CNR NO.MHSCA20013222021

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT - 47
IN
MESNE PROFIT APPLICATION NO.225 OF 2021
IN
T.E. & R. SUIT NO.70/82 OF 2004

Mr. Baldota Brothers ... Applicants/ (Orig. Plaintiffs)

Versus

1. M/s. Popular Finance Corporation (India) & Ors. ... Respondents/ (Orig. Defendants)

Coram : U. S. Babar
Judge, C. R. No.9
Date : 18/08/2026

ORDER :

1. Defendant No.2 has filed this application for permission to file additional evidence affidavit alongwith the documents.

2. It is contended by the defendant that plaintiffs have made mesne profit application in respect of the suit premises. Matter is part heard. Plaintiffs have closed their evidence. Cross-examination of the defendants is in progress. It is the case of this defendant that their Divisional Office-XI was in operation from the suit premises till 19/07/2004. Thereafter it was shifted from the suit premises to the Sterling Cinema Building. Without prejudice to the defence of this defendant, it is submitted that if defendant No.2 is liable to pay the mesne profit, then the same are limited to the period from the date of filing of the suit till they remove their Divisional Office from the suit

premises to the Sterling Cinema Building and handed over possession to the Court Receiver. In alternatively, it is the case of defendant No.2 that they had made an application showing their intention to relinquish the possession of the suit premises as per Order XX Rule 12(C)(ii) of the Civil Procedure Code, 1908.

3. It is further contended by defendant No.2 that while studying the old files relating to the above matter, the said witness came across certain documents which show that defendants had engaged the services of Movers and Packers to shift the record of Divisional Office-XI from the suit premises to the Sterling Cinema Building. Defendant No.2 had quoted a tender dated 05/07/2004 for the said purpose. Three quotations were received by defendant No.2 for the said purpose. The contract was awarded to M/s. Lakshgeet Enterprises. These documents will show that defendant No.2 had taken steps to remove their office from the suit premises to the Sterling Cinema Building. This is vital evidence in support of case of the defendant. Therefore, defendant No.2 be permitted to lead additional evidence alongwith the documents.

4. Plaintiffs have filed reply at Exhibit-48 and contended that the application is false, vexatious and not maintainable at all. Mr. N. Jason Mathew does not have any authority to file the application on behalf of defendant No.2. It is filed to delay the hearing of the mesne profit application and to avoid the liability of payment. This matter is pending for further cross-examination of defendant No.2. As per the affidavit filed on 01/11/2004, defendant No.2 never handed over possession of the suit premises to the Court Receiver or to the Respondent No.1 or to the applicants. They have

not produced any documents to show that they have handed over the possession of the suit premises to the Court Receiver. It is the matter of record that applicants have received the possession of the suit premises on 14/02/2020. Decree has been passed against both the respondents as such the liability continues for the period from 01/06/2004 to 14/02/2020 as per the Judgment and Decree dated 05/06/2021 T.E. & R. Suit No.70/82 of 2004.

5. Applicants further contended that respondent No.2 has filed evidence affidavit on 22/07/2024 at Exh.37 alongwith list of documents at Exh.38. Thereafter application filed by respondent No.2 for additional evidence at Exh.40 was allowed by the Court on 21/10/2024. Respondent No.2 has adopted delaying tactics. There is no provision to permit the party again and again to lead additional evidence. There is no reference of any such document in the written statement filed by respondent No.2 to the mesne profit application. Documents were within their knowledge and they have intentionally not filed with their previous affidavit. Cross-examination of the witness of the defendant No.2 is in progress and it is not completed. All the documents referred therein are of the year 2004 and not any subsequent documents. Hence, the application be rejected.

6. Perused the application and say filed. Heard learned advocates of both the sides. I have gone through the case laws filed by respondent No.2 at Exhibit-51

7. By this application, respondent No.2 is seeking permission to file additional evidence affidavit alongwith the documents with respect to the shifting of their office from the suit premises to the Sterling Cinema Building on 19/07/2004. It is contended by

respondent No.2 that while studying the old files relating to the above matter, the said witness came across certain documents which show that defendants had engaged the services of Movers and Packers to shift the record of Divisional Office-XI from the suit premises to the Sterling Cinema Building. Defendant No.2 had quoted a tender dated 05/07/2004 for the said purpose. Three quotations were received by defendant No.2 for the said purpose. The contract was awarded to M/s. Lakshgeet Enterprises. These documents will show that defendant No.2 had taken steps to remove their office from the suit premises to the Sterling Cinema Building. This is vital evidence in support of case of the defendant.

8. Applicant has denied all the contentions in the application and stated that there is no such provision to permit the respondents to file additional evidence affidavit again and again and there is no such pleading in the written statement filed by the respondents to mesne profit application in respect of shifting of the office from the suit premises on 19/07/2004. Respondents were already in possession of these documents, but they have not filed it alongwith earlier evidence affidavit. Respondent No.2 has no authority to file this application. Cross-examination of respondent No.2 is in progress. There is no any document produced on record to show that respondents have handed over possession of the suit premises to the Court Receiver in the year 2004. It is a matter of record that applicants have received the possession of the suit premises on 14/02/2020. Therefore, the liability to pay the mesne profit continues for the period from 01/06/2004 to 14/02/2020 as per the Judgment and Decree dated 06/05/2020 passed in T.E.&R. Suit

No.70/82 of 2004.

9. Applicants have filed the mesne profit application in respect of the suit premises in view of the Judgment and Decree dated 06/05/2020 passed in T.E. & R. Suit No.70/82 of 2004. On perusal of Judgment of the said suit, it appears that in operative part in Clause No.2, it is mentioned that, “Defendant Nos.1 and 2 jointly and severally shall pay the mesne profit to the plaintiffs pertaining to the suit premises, more particularly mentioned in the plaint for the period from 01/06/2004 to 14/02/2020”. It is an admitted fact that applicants have received the possession of the suit premises on 14/02/2020. Mesne profit application is pending for cross-examination of respondent No.2 and it is in progress. Admittedly already by passing order below Exhibit-40, the Court has allowed respondent No.2 to file an additional evidence on 21/10/2024.

10. On perusal of written statement filed by respondent No.2 at Exhibit-15, it reveals that it is contended by the respondents that they have handed over vacant possession of the suit premises to Respondent No.1 through the Court Receiver in the year 2004. In this application, it is contended by respondent No.2 that while studying the old files relating to the above matter, the said witness came across certain documents which show that defendants had engaged the services of Movers and Packers to shift the record of Divisional Office-XI from the suit premises to the Sterling Cinema Building. Defendant No.2 had quoted a tender dated 05/07/2004 for the said purpose. Three quotations were received by defendant No.2 for the said purpose. The contract was awarded to M/s. Lakshgeet Enterprises. These documents will show that defendant No.2 had taken steps to

remove their office from the suit premises to the Sterling Cinema Building. Respondent No.2 has not mentioned all these facts in the written statement filed to the mesne profit application. Moreover, they have not produced any documentary evidence in support of their contention in the application. It is settled law that the evidence beyond pleading cannot be taken into consideration. Admittedly, the cross-examination of respondent No.2 is in progress and it is not yet completed. In such circumstance, respondent No.2 cannot file additional affidavit of evidence during the pendency of his cross-examination by disturbing normal rules of evidence and that too, which is beyond the pleadings in the defence. Respondent No.2 has not given any explanation as to why he has not pleaded the said facts and produced documents alongwith the written statement or in their earlier evidence affidavit as these facts and documents are relating to the year 2004.

11. Respondent No.2 has relied upon the following case laws :-

i)	**Babasaheb Mete v/s Sumanbai Saraf & Ors., 2008(4) Mh.L.J. 502;**
ii)	**Rajesh Varma v/s Aminex Holdings and Insestments & Ors., 2008(3) Mh.L.J. 460;**
iii)	**Ramchandra Tatyaba Ingale v/s Mugutrao Balasaheb Ingale (since deceased) through his legal heirs Malini alias Malan Mugutrao Ingale & Ors., 2015(3) Mh.L.J. 266.**

I have carefully gone through the case laws cited by Respondent No.2. As the facts in the aforesaid case laws are different than the case in hand, the ratio laid down in the aforesaid case laws are not helpful to respondent No.2.

12. With the aforesaid discussion, I am of the view that this application is filed to prolong the matter and to avoid the payment of liability of mesne profit in view of the order passed in T.E. & R. Suit No.70/82 of 2004. Further I do not find any substance in the application. Hence, it is liable to be rejected. Hence, I pass the following order :-

: ORDER :

1. Application is rejected.
2. No order as to the costs.

DISTRICT COURTS MAHARASHTRA

Digitally signed by UJJWALA SANDIP BABAR
Date: 2026.08.18 17:03:58 +0530

Mumbai **(U. S. Babar)**
Date : 18/08/2026 **Judge, C.R. No.9**

Directly dictated on PC on : 18/08/2026
Checked & Signed on : 18/08/2026