

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.554 OF 2013

IN

APPEAL NO.183 OF 2009

IN

MISC. NOTICE NO.57 OF 2004

IN

T.E. & R. SUIT NO.229/274 OF 2000

Central Bank of India ... Applicant  
Vs.  
Anil Puranmal Bansal & Anr. ... Respondents

Mr. Sharan Jagtiani, Adv. for the applicant.

Mr. G.S. Godbole, Adv. i/b. I.A. Bagaria, Adv. for the Respondents.

**CORAM : R.G. KETKAR, J.**

**DATE : 28<sup>th</sup> JANUARY, 2014.**

**PC :**

Heard Mr. Sharan Jagtiani, learned counsel for the applicant and Mr. G.S.Godbole, learned counsel for the respondents at length.

2. By this application U/s.115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') the applicant has challenged the judgment and order dated 20<sup>th</sup> January, 2007 passed by the learned Judge, Court Room No.16 of Small Causes Court at Mumbai in Misc. Notice No.57 of 2004 as also the judgment and order dated 30<sup>th</sup> March, 2013 passed by the Appellate Bench of the Small Causes Court at Mumbai in Appeal No.183 of 2007. By these orders, the Courts below allowed the notice taken out by the respondent Nos.1 and 2 and directed applicant to pay amount of mesne profits in respect of the suit premises admeasuring 7000 sq.ft. built up area at the rate of Rs.140/-

per square ft. p.m. with effect from 1<sup>st</sup> October, 2000 to 31<sup>st</sup> March, 2003 together with simple interest thereon at the rate of 6% p.a. from 1<sup>st</sup> October, 2000 till realisation of entire amount.

3. Mr. Jagtiani states that the amount of Rs.2,46,49,754.50 as per the impugned orders is deposited in the Small Causes Court at Mumbai on 27<sup>th</sup> June, 2013.

4. In support of this application, Mr. Jagtiani submitted that the Courts below committed serious error in entertaining Misc. Notice No.57 of 2004 taken out by the respondents in T.E. & R Suit No.229/274 of 2000 and granting relief to the respondents. He submitted that the respondents took out Misc. Notice No.4705 of 2004 in eviction suit No.1486/4851 of 1983 for the mense profits. The respondents were, therefore, not entitled to persue another application claiming same relief in respect of same premises being suit premises. He submitted that the Courts below also committed serious error in interpreting Order 20 Rule 12 of C.P.C. He invited my attention to contention raised by the respondents before the Appellate Court. The respondents contended that the applicatin made by them is maintainable under Order 20 Rule 12 (1) (ba) of C.P.C. Mr. Jagtiani submitted that in the facts and circumstances of the present case the said provision is not at all applicable. He submitted that the respondents had earlier instituted suit in the year 1983, after

terminating the tenancy by issuing notice dated 29<sup>th</sup> May, 1982 and 19<sup>th</sup> June, 1982. The prayer in the suit was only of possession, no prayer for mense profits was made. The decree passed by the Courts below was finally confirmed by the Apex Court and eventually the applicant handed over possession on 31<sup>st</sup> March, 2003.

5. On the other hand Mr. Godbole submitted that the applicant had challenged the judgment and order dated 19<sup>th</sup> October, 2003 passed by the learned Trial Judge whereby the notice filed by the applicant for dismissal of T.E. & R. Suit No.229/274 of 2000 and interim notice No.108 of 2007 came to be discharged. On behalf of the applicant it was contended that since it has already handed over possession of the suit premises in pursuance of the order of the Apex Court, the suit is barred by principles of resjudicata. The learned Trial Judge discharged the notice by observing that the Court has power to grant mense profits or to issue direction for inquiring into mense profits under Order 20 Rule 12 of the C.P.C. The Revisional Court dismissed the revision application preferred by the applicant summarily. Mr. Godbole submitted that the decisions were not challenged by the applicant and, therefore, have attend finality.

6. In my opinion a fairly arguable questions are raised. Hence, Rule. Mr. Bagaria waives service on behalf of respondent Nos.1 and 2. List the application along with Civil Revision Application No.137 of

2010.

7. As noted earlier the applicant has already deposited amount of Rs.2,46,49,754.50 in the Small Causes Court on 27<sup>th</sup> June, 2013. Respondent Nos.1 and 2 are permitted to withdraw the said amount after furnishing solvent security to the satisfaction of the Registrar (Judl.II). The Registrar (Judl.II) shall hear both the parties before accepting the security furnished by respondent Nos.1 and 2. Mr. Godbole submits that in the event of the Registrar (Judl.II) permitting respondent Nos.1 and 2 to withdraw the amount, they will abide by the order that may be passed while disposing of the proceedings. Till such time the Registrar (Judl.II) passes the order, amount deposited by the applicants shall be invested in any Nationalised Bank for a period of 45 days, if not, already invested. It is expressly made clear that the contentions of the respondent Nos.1 and 2 that the applicants are precluded from agitating the maintainability of the suit as also maintainability of Misc. Notice No.108 of 2007 including the present application are expressly kept open. If the Registrar (Judl.II) permits respondent Nos.1 and 2 to withdraw the amount the respondent Nos.1 and 2 shall abide by the order that may be passed while disposing of the proceedings.

**( R G. KETKAR, J.)**