

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY*****CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 16661 OF 2023****Punjab And Sind Bank****..... Petitioner****VERSUS****The Dilwara Co Operative Housing Society Ltd.****Thr. Its Hon. Secretary U. M. Katre****..... Respondent**

Mr.Sujeet Kurup for the Petitioner.

Mr.Sukand R.Kulkarni for the Respondent.

**CORAM: RAJESH S. PATIL, J.****DATE : 10 JANUARY, 2024****P.C. :-**

This civil writ petition is filed by the petitioner bank who has suffered eviction decree. The challenge in the writ petition is only as regards to the mesne profit order passed by the Court of Small Causes. The mesne profit order concurrently holds that the petitioner herein should pay the mesne profit at the rate of Rs.300/- per sq.ft. per month, till handing over of the possession.

2. The petitioner had also challenged the eviction order by way of Writ Petition No. 6536 of 2014. The said writ petition is

pending before this Court, only as regards the “additional ground rent and certain other payments”. The question whether the same would be payable by the petitioner/bank or by the respondent, is in dispute?.

3. The issue as regards to the possession is settled as the possession of the subject premises is already handed over to the respondent society on 17 August, 2015. There is no dispute on this issue.

4. Be that as it may, the present writ petition is only limited to the issue whether the mense profit payable by the petitioner/bank would be at the rate of Rs.300/- per sq.ft. per month or at the rate of Rs.197/- per sq.ft. per month.

5. By an order dated 14 February, 2023 passed in Writ Petition No. 12048 of 2022, which challenged the order dated 18 June, 2022, passed below Ex.8 and the order dated 10 August, 2022, passed below Ex.12, the said writ petition was allowed and the

petitioner bank was directed to deposit the arrears of mesne profit at the rate of Rs.200/- per sq.ft. per month from 6 May, 2008 to 17 August, 2015, along with interest at the rate of 6% per annum.

6. Both the learned counsel agree that the said amount as mentioned in the order dated 14 February, 2023 was deposited by the petitioner bank in the Court of Small Causes. However, learned counsel appearing for the respondent society is disputing the calculation of the amount as recorded in the order dated 14 February, 2023.

7. Today the fact remains that the petitioner bank has only deposited mesne profit at the rate of Rs. 200/- per sq.ft. per month, when the concurrent findings recorded by the Small Causes Court, the mesne profit is calculated at the rate of Rs.300/- per sq.ft. per month.

8. In such a situation, the petitioner is directed to deposit the

balance mesne profit at the rate of Rs.100/- per sq.ft. per month along with interest accrued thereon as per the directions given in the impugned judgment and order within a period of four weeks from today.

9. At this stage, learned counsel for the petitioner seeks time of six weeks to deposit the amount, without prejudice to their rights and contentions. The petitioner is granted time of six weeks to deposit the balance mesne profit at the rate of Rs.300/- per sq.ft. per month, along with interest accrued thereon.

10. Matter to come up on board on **6 February, 2024**.

**[RAJESH S. PATIL, J.]**