



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 15557 OF 2024

IN

CIVIL REVISION APPLICATION NO. 98 OF 2021

1. State Bank of India
a Statutory Corporation incorporated
under the State Bank of India Act, 1955.
Having its Corporate Office at
State Bank Bhavan, M.C. Road,
Nariman Point, Mumbai – 400 021.

2. State Bank of India Quarters
Irla Society, Near Velankani Church,
Vile Parle (West),
Mumbai – 400 057.

..Applicants

In the matter between

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..Applicants

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RAMCHANDRA
SANKPAL

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ARUN
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Versus

Amum Builders
a Partnership Firm, having its
Office at 256, LT Marg, Opposite
Commissioner's Office,
Mumbai – 400 002

...Respondent

Adv Sonal, with Hritika Shroff and Pranay Patil, i/b Ankit R. Tripathi,
for the Applicants.

Mr. Mayur Khandeparkar, i/b Neel Gala, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 25th SEPTEMBER 2025

ORDER:

1. This Application is preferred to stay the effect, operation and implementation of the Mesne Profits Petition No. 3 of 2021 pending before the Court of Small Causes at Bandra, Mumbai, arising out of the judgment and decree passed by the Appellate Bench of the Court of Small Causes in Appeal No. 12 of 2016 in T.E. & R. Suit No. 14/23 of 2008.

2. The Applicants are the tenants in respect of the Suit premises. The Respondent-landlord instituted the Suit i.e., T. E. & R. Suit No. 14/23 of 2008 to regain the possession of the land situated at Irla Society, Vile Parle (W), Mumbai (“the Suit property”). The Trial Court dismissed the Suit by a judgment and decree dated 2nd May 2016.

3. In Appeal No. 12 of 2016, preferred by the Respondents, the Appellate Bench partly allowed the Appeal and directed the Applicants to handover vacant possession of the Suit premises.

4. Being aggrieved, the Applicants preferred Civil Revision Application No. 98 of 2021. By an order dated 21st July 2023, this Court

passed ad-interim relief in terms of prayer clause (b) in the Civil Revision Application, which reads as under:

“b) That pending the hearing and final disposal of this Civil Revision Application, this Hon’ble Court be pleased to stay the effect, operation and implementation of the Judgment and Decree dated 26.02.2021 passed by the Appellate Bench of the Hon’ble Small Causes Court in Appeal No. 12 of 2016 in T.E. & R Suit No. 14/23 of 2008.”

5. By a further order dated 28th November 2023, this Court directed the Applicants to deposit interim compensation @ Rs.5,50,000/- per month with effect from 1st December 2007 and continue to deposit the interim compensation at the said rate on or before the 15th day of each month.

6. Pursuant to the decree passed by the Appellate Court, the Respondent-Plaintiff had filed Mesne Profits Petition No. 3 of 2021. On 21st October 2024, the Applicants filed an Application to stay the proceeding in Mesne Profits Petition No. 3 of 2021 till the final disposal of Civil Revision Application as this Court has stayed the execution, operation and implementation of the decree by orders dated 21st July 2023 and 28th November 2023.

7. By the impugned order dated 21st October 2024, the learned Judge, Court of Small Causes rejected the Application observing that

there was no stay to the proceedings in Mesne Profits Petition No. 3 of 2021.

8. Being aggrieved, the Applicants have taken out this Application in Revision Application No. 98 of 2021.

9. An Affidavit in Reply is filed on behalf of the Respondent-Plaintiff resisting the prayers in the Application. The substance of the resistance put-forth by the Respondent is that the enquiry for determination of *mesne profit* cannot be stayed as it is considered to be in the form of a separate money suit. Stay can only be granted to the execution of the decree so far as the delivery of possession of the Suit premises.

10. I have heard Ms. Sonal, the learned Counsel for the Applicants, and Mr. Mayur Khandeparkar, the learned Counsel for the Respondent, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

11. Ms. Sonal, the learned Counsel for the Applicants, submitted that the learned Judge, Court of Small Causes, has taken a very constricted view of the matter. Laying emphasis on the prayer clause (b) of the Revision Application (extracted above), Ms. Sonal would urge that this Court has, by way of interim relief, stayed the effect, operation and implementation of the decree passed by the Appellate Bench in its entirety. It is, therefore, not open for the Respondent to contend that the

stay operates only in respect of eviction of the Applicants pursuant to the impugned decree.

12. Ms. Sonal would further urge that, the Applicants have been depositing the interim compensation as determined by this Court. The interest of the Respondent-Plaintiff is thus adequately protected. In the event in Civil Revision Application, this Court sets aside the decree passed by the Appellate Bench, time and effort put in the Mesne Profits Petition would be wasted. Therefore, the impugned order deserves to be quashed and set aside and the proceedings in Mesne Profits Petition No. 3 of 2021 deserve to be deferred till the final possession of the Civil Revision Application lest anomalous situation would ensue, submitted Ms. Sonal.

13. As against this, Mr. Khandeparkar, the learned Counsel for the Respondent-Plaintiff, submitted that there is no error or infirmity in the impugned order. The learned Judge has rightly recorded that the proceeding in the Mesne Profits Petition have not been stayed. Taking the Court through the provisions of Order XX Rule 12 of the Code of Civil Procedure, 1908 (“the Code”), Mr. Khandeparkar would urge that the right to apply for ascertainment of *mesne profits* accrues when the Trial Court passes a decree for delivery of possession and orders enquiry into the *mesne profits*. It is not necessary that the successful

party shall wait till the disposal of the proceedings before the Appellate Court/Revisional Court for determination of the *mesne profits*.

14. Any other view, according to Mr. Khandeparkar, would cause grave prejudice to the Decree Holder as the Decree Holder would be deprived of the fruits of the decree for an indefinite period if the proceeding for the *mesne profits* were to be initiated only after the decree for eviction has attained finality.

15. Mr. Khandeparkar would urge the exercise of ascertainment of the *mesne profits* could proceed, however, the execution of the order to pay the *mesne profits* may get deferred. To lend support to this submission, Mr. Khandeparkar placed a very strong reliance on a judgment of a learned Single Judge of this Court in the case of **Purushottam Bajranglal Agarwal & Anr Vs Nag Vastra Bhandar**.¹

16. I have given careful consideration to the submissions canvassed across the bar, and carefully perused the material on record.

17. To begin with, it is necessary to note that interim relief granted by this Court was in terms of prayer clause (b) (extracted above). Evidently, in the said prayer clause the Applicants have prayed for stay to the effect, operation and implementation of the Decree dated 26th February 2021 passed by the Appellate Bench. On a plain reading of the order passed by this Court on 21st July 2023 and the further order dated 28th November 2023, in conjunction with the prayer clause (b)

1 1979 Mh.L.J. 87.

(extracted above), one gets an impression that what has been stayed is the effect, operation and execution of the decree as a whole.

18. Mr. Khandeparkar made a strenuous effort to dispel the aforesaid apparent impression by canvassing a submission that the direction for determination of the *mesne profits* need not be stayed though the decree for possession is stayed. In the interregnum what can be stayed is the implementation of the order to pay *mesne profits* and not the ascertainment thereof, was the thrust of the submission of Mr. Khandeparkar.

19. Few provisions of the Code are required to be noted to appreciate the sustainability of the aforesaid submission. First, the provisions contained in Order XX Rule 12 of the Code, which prescribe what a decree for possession and *mesne profits* shall provide for. Rule 12 of Order XX (Bombay amendment) reads as under:

“12 Decree or possession and mesne profits.—(1)

Where a suit is for the recovery of possession of immovable property and for rent or *mesne profits*, the Court may pass a decree—

(a) for the possession of the property;

(b) for the rent or *mesne profits* which have accrued on the property during the period prior to the institution of the suit, or directing an enquiry as to such rent or *mesne profits*;

(c) directing an inquiry as to rent or *mesne profits* from the institution of the suit until—

(i) the delivery of possession to the decree-holder, or

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court.

(2) Where an inquiry is directed under clause (b) or clause (c) of sub-rule (1) above, a final decree in respect of the rent or *mesne profits* shall be passed in accordance with the result of such inquiry.”

20. In the context of the controversy at hand, a correct reading of Rule 12 of Order XX would imply that where a Court passes a decree for possession of immovable property, the decree may provide for, firstly, the delivery of possession of the property, secondly, for the rent or *mesne profits* which have accrued on the property during the period from the institution of the Suit or an enquiry as to such past rent or *mesne profits* and, thirdly, an enquiry as to future rent or *mesne profits* till the delivery of possession to the decree holder or relinquishment of possession by the judgment debtor.

21. A decree for delivery of possession of immovable property is, in a sense, a composite decree for possession of the property as well as the past and future *mesne profits* from the time the possession of the Judgment Debtor becomes wrongful. A direction for determination of

the *mesne profits* stems from the very decree for delivery of possession of the Suit property. A determination that the possession of the judgment debtor has become wrongful is a sine qua non for a claim for *mesne profits*. To put it in other words, a claim for *mesne profits* is a necessary adjunct of a decree for possession upon a declaration that the possession of the judgment debtor became wrongful.

22. What can be stayed by the Appellate Court? The provisions of Order XLI Rule 5 of the Code deserve to be noted. It reads as under:

5. Stay by Appellate Court.—(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Explanation.—An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.

23. Rule 5(1) is in three parts. The first part of the sub-Rule (1) of Rule 5 is of material significance. It provides that an Appeal shall not operate as a stay of proceedings under a decree or order appealed from, except so far as the Appellate Court may order. The second part further clarifies that the execution of the decree need not be stayed only for the reason that an appeal has been filed. The third part of sub-Rule (1) empowers the Appellate Court to order stay of execution of the decree for a sufficient cause. The first part would thus indicate that the Appellate Court is empowered to stay the proceedings under a decree or order Appealed from in its entirety or specific components thereof. Where a decree is passed for delivery of possession of immovable property and an enquiry into the past or future *mesne profits* is also ordered, the proceeding for the determination of the *mesne profits* fall within the ambit of the expression, “proceedings under a decree or order appealed from” which the Appellate Court is empowered to stay, like the execution petition filed for delivery of possession.

24. At this stage a reference may be made to the decision in the case of **Purushottam Bajranglal Agarwal (Supra)**, on which a very strong reliance was placed by Mr. Khandeparkar.

25. In the said case a learned Single Judge of this Court considered the question as to ‘when right to apply of ascertainment of *mesne profits* arises when a preliminary decree directs an enquiry as to future

mesne profits from the institution of the suit under Order XX Rule 12 (1)(c) of the Code'. The facts of the said case were such that, when the Judgment Debtor filed an Application in the Second Appeal for stay of the decree, the High Court had granted stay as regards the delivery of possession. A further direction was given that enquiry into the *mesne profits* shall not be stayed.

26. In the aforesaid backdrop, the learned Single Judge held that there was no clear indication in the provisions of Order XX Rule 12(1) (c) that the right to apply for *mesne profits* arises only after the happening of one of the events mentioned in Order XX Rule 12 (1)(c) of the Code. The provisions do not prohibit the Decree Holder from applying for ascertainment of the *mesne profits* or the provisions do not compel the Decree Holder to wait until any of the three events contemplated by Clause (c)(iii) occurs.

27. The learned Single Judge went on to observe that the direction to judgment Debtor to deposit certain amount towards *mesne profits* during the pendency of the Appeal would not also be an impediment for ascertaining the *mesne profits*. Such a direction had been given because the Judgment Debtor was allowed to continue in possession of the Suit premises. One of the objects of such direction, is to ensure that the Decree Holder, if ultimately he succeeds, is not required to spend further time in recovery of the amount due to him by way of *mesne*

profits. Therefore, the direction requiring the Judgment Debtor to furnish security or to deposit certain amount towards *mense profits* would not disentitle the Decree Holder from following the remedy of having the *mesne profits* ascertained.

28. The ratio of the aforesaid decision is required to be appreciated in the light of the facts of the said case. A material distinguishing factor in the said case was that, though the Appellate Court had stayed the decree to the extent of delivery of possession, a direction was issued that enquiry into *mesne profits* shall not be stayed. That brings into play the power of the Appellate Court under Order XLI Rule 5(1) of the Code (extracted above). The stay to the execution of the decree operates only so far as the Appellate Court directs.

29. In that case, the Appellate Court exercised the power to stay the execution of the decree only to the extent of delivery of possession and, therefore, all the proceedings under the decree cannot be said to have been stayed. That is not the case at hand. In the instant case, this Court has granted stay to the effect, operation and implementation of the decree passed by the Appellate Bench as a whole. Resultantly all the proceedings under the decree which is impugned in this Revision Application stand stayed.

30. Undoubtedly, in a given case, it would be open for the Appellate Court or Revisional Court to stay the execution and operation of the

impugned decree to the limited extent of delivery of possession. In that event, the proceeding for ascertainment of *mesne profits* can legitimately proceed unhindered. However, where the decree as a whole is stayed, like the case at hand, it may not be permissible to restrict the scope of the stay order to the delivery of possession of the property only.

31. Lastly, the submission of Ms. Sonal that, in the event, the decree is set aside by this Court the entire proceeding before the Trial Court in Mesne Profits Petition No. 3 of 2021 would be rendered futile, cannot be said to be unfounded. Apart from the time, efforts and resources of the parties, even the precious judicial time would be wasted. Therefore, looking from any perspective, the continuation of the proceedings in Mesne Profits Petition No. 3 of 2021 appears to be unsustainable. Resultantly, the Interim Application deserves to be allowed.

32. Hence the following order:

: O R D E R :

- (i) The Application stands allowed.
- (ii) The proceedings in Mesne Profits Petition No. 3 of 2021 and Execution Application No. 98 of 2023 shall

stand stayed until the final disposal of the Civil Revision

Application.

No costs.

[N. J. JAMADAR, J.]