



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**CIVIL REVISION APPLICATION NO. 283 OF 2022**

Maharashtra Tourism Development Corporation Limited **...Applicant**

**Versus**

Indian Express Newspapers (Bombay) Pvt. Ltd. **...Respondent**

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**Mr. S.M. Gorwadkar, Senior Advocate** with Mr. Varun Thanawla i/b Ms. Kavita Solunke, for the Applicant.

**Mr. Surel Shah, Senior Advocate** with Mr. Amol Joshi & Ms. Tejasvi Ghag i/b Ms. Poorvi Kamani, for the Respondent.

Mr. Sanjay Dhekane, Senior Manager (Legal), MTDC, present.

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**CORAM: SANDEEP V. MARNE, J.**

**Reserved On: 20 April 2026.**

**Pronounced On: 5 May 2026.**

**Judgment:**

1) The Revision Application is filed by Maharashtra Tourism Development Corporation Limited (**MTDC**) challenging the judgment and order dated 8 February 2019 passed by the Appellate Bench of the Small Causes Court dismissing Misc. Appeal No.62 of 2013 and confirming Trial Court's decision dated 16 October 2012 in Mesne Profits Misc. Application No.20 of 2007. The Trial Court has determined mesne



profits in respect of the suit premises at Rs.163/- per sq. feet per month from 31 January 2001 to 31 December 2005 and at Rs.233/- per sq. feet per month from 1 January 2006 till the date of delivery of possession i.e. 30 December 2010 alongwith interest @ 6%p.a.

2) Office premise admeasuring 5950 sq.ft. (carpet area) on 9<sup>th</sup> floor of the building 'Express Tower', situated at Nariman Point, Mumbai-400 021 are the '**suit premises**'. According to the Applicant, the land in question was originally leased by the Government of Maharashtra to the Respondent-Indian Express Newspapers (Bombay) Pvt. Ltd. (**Indian Express**) on 2 September 1963 who constructed a building thereon. By virtue of the Lease Deed dated 8 December 1972, the Government of Maharashtra leased the land and the building to Indian Express. It is the case of the Respondent that by draft agreement sent on 4 January 1975, the Government was put in possession as tenant in respect of the suit premises. MTDC was formed by the Government of Maharashtra as an extension of tourism department with 100% share owned by the Government and directors of MTDC being appointed by the Government.

3) Indian Express filed TE&R. Suit No. 73/79 of 2001 seeking recovery of possession of the suit premises from MTDC. The suit was resisted by MTDC by filing written statement contending *inter-alia* that the Government of Maharashtra was the tenant in respect of the suit premises and the tenancy was protected under Section 3(a) of the Maharashtra Rent Control Act, 1999 (**MRC Act**). The Trial Court however



decreed the suit on 16 March 2004 directing MTDC to handover possession of the suit premises to the Indian Express.

4) MTDC filed Appeal No. 323 of 2004 challenging the eviction decree dated 16 March 2004. During pendency of the appeal, MTDC paid to Indian Express interim compensation of Rs.8,30,97,451/-. The Appeal Court however dismissed the Appeal of MTDC on 6 March 2009. The Appellate Court's decree was challenged by the Applicant in Civil Revision Application 634 of 2009 which came to be dismissed by order dated 18 November 2009. The Apex Court refused to entertain the Special Leave Petition filed by MTDC. MTDC accordingly handed over possession of the suit premises to Indian Express on 30 December 2010. During pendency of the Appeal, Indian Express had taken out Mesne Profits Misc. Application No. 20 of 2007 for determination of mesne profits for the period from 30 January 2001 to 30 December 2010. The application was opposed by MTDC. Based on pleadings, Small Causes Court framed issues. Parties led evidence in support of their respective claims. Indian Express examined its Director-Vaidehi Thakar as P.W.1 and Harshad Maniar- Architect and valuer as P.W.2. MTDC examined Sanjay Dhekane as D.W.1 and Yatish Kini-Architect and valuer as D.W.2. After considering the pleadings, documentary and oral evidence, the Small Causes Court proceeded to allow Mesne Profits Misc. Application No. 20 of 2007 by judgment and order dated 16 October 2012. The Court determined mesne profits in respect of the suit premises at Rs.163/- per sq. ft. per month from 31 January 2001 to 31 December 2005 and at Rs.233/- per sq. ft. per month from 1 January 2006 till the date delivery of



possession i.e. 30 December 2010. The Trial Court granted interest @ 6%p.a. in favour of the Indian Express.

5) MTDC filed Appeal No. 62 of 2013 before the Appellate Bench of the Small Causes Court. The Appeal has been dismissed vide judgment and order dated 8 February 2019, which is the subject matter of challenge in the present Revision Application. By order dated 28 August 2023, this Court admitted the Revision Application and granted stay to the impugned orders subject to deposit of entire decretal amount in the Small Causes Court within a period of 12 weeks. It appears that on account of failure on the part of the Applicant, the stay to the impugned orders has not remained operational and this is clarified by the Court vide order dated 30 July 2024.

6) It appears that the Applicant had deposited an amount of Rs. Rs.8,30,97,451/- which has been withdrawn by the Respondents. Additionally, Respondent has shown willingness to pay to the Respondent further amount of Rs. 2,00,00,000/- at the time of closure of the proceedings for judgment. With the consent of the learned counsel appearing for the parties, the Revision Application is called out for final hearing.

7) Mr. Gorwadkar, the learned Senior Advocate appearing for the Revision Applicant-MTDC submits that the Applicant is not liable to pay any mesne profits in respect of the suit premises since the decree itself is a nullity. He submits that the Applicant has raised the said issue in Writ Petition No. 1595 of 2026. That the land on which building is constructed belongs to the State Government, who has become the owner in respect of the building. That occupation of the suit premises is



thus by the State Government in capacity as owner and not as a lessee. That the State Government and MTDC are not distinct entities for the purpose of application of provisions of Section 3(1)(a) of the MRC Act. That the suit itself was not maintainable and the decree passed therein is a nullity. That the issue of lack of jurisdiction is never *res-judicata* and can be examined even in a collateral proceeding.

8) Without prejudice, Mr. Gorwadkar submits that the Small Causes Court has determined excessive amount towards mesne profits without properly appreciating the valuation report relied upon by the Applicant's valuer. That the Small Causes Court has erroneously considered only the valuation report of Plaintiff's witness. He submits that the inquiry into mesne profits conducted by the Small Causes Court is thus perfunctory. That MTDC, being a Government entity, cannot be saddled with the liability to pay such excessive amount of mesne profits when the State Government is the owner, not only of the land but also of the building. He therefore prays for setting side the orders passed by the Trial and the Appellate Courts.

9) Per contra Mr. Surel Shah, learned Senior Advocate appearing for the Respondent-Indian Express opposes the Revision Application submitting that the issue of decree being a nullity is sought to be agitated for the first time before this Court and that issue was never the subject matter of dispute before the Trial and the Appellate Courts. That the Applicant cannot be permitted to argue before this Court something which was never raised before the Courts below. That in any case, the decree has attained finality on account of its confirmation by



the Appellate Court, by this Court and by the Apex Court. That the issue of applicability of provisions of Section 3(1)(a) of the MRC Act cannot be raised in a mesne profit enquiry. That Applicant is otherwise a statutory Corporation having paid up share capital in excess of Rs.1 crore. That therefore provisions of MRC Act are not applicable to the tenancy of the Applicant and this position is confirmed by the Trial Court in its judgment. That the Applicant had not challenged the jurisdiction of the Small Causes Court under Section 41 of the Presidency Small Causes Court Act,1882 (**PSCC Act**) and cannot now be permitted to raise the said issue in mesne profits inquiry. That filing of the present Revision Application is gross abuse of process of law.

10) Mr. Shah further submits that the orders passed by the Trial and Appellate Courts are well supported by the evidence on record. That both the Courts have relied upon valuation report of Mr. Harshad Maniar, who has taken into consideration comparable instances of premises in the same building as against instances taken into consideration by the Applicant's valuer. Mr. Shah submits that even after adjusting the amount of Rs.8,30,97,451/- deposited by the Applicant and withdrawn by the Respondent, an amount of Rs. 17.90 crores is due and payable by the Applicant towards mesne profits. He prays for dismissal of the Revision Application.

11) Rival contentions raised on behalf of the parties now fall for my consideration.



12) The limited remit of inquiry in the present Revision Application is about the correctness of inquiry conducted by the Small Causes Court under Order 20 Rule 12(c) of Civil Procedure Code, 1908 **(the Code)** while determining the mesne profits in respect of the suit premises. The other related issue is the correctness of the quantum of mesne profits determined by the Trial Court as upheld by the Appellate Bench. The Applicant-MTDC has suffered a decree for eviction dated 16 March 2004 in TE & R. Suit No.73/79 of 2001. The suit was filed by Indian Express under the provisions of Section 41 of the PSCC Act contending that the MTDC is not a protected tenant and that under Section 3(1)(b) of the MRC Act, it is not entitled to protection of the said Act. The Trial Court specifically framed an issue about applicability of provisions of Section 3(1)(b) of the MRC Act and answered the same against the Applicant and in favour of Respondent-Indian Express. After holding that the Applicant is not entitled to protection from eviction and rent control under the MRC Act, the Trial Court proceeded to decree the suit by judgment and order dated 16 March 2004 directing the Applicant to handover possession of the suit premises to Indian Express with further direction for payment of mesne profits from the date of the suit till handing over of possession of the suit premises. For that purpose, the Trial Court directed conduct of inquiry under Order 20 Rule 12(c) of the Code. The eviction decree passed by the Trial Court has been confirmed in Appeal vide judgment and order dated 6 March 2009. The Appeal Court has also considered and decided whether the provisions of Section 3(1)(b) of the MRC Act apply to the premises in question. Applicant-MTDC preferred Civil Revision Application No.634 of 2009 in this Court, which was dismissed by order dated 18 November 2009. This Court also



negated the contention of the Petitioner that the tenancy was created in favour of the State Government since a specific ground to that effect was raised in para-13 of the Revision Application. The Applicant-MTDC carried the challenge before the Apex Court and once again urged the issue of State Government being the real tenant and relied upon letter dated 4 January 1975. The Apex Court however dismissed Special Leave Petition (C) No.35024 of 2009 by order dated 5 January 2010.

13) This is how the eviction decree passed in T.E.& R. Suit No.73/79 of 2001 got confirmed upto the Hon'ble Apex Court. In view of the above discussion, I am not inclined to go into the issue as to whether the decree is a nullity or not. The issue of State Government being the real tenant was specifically raised while challenging the decree and the same cannot be permitted to be raised in mesne profits inquiry. In any case, the Applicant has filed separate Writ Petition No.1595 of 2026 challenging an order passed in execution proceedings in which its objection about decree being nullity was rejected. I am therefore confining the present Revision Application to the core issue about correctness of quantum of mesne profits decided by the Trial and the Appellate Courts.

14) The Small Causes Court has conducted an inquiry into mesne profits and by order dated 16 October 2012 has determined the mesne profits in respect of the suit premises @ Rs.163/- per sq.ft. per month from 31 January 2001 to 31 December 2005 and @ Rs.233/- per sq.ft. per month from 1 January 2006 till 30 December 2010 when



possession of the suit premises is handed over to the Respondent-Indian Express .

15) In support of its claim, Applicant-Indian Express examined its Director-Mrs. Vaidehi Thakkar and Valuer-Mr.Harshad Maniar. On the other hand, the Applicant-MTDC examined Mr. Yatish Kini as its valuer. However, it transpired that Mr. Harshad Maniar took into consideration comparable instances in respect of the premises located on 4<sup>th</sup> , 12<sup>th</sup> and 13<sup>th</sup> floor of the same building in respect of the first block period from 2001 to 2005 and in respect of the premises on 1<sup>st</sup> and 13<sup>th</sup> floor for second block for the period from 2006 to 2010. On the other hand Mr. Yatish Kini, valuer of Applicant-MTDC, determined valuation on the basis of comparative method, capitalization method and multiplier method. However, Mr. Yatish Kini did not use comparative indicators for depicting market rental for the relevant inquiry period for quantifying the mesne profits.

16) Therefore, the Small Causes Court has preferred to rely on valuation report of Mr. Harshad Maniar (P.W.2) as compared to the valuation report of Mr. Yatish Kini (D.W.2). I do not find any error on the part of the Small Causes Court in doing so.

17) I have gone through the valuation report of Mr. Harshad Maniar, as well as his deposition recorded in the mesne profits inquiry. Mr. Maniar divided the inquiry period into two groups (i) 2001 to 2005 and (ii) 2006 till 2010. In respect of Group-1 period from 2001 to 2005, he has taken into consideration four comparable instances of offices located



in the same building on 4<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> floor which depicted following position:

<u>Name of licensee</u>	M/s. Pathak & Associates	Lasalle Partners (I) Pvt. Ltd	The Bank of New York	Delta Air-lines INC
<u>Date of Agreement</u>	16-5-2000	8-01-2001	29-6-2000	1-2-2001
<u>Area</u>	8061 s.ft.	2272 s.ft. B.U.A.	2900 s.ft. B.U.A.	3200 s.ft. B.U.A.
<u>Premises</u>	Office premises on 12 <sup>th</sup> floor	13 <sup>th</sup> floor	12 <sup>th</sup> floor	4 <sup>th</sup> floor
<u>License period</u>	36 months form 1-6-2000	36 months form 15-2-2001	36 months form 22-6-2000	36 months form 1-2-2001
<u>Compensation (A)</u>	Rs. 110/- p.s.ft. Including taxes	Rs. 80/- p.s.ft.	Rs. 100/- p.s.ft.	Rs. 155/- p.s.ft. Including air-conditioning
<u>Centrally Air Conditioning charges (B)</u>	Rs. 20/- p.s.ft.	Rs. 20/- p.s.ft.	Rs. 20/- p.s.ft.	-----
<u>Other building servise charges (C)</u>	Rs. 20/- p.s.ft. B.U.A.	Rs. 50/- p.s.ft. B.U.A.	Rs. 32.50/- p.s.ft.	Rs. 11/- p.s.ft.
<u>Option of Renewal</u>	After 36 monthd at 15% increase in licensee fee	After 36 monthd at 15% increase in licensee fee	After 36 monthd at 15% increase in licensee fee	After 36 monthd at 15% increase in licensee fee
<u>Additional Municipal taxes if any from</u>	From 1-6-2000 to be borne by licensee	From 15-2-2001 to be borne by licensee	To be borne by licensee	To be borne by licensor
<u>Interest free security deposit</u>	Rs. 72,54,9000/-	Rs. 20,44,800/-	Rs. 26,53,500/-	Rs. 39,68,000/-
<u>Doc. No.</u>	BBE -4455 2000	R-3 BBB- 997 2001	R-3 BBB- 5893 2001	R-3 BBB- 996 2001

18) The Valuer-Mr. Harshad Maniar took into consideration factors of monthly compensation, charges for centralized air conditioning, building services and interest on security deposit and held



that for Group-1 period of 2001 to 2005, the license fees was paid as under:

- (i) M/s. Pathak & Associates-12th floor- Rs.157.31/- per sq. ft per month.
- (ii) Lasalle Partners (I) Pvt. Ltd -13 floor Rs.157.31/- per sq. ft per month.
- (iii) The Bank of New York-12 floor- Rs.159.93/- per sq. ft per month.
- (iv) Delta Air-lines INC-4 floor - Rs.176.07/- per sq. ft per month.

19) By considering the variable trend of four comparable instances for Group-1 period, the Valuer opined that the rate would be Rs.163/- per sq.ft. per month. Accordingly, the Trial Court has awarded mesne profits in respect of Group-1 period from 2001 to 2005 at Rs.163/- per sq.ft. per month. However, it is seen that in respect of three comparable instances of M/s. Pathak & Associates, Lasalle Partners (I) Pvt. Ltd and The Bank of New York, mesne profits were only in the range of Rs.157/- to Rs.159/- per sq.ft. per month. In my view, therefore fixation of mesne profits @ Rs.163/- per sq.ft. per month for Group-1 period appears to be on a slightly higher side. Also, the above rates are considered by adding interest component of Rs.9.75% on the security deposit. Otherwise, the base rents were only in the range of Rs.150/- per sq.ft. per month in all the three comparative instances. In my view, therefore considering the peculiar facts and circumstances of the present case, where the Petitioner is an undertaking of Government of Maharashtra, it would be appropriate to direct slight reduction in respect of the rate of mesne profits from Rs.163/- to Rs.150/- per sq ft per month in respect of Group-1 period from 2001 to 2005.



20) Coming to the Group-2 period from 2006 to 2010, the valuer, Mr. Harshad Maniar took into consideration two comparable instances in respect of the licensees of Indian Express viz Bank of America and Jones Lang Lasalle Property Consultant (I) Pvt. Ltd. which depicted following position:

<u>Name of licensor</u>	Indian Express Newspapers (Mumbai) Pvt. Ltd.	Indian Express Newspapers (Mumbai) Pvt. Ltd.
<u>Name of licensee</u>	Bank of America	Jones Lang Lasalle Property Consultant (I) Pvt. Ltd.
<u>Date of Agreement</u>	21-8-2006	15-3-2007
<u>Area</u>	5100 s.ft. B.U.A.	2272 s.ft. B.U.A.
<u>Premises</u>	Office premises on 1 <sup>st</sup> floor in Express Tower Building	Office premises on 13 <sup>th</sup> floor in Express Tower Building
<u>License period</u>	21-8-2006 to 20-9-2009 for 37 months	15-02-2007 to 14-11-2009 for 37 months
<u>Compensation (A)</u>	Rs. 125/- p.s.ft.	Rs. 125/- p.s.ft.
<u>Amenity charges (B)</u>	Rs. 100/- p.s.ft.	Rs. 100/- p.s.ft.
<u>Option of renewal</u>	No option	No option
<u>Municipal taxes</u>	To be borne by licensor	Existing taxes to be borne by licensor and increase in taxes, if any will be borne by licensee
<u>Interest free security deposit</u>	Rs. 68,25,000/-	Rs. 30,67,200/-
<u>Doc. No.</u>	BBE -1 8794 2006	-----

21) After adding factors of amenity charges and interest on security deposit, the valuer Mr. Harshad Maniar considered the rentals in respect of two comparable instances on the 1<sup>st</sup> and 13<sup>th</sup> floors as under:



- (i) Bank of America -1 floor- Rs.232.80/- per sq. ft per month.
- (ii) Jones Lang Lasalle Property Consultant (I) Pvt. Ltd -13 floor- Rs.232.87/- per sq. ft per month.

22) Considering the two comparative instances, the Valuer recommended average rent of Rs.233/- per sq.ft per month for Group-B period from 2006 to 2010. The Trial Court has accepted the same and has directed payment of mesne profits @ Rs.233/- per sq. ft per month from 1 January 2006 to 30 December 2010.

23) In respect of Group-2 period also, slight reduction in the rate of mesne profits is warranted. The base monthly compensation in respect of both the instances of Bank of America and Jones Lang Lasalle Property Consultant (I) Pvt. Ltd. was Rs.125/- to which amenity charges of Rs.100/- per sq.ft. per month were added. Furthermore, the valuer considered 7% interest on security deposits and thereafter recommended rental value of Rs.233/- per sq.ft. per month. In that view of the matter, it would be appropriate to fix mesne profits in respect of Group-2 period @ Rs.200/- per sq.ft. per month.

24) Grant of some reduction in the rates of mesne profits in favour of the Applicant is thus fully justified based on the comparable instances cited by the valuer of Indian Express. Additionally, this Court also took into consideration the fact that the Applicant is a State Government undertaking and is not in a position to bear the financial burden of paying mesne profits at commercial rates in respect of a fairly large property admeasuring 5950 sq.ft. in Nariman Point in Mumbai. Reduction in rate of mesne profits would provide some solace to the



Applicant, who has expressed inability to deposit the decretal amount despite order passed by this Court on 28 August 2023. In fact, this is a reason why, in his usual fairness, Mr. Shah has not very strenuously opposed the suggestion made by this Court during the course of hearing for slight reduction in the amount of mesne profits.

25) The Applicant was a protected tenant in respect of the suit premises during the regime of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. On account of introduction of provisions of Section 3(1)(b) of the MRC Act which came into effect on 31 March 2000, the Applicant lost protection from eviction and rent escalation. The provision of Section 3(1)(b) was newly introduced and it took some time for excepted entities to understand its true effect. The provision got interpreted by Courts and finally the situation got settled that the entities like MTDC do not enjoy protection from rent control and eviction, like several other entities, who have lost rent control protection, the Applicant also tried its luck for protecting its possessory right in respect of the suit premises upto the Apex Court and in the process, has incurred liability to pay mesne profits in respect of the suit premises. In my view therefore this slight reduction in the rate of mesne profits would therefore provide some solace to the Applicant which is a Government of Maharashtra undertaking and a public body.

26) Considering the above position, the Civil Revision Application succeeds partly, and I proceed to pass the following order:



(i) Orders passed by the Small Causes Court on 16 October 2012 in Mesne Profits Misc. Application No.20 of 2007 and by the Appellate Bench on 8 February 2019 in Misc. Appeal No.62 of 2013 are modified to the quantum of mesne profits.

(ii) It is directed that the Applicant-MTDC is liable to pay to the Respondent-Indian Express mesne profits in respect of the suit premises admeasuring 5950 sq.ft carpet area @ Rs.150/- per sq.ft. per month from 31 January 2001 to 31 December 2005 and @ Rs.200/- per sq.ft. per month in respect of the period from 1 January 2006 till 30 December 2010 alongwith interest @ 6% p.a.

27) Civil Revision Application is **allowed** to the above extent. There shall be no order as to costs.

**(SANDEEP V. MARNE, J.)**