. Maniar (P.W.2) by defendant is as under:

> *"It is true that I have not given any letter to defendant that I am going to visit the suit premises on 28.09.2007.*
> *It is true that I have not inspected the government record or revenue record in respect of suit premises.*
> *It is true that I am not aware as to whether actually compensation of Rs. 40,000/- and interest free deposit of Rs. 5 lacs was paid vide agreement dated 27.05.2002. Suit premises and Mohan Mill compound premises defer slightly in location.*
> *The location of suit premises and this premises also defer slightly.*
> *It is correct to say that in the suit premises landlord was not supplying water facility and telephone facility however he was providing electricity.*
> *Today interest is being paid at the rate of 8%.*
> *It is true that I have no documents to show about the age and conditions of indicator No.1 and indicator No.2 premises.*
> *It is true that whatever I have mentioned about Indicator No.2 in my report is based on Index II.*

41. Relevant cross-examination of Mr. Maniar (P.W.2) by respondent is as under:

> "*It is true that the agreements below Indicator No.1 and 2 were not executed in my presence.*
> *I do not know whether there is any law whereby interest at the rate of 8.5 per annum on mesne profit can be imposed. I am not aware whether generally the interest at the rate more than 6% per annum is awarded.* "

42. Apart from the report of Mr. Maniar (P.W.2), plaintiff has examined Mr. Kamlesh Pandya (P.W.3) to prove the leave and licence agreement dated 05.04.2007 executed between plaintiff company and one Indian Plywood Manufacturing Company. This

witness has placed on record certified copy of aforesaid leave and licence (Exh. 56). A perusal of said copy, it made out that it was a registered leave and licence agreement, and as per that agreement plaintiff company granted licence of godown No. 13 out of the same property from the present matter at monthly compensation of Rs. 84,000/-.

43. Apart from above documents, plaintiff has also placed on record copy of Index II (Exh. 22) of an agreement which has referred by Mr. Maniar as a Indicator No.2. Further copy of leave and licence agreement (Exh. 24) of the year 2004 between plaintiff company and above Indian Plywood Company for godown No. 13 which shows monthly compensation of Rs. 42,000/-. Objections have taken by other side that plaintiff witnesses are not party to above agreement and accordingly not admissible in the evidence. In my view, aforesaid all agreements are registered documents. Plaintiff has also placed on record bank account statement Exh. 26 to show that plaintiff company has actually received compensation amount as per agreement (Exh. 24). It is settled principle of law that register of Index II maintained by concerned government office is a public document and so it's certified copy is admissible in the evidence. In the case of **M/s. Kaizen India (supra)**, the Hon'ble Allahabad High Court has observed that, "*certified copy of the Lease Agreement is a Public Document, as contemplated under Section 74 of the Indian Evidence Act, 1972 and in terms of the 3rd Proviso to Section 65 (e) or 65(f) the certified copy is admissible in evidence.*"

44. Now all documentary evidence placed on record by the plaintiff to decide the quantum of mesne profits has to be considered. Mr. Maniar (P.W.2) in his report has adopted the method of comparables based on the data available in the locality. Even though, during the course of submission defendant has objected this method, but not placed on record any material to show which method is proper to decide the dispute from present application. The parties are not in dispute of existence of the suit premises, it's locality and area. Even though, during cross-examination, other side has disputed the area of the suit premises, other corroborative material has not come on record. A decree from eviction suit mentions the area of the suit premises as 4300 sq.ft. Accordingly, I hold area of the suit premises as 4300 sq.ft.

45. The valuer i.e. P.W.2 has mentioned the Indicator No.1 which is an agreement dated 27.05.2002 of leave and licence from Moon Mill compound which was a registered agreement. The area of the suit premises from Indicator No.1 is 5300 sq.ft., which is according to me similar to the suit premises. The valuer has also taken into consideration the tenure of said agreement which is of 33 months and interest free deposit which was of Rs. 5 Lakhs. During cross-examination, it has come on record that premises from this agreement is at slight different place than that of suit premises. On the basis of area and monthly compensation valuer has fixed by way of analysis monthly compensation of suit premises at Rs. 7.54 sq.ft. Further, he has also added interest @ 8.5 % on Rs.5 Lakhs which monthly compensation comes to Rs. 0.66 per sq.ft. He has also added 20%

compensation for better situation and location at the rate of Rs. 1.64 per sq.ft. In this way, as per the analysis of valuer, monthly compensation of suit premises during the said period was Rs. 9.84 per sq.ft.

46. Indicator No.2 is also a transaction of leave and licence agreement in respect of area 160.16 sq.ft.with monthly compensation of Rs. 18,000/- per month. As per analysis by valuer, monthly compensation of suit premises on the basis of rent and area is 9.36 sq.ft. and he also added 20% on account of situation and location which is @ of Rs. 1.87 per sq.ft.per month. Thus, as per Indicator No.2, total market rental of suit premises is Rs. 11.23 per sq.ft. per month.

47. By taking average of above market rental @ of Rs. 10.53 sq.ft. p.m. with round figure monthly market rental has shown Rs. 11 per sq.ft. per month. Thus, accordingly gross mesne profit of suit premises is Rs. 47,300/- per month.

48. Now it is to be seen whether aforesaid analysis by valuer is proper, reasonable and based on reliable data. So far as agreements are concerned, both Indicators are registered documents, of which copies are attached with report. In my view, the area of suit premises is of 4300 sq.ft. However the area from Indicator No.2 is very less as compared to the suit premises. The need of the particular person and the area of premises are the major factors to decide the monthly compensation. In my view, considering the area of premises from Indicator No. 2, it will be not proper and reasonable to apply that rate to the suit premises.

49. So far as Indicator No. 1 is concerned, the area is near about similar to the suit premises. Both premises are also located in the same vicinity. In the present case, except the statement of Mr. Maniar (P.W.2) from cross-examination, what kind of facilities provided to the suit premises have not come on record. Furthermore, what kind of facilities available to the premises from Indicator No.1, also not discloses from report. As per report, nature of the building is a ground floor load bearing rubble masonry wall structure with A.C. sheet roof. Mr. Maniar (P.W.2) is a expert person from the field deciding market rental. Nothing has brought on record by other side which leads to create doubt about his report. In fact, other side has not adduced any kind of evidence to discharge the burden of proving profits actually received from use of suit premises. Accordingly, monthly market rental of Rs. 9.84 per sq.ft. shown as per Indicator I appears to be reasonable and fair.

50. Agreement (Exh. 24) is also registered leave and licence between plaintiff and aforesaid Indian Plywood Company in respect of godown No.13 from the same locality. It is to be noted that suit premises is godown No. 16 which appears to be very close to godown No. 13 having 4306 sq.ft area. Thus, the area of these two properties is the same. As per this agreement, monthly compensation of Rs. 42,000/-. Accordingly, as per this agreement, monthly compensation of suit premises would be of Rs. 9.75 per sq.ft. per month. Merely, agreement Exh. 24 has executed by plaintiff company is not a ground to discard it. In fact, according to me, instance from agreement Exh. 24 which is

of the year 2004 is most relevant and applicable to the present case.

51. From aforesaid discussions, two market rental i.e. as per Indicator No. 1 Rs. 9.84 per sq.ft. per month and Rs. 9.75 per sq.ft.per month as per agreement Exh. 24 has come on record. Thus, average market rental is of Rs.9.80 i.e. to say Rs. 10/- per sq.ft.per month. What transpires from record was that originally transaction between the parties was of tenancy. It is the only capital share of defendant is more than the prescribed limit, the provisions of MRCA not made applicable. If provisions of MRCA would be applicable, the situation i.e. date of possession becoming unlawful would be different. In my view, this fact also needs to be taken into consideration while deciding mesne profits to the suit premises. Thus, average rental of suit premises comes to Rs. 10/- per sq.ft. per month. As per this rate, monthly compensation of suit premises comes to Rs.43,000/-. According to me, this monthly mesne profit is reasonable, fair and proper considering the nature of the suit premises.

52. In the case of **Fateh Chand (supra),** the Hon'ble Apex Court has held that, *" plaintiff is entitled to mesne profits from the defendant together with interest on such profits."* Thus, in the present case also plaintiff is entitled to interest on the mesne profits amount since it has become due. Undisputedly, the tenancy from the present matter is a monthly tenancy. However, considering the nature of present inquiry it is just and proper to grant simple interest per annum to the plaintiff on year mesne profit amount, instead of each monthly mesne profit amount.

53. Respondent in cross-examination to Mr. Maniar (P.W.2) has suggested interest rate of 6% per annum. Mr. Maniar (P.W.2) in cross-examination by defendant voluntarily stated that today i.e. in the year 2018, interest rate is being paid @ 8 % per annum. Considering all these facts and Section 34 of CPC interest @ 6 % per annum would be just and proper.

54. From overall discussions, following facts are made clear :

a) Area of the suit premises – 4300 sq.ft.
b) Date of possession becoming unlawful – 01.08.2001
c) Date of possession received by the plaintiff – 16.08.2013
d) Average market rental of suit premises – Rs. 10/- per sq.ft.per month.
e) Plaintiff is entitled to mesne profits from the date of possession becoming unlawful till handing over the possession i.e. for the period from 01.08.2001 till 16.08.2013.
f) Monthly gross mesne profits of suit premises – Rs. 43,000/-.
g) Rate of interest 6 % per annum.

55. Now for more clarity and to decide the actual quantum of mesne profits amount with interest as on today, it is necessary to put all these facts in tabular form, as follows: -

Sr. No.	Period	No. of months till 16.08.2013	Total mesne profits amount @ Rs. 43,000/- p.m. till 16.08.2013 in Rs.	No. of years as on today i.e. 30.07.2026 (round factor adopted)	Amount of interest @ 6% per annum till today i.e. 30.07.2026 in Rs.	Gross Total amount (C+E) in Rs.
	A	B	C	D	E	F
1.	01.08.2001 to 31.12.2001	5	2,15,000	24.58	31,7082	532,082
2.	01.01.2002 to 31.12.2002	12	5,16,000	23.58	7,30,037	1,246,037
3.	01.01.2003 to 31.12.2003	12	5,16,000	22.58	699,076	1,215,076
4.	01.01.2004 to 31.12.2004	12	5,16,000	21.58	668,117	1,184,117
5.	01.01.2005 to 31.12.2005	12	5,16,000	20.58	637,157	1,153,157
6.	01.01.2006 to 31.12.2006	12	5,16,000	19.58	606,197	1,122,197
7.	01.01.2007 to 31.12.2007	12	5,16,000	18.58	575,237	1,091,237
8.	01.01.2008 to 31.12.2008	12	5,16,000	17.58	544,277	1,060,277
9.	01.01.2009 to 31.12.2009	12	5,16,000	16.58	513,317	1,029,317
10.	01.01.2010 to 31.12.2010	12	5,16,000	15.58	482,357	998,357

11.	01.01.2011 to 31.12.2011	12	5,16,000	14.58	451,397	967,397
12.	01.01.2012 to 31.12.2012	12	5,16,000	13.58	420,437	936,437
13.	01.01.2013 to 16.08.2013	7.5	322,500	12	232,200	554,700

Gross Total due amount as on 30.07.2026 = 1,30,90,388/-

56. From aforesaid discussion, **point No. 2 is answered in the Affirmative. Point No. 3 is answered Rs.10/- per sq.ft. per month and point No.4 in the Affirmative interest at rate of 6% p.a.**

AS TO POINT NO. 5:-

57. Mrs. Aparna Khatu (D.W.1)/ (R.W.1) on behalf of defendant has filed her affidavit of examination-in-chief. She stated that defendant company was not in possession, occupation or use of suit premises since about 1996 till today. The defendant company does not have any goods and articles of whatsoever nature in the suit premises. The suit premises was in exclusive use and occupation, possession of respondent. Thus in short, as per defendant in any event recovery or claim of mesne profits from the defendant does not arise. Considering the defence of respondent, in my view cross-examination of this witness by respondent is more relevant.

58. During cross-examination by plaintiff Mrs. Aparna Khatu (D.W.1)/ (R.W.1) stated that, no document was executed between defendant and respondent before putting respondent in possession of the suit premises. This witness in cross-examination by respondent has stated as under:

> "*It is correct to say that my mother Panna Khatau did not dispute the relationship between defendant and respondents. I am director of defendant company since 2013. I have gone through the record of company relating to the suit premises. I have no idea how respondent came into possession of the suit premises which are tenanted by the defendant company.*
>
> *Defendant company generally maintain the records of correspondence relating to the suit premises. It is true to say that Mr. Bharadwaj was the Manager of defendant company.*
>
> *Now photocopy of receipt dated 15.11.2003 is shown to me. It is not true to say that defendant company has issued this receipt acknowledging amount of Rs. 2,00,000/- towards security deposit. It is not true to say that defendant company every month accepted Rs. 20,000/- towards monthly rent in cash from the respondent.*
>
> *I learnt that respondent is in occupation of the suit premises when the bailiff went to the suit premises to serve the notice.*

> *It is correctly stated that it is the contention of respondent No.2 that they are in lawful occupation since 15.04.2001. Defendant company did not initiate any proceeding for eviction of the respondent."*

59. Aforesaid cross-examination by respondent, made out that according to respondent, they were in legal possession of the suit premises through defendant. However, interestingly it is worthy to note that in reply respondent contended as, "*admittedly, the respondents are in possession of the suit premises from last many years with the knowledge and consent of the plaintiff and inspite of same the respondents have not made party to the eviction suit."* In my view, this statement on the part of the respondent made clear that respondent is claiming possession of the suit premises independently otherwise than through defendant.

60. Irrespective of above fact, it is also pertinent to note that during the trial of eviction suit and even also in Appeal, defendant conducted the Trial with contention that they are in possession of the suit premises. Aforesaid facts made situation more clear that both defendant and respondent were claiming independent possession to the suit premises, as like there was no privity of contract between them.

61. Now in view of aforesaid facts and circumstances, it is to be seen whether legal principles from the cases relied by the defendant can be made applicable to the present case or not. In the case of **Shri. Dnyandev Tukaram Kashirsagar (supra),** the

Hon'ble Parent High Court has relied upon the legal principle from the case of **Marshall Sons & Co. (I) v/s. Sahi Oretrans (P) Ltd.**, wherein the Hon'ble Apex Court has held that if the execution of a decree is resisted by the obstructionist, then obstructionist is liable to pay mesne profits equivalent to the market rate.

62. Both plaintiff and defendant have relied on the legal principle from the case of **Lucky Kochuvareed (supra),** wherein the Hon'ble Apex Court has held that, *"As a rule, therefore, liability to pay mesne profits goes with actual possession of the land. That is to say, generally, the person in wrongful possession and enjoyment of the immovable property is liable for mesne profits. But, where the plaintiff's dispossession, or, his being kept out of possession can be regarded as a joint or concerted act of several persons, each of them who participates in the commission of that act would be liable for mesne profits even though he was not in actual possession and the profits were received not by him but by some of his confederates. In such a case where the claim for mesne profits is against several trespassers who combined to keep the plaintiff out of possession, it is open to the court to adopt either of the two courses: It may by its decree hold all such trespassers jointly and severally liable for mesne profits, leaving them to have their respective rights adjusted in a separate suit for contribution; or, it may, if there is proper material before it, ascertain and apportion the liability of each of them on a proper application made by the defendant during the same proceedings."*

63. In view of aforesaid principles, a person who was in actual possession of the suit premises is liable to pay mesne

profits. Now in this case, as per respondent, they were in possession of the suit premises since prior to the year 2001 with the consent of plaintiff. It is a matter of record that respondent has not entered into the witness box. For this reason, plaintiff has not got opportunity to test the veracity of aforesaid statement. Furthermore, respondent has caused obstruction to the execution of warrant of possession and thus their claim stands decided. Now respondent cannot take stand that they were not party to the eviction suit and Appeal, therefore, not made liable to pay mesne profits.

64. In this case, what is important to note that defendant was the original tenant of the suit premises. Defendant resisted the Trial of the suit and even Appeal with contention that they are in possession of the suit premises. Being a tenant, defendant is the best person to show how respondent came in possession of the suit premises. Considering the position of defendant, in my view, without any contract of privity between defendant and respondent, it would not be lawful for respondent to remain present in the suit premises for such long period. But it is interesting to note that both respondent and defendant are acting as like they do not known to each other even till today. In such situation, in my view, it is difficult to assess the actual role and liability of defendant and respondent independently.

65. As respondent fails to appear into the witness box, whether defendants have profiteered from suit premises by way of rent has not come on record. Being in actual possession of the suit premises and as failed to show any kind of privity of contract either with plaintiff or defendant, in my view respondent is liable

to pay mesne profits to the plaintiff. Furthermore, defendant has also failed to show the manner in which respondent came in possession of the suit premises. As defendant has failed to show any kind of privity of contract with respondent, in my view defendant is also jointly and severally liable to pay mesne profits along with respondent. Accordingly, with respect to the legal principle from the case of **Marshall Sons & Co. (supra)** is not useful to the defendant to fasten the entire liability on the respondent.

66. In view of aforesaid discussion, I hold that both defendant and respondent are jointly and severally liable for mesne profits payable to the plaintiff / decree holder. Accordingly, **this point is answered as shown before it.**

67. In the present inquiry, issue of limitation is not raised by either party. Hence in my view it is not necessary to deal with that issue.

AS TO POINT NO. 6:-

68. In view of findings, points No. 1 to 5 plaintiff / decree holder is entitled to mesne profits @ Rs. 10% per sq.ft.per month (i.e. to say Rs.43,000/- per month) with interest @ 6% p.a. for the period from 01.08.2001 till 16.08.2013 (of which gross total amount has come Rs.1,30,90,388/- [Rupees One Crore Thirty Lakhs Ninety Thousands Three Hundred Eighty Eight Only]. Further decree holder is also entitled to interest @ 6% p.a., on aforesaid gross amount until payment by other side. Decree is also liable to pay court fees on aforesaid quantified

gross amount i.e. Rs.1,30,90,388/-. It is not the contention of either defendant or respondent that during Trial of litigation, they have paid any amount towards rent / compensation to the plaintiff. **<u>In the result following order is passed.</u>**

:<u>ORDER :</u>

1. Mesne profits application is allowed with costs.
2. Both defendant and respondent jointly and severally liable do pay the amount of Rs.1,30,90,388/- [Rupees One Crore Thirty Lakhs Ninety Thousands Three Hundred Eighty Eight Only] along with simple interest at 6% per annum from the date of this order until payment, towards Mesne profits for the period 01.08.2001 to 16.08.2013.
3. Plaintiff/ decree holder do pay the Court fees on the amount of Rs.1,30,90,388/-.
4. After payment of court fees, final decree be drawn up accordingly.

[Judgment pronounced in open Court.]

Digitally signed by MULE SAMADHAN KASHINATH
Date: 2026.07.30 17:53:27 +0530

[S.K. Mule]

Date :30/07/2026 **Judge, C. R. No.16**