

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT NO.1
IN
MARJI APPLICATION NO.195 OF 2019
IN
MESNE PROFITS APPLICATION NO.690 OF 2013
IN
T.E. & R. SUIT NO.125/154 OF 2008

The Dilwara Co-operative Housing Society Ltd.	 Plaintiffs
Versus	
Punjab and Sindh Bank	 Defendant

Mr. A.H. Gandhi, learned advocate for the Plaintiffs.
Mr. S.M. Shah, learned advocate for the Defendant.

Coram :- O.S.Patil
Judge, C.R.No.19
Date :- 06/06/2019

ORAL ORDER :

The plaintiff has filed this application for corrections in the Judgment and Decree dated 13/02/2019 passed in Mesne Profits Application No. 690/2013 in T. E. & R. Suit No. 125/154 of 2008 pertaining to the calculation of the amount of the mesne profits and interest.

2. In short, it is the contention of the plaintiff that the plaintiff had filed Mesne Profits Application No.690 of 2013. The defendant filed

Appeal No.17 of 2011 against the Judgment and Decree dated 18/01/2011 passed in T.E. & R. Suit No.125/154 of 2008. The defendant, in the said Appeal was ordered to deposit in the Court the sum of Rs.200/- per sq. ft. per month from the date of Decree i.e. 18/01/2011 till disposal of the Appeal. The defendant, as per the order of the Hon'ble Appellate Court, deposited Rs.6,00,000/- per month at the rate of Rs.200/- per sq. ft. per month from 18/01/2011. The defendant handed over vacant possession of the suit premises to the plaintiff on 17/08/2015. Accordingly, the defendant stopped depositing the sum of Rs.6,00,000/- per month in this Court from 17/08/2015. The defendant has accordingly deposited sum of Rs.3,17,80,644/- only for the period of 18/01/2011 to 17/08/2015 at the rate of Rs.6,00,000/- per month. Prior to the said order dated 02/12/2011 the defendant was paying to the plaintiff monthly sum at the rate of Rs.85/- per sq. ft. upto 17/01/2011. The defendant has paid the plaintiff sum of Rs.1,08,12,811.70 ps. for the period 06/05/2008 to 17/01/2011. The mesne profit application was heard on merits and by Judgment and Decree dated 13/02/2019 this Court was pleased to allow the said application. In the operative part of the Judgment and Decree the defendant is ordered to pay at the rate of Rs.300/- per sq. ft. per month for the period from 06/05/2008 to 17/08/2015 which comes to Rs.8,76,43,294.70 ps. The defendant has paid Rs.4,25,93,455.70 ps. being aggregate amount. Therefore, the defendant is liable to pay principle amount of Rs.4,50,49,839. The simple interest at the rate of 6% on the said amount comes to Rs.27,02,990.34. Therefore, the defendant is liable to pay Rs.4,77,52,829.34. In the operative part of the said order this Court has calculated principle mesne profit amount as Rs.2,62,10,000/- and

towards interest Rs.15,72,600/-. Therefore, some error is crept while calculating the amount in operative part. Therefore the plaintiff requests to correct the said order.

3. The defendant has strongly resisted this application by filing its say at Exhibit 5. In short, it is the contention of this defendant that the defendant proposed to file Appeal against the Judgment and order of this Court dated 13/02/2019. The application of the plaintiff is not maintainable. The defendant has deposited a sum of Rs.6,00,000/- for a period from 18/01/2011 to 17/08/2015 amounting to Rs.3,30,00,000/-. The defendant has in all paid to the plaintiff a sum of Rs.82,58,710/- for the period of 06/05/2008 to 17/01/2011. The area of the suit premises is admittedly 3000 sq. ft. The defendants are ordered to pay Rs.9,00,000/- at the rate of Rs.300/- per sq. ft. per month for a period from 06/05/2008 to 17/08/2015 which comes to Rs.2,86,48,386/-. The defendant has paid Rs.3,30,00,000/-. Therefore, it is incorrect to say that the defendant is liable to pay Rs.4,50,49,839.00. As per the order dated 13/02/2019 the defendants are only liable to pay Rs.3,73,89,676 only and the amount of interest at the rate of 6% p.a. would come to Rs.15,72,600/- and not as claimed by the plaintiff. The calculations shown by the plaintiff is not correct. Therefore, rectification in the calculation as claimed by the plaintiff cannot be allowed. Hence the defendant requests to reject this application.

4. Heard both sides. Perused the material on record. The copy of Judgment and order dated 13/02/2019 shows that the mesne profit

application of the plaintiff is allowed by this Court. It is further held that, the plaintiff is entitled to the mesne profits regarding the suit premises at the rate of Rs.300/- per sq. ft. per month for the period starting from 06/05/2008 to 17/08/2015 i.e. Rupees Three Lakhs per month along with 6% interest i.e. Rupees Two Crore Sixty Two Lakhs and Ten Thousand towards mesne profits and Rupees Fifteen Lakhs Seventy Two Thousand and Six hundred towards interest.

5. It is the contention of the plaintiff that the defendant is liable to pay principle amount of Rs.4,50,49,839/- and simple interest of Rs.27,02,990.34. On the contrary, it is the contention of the defendant that the defendant is liable to pay a sum of Rs.3,73,89,676/- towards principle amount and a sum of Rs.15,72,600/- towards interest. This Court has calculated Rs.2,62,10,000/- towards principle amount and Rs.15,72,600/- towards interest. Therefore, considering the rate at which mesne profit is granted by this Court and contention of the plaintiff and the defendant, there remains no manner of doubt that some error has occurred in calculating sum amount. Learned counsels for the plaintiff and defendant submitted that purpose would be served by deleting the said amount of calculation in the order. Therefore, considering this submission, I deem it fit to delete the said amount of calculation in the order in the Judgment and decree dated 13/02/2019.

6. This Court has directed the defendant to pay the said amount within three months from 13/02/2019. Learned counsel for the defendant requests to extend this period of three months from today. On the

contrary, learned counsel for the plaintiff submits that instead of three month this period could be extended by one month. But, considering the error in the order and amount mentioned in the order, I deem it fit to add 'dated 06/06/2019' in para No. 4 of the order. Hence, I pass the following order :-

: ORDER :

1. Application is allowed.
2. The words “i.e. Rupees Three Lakhs per month” and “i.e. Rupees Two Crore Sixty Two Lakhs and Ten Thousand towards mesne profits and Rupees Fifteen Lakhs Seventy Two Thousand and Six hundred towards interest” are deleted from para No.2 of the operative order and the word 'thereon' is added after the word 'interest' and words 'dated 06/06/2019' are added after the word 'order' in paragraph No. 4 of the operative order of the Judgment and Decree dated 13/02/2019 passed in Mesne Profits Application No. 690/2013 in T. E. & R. Suit No. 125/154 of 2008.
3. Judicial Clerk is directed to carry out the corrections.

[O.S.Patil]
Judge, C.R.No.19*

Order Dictated & Typed on :- 06/06/2019
Order Checked & Signed on :- 07/06/2019