
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 285 OF 2026

JAIN SAHAKARI BANK LIMITED

...APPLICANT

Versus

ASIT DHANKUMAR JAVERI AND OTHERS

...RESPONDENTS

**Mr. Bhushan Deshmukh, Mr. Ankit Tiwari, Mr. Pranav Kokje,
Mr. Karshil Shah i/b Mr. Mahadev Parab, *learned counsel for
the Applicant.***

None for the Respondents.

CORAM : ARUN R. PEDNEKER, J.

DATE : 18th SEPTEMBER, 2026.

Per Court :

1. Heard Mr. Pranav Kokje along with other learned counsel appearing for the Applicant.

2. By the present Civil Revision Application, the Applicant is challenging the order dated 5th February, 2026, passed by the Appellate Court dismissing Appeal No. 3 of 2019 and confirming the decree of eviction, while further directing a separate inquiry into mesne profits. The Applicant is also challenging the order dated 5th October, 2018, passed by the learned Trial Court in R.A.E. Suit No. 41/69 of 2005, whereby the learned Trial Court directed the

Defendants to hand over the vacant possession of the suit premises. The Applicant is the original Defendant No. 2 in the said eviction suit. The eviction suit was instituted by the present Respondent Nos. 1 to 6 against the Applicant and Respondent No. 8.

3. For the sake of convenience, the parties shall hereinafter be referred to by the designation assigned to them in the eviction suit.

4. The facts giving rise to the present Revision Application, in brief, are that the Plaintiffs are the Trustees of Sheth Hirachand Gurnanji Dharmashala Trust and are the owners and landlords of the property known as “Hira Baug”, situated at C. P. Tank, Mumbai - 400004 (hereinafter referred to as the “Suit Property”). In the said Suit Property, the Defendant No. 1 was the tenant in respect of Shop No. 10A (hereinafter referred to as the “Suit Premises”) at a monthly rent of Rs. 140/-. The Plaintiffs instituted R.A.E. Suit No. 41/69 of 2005, *inter alia*, alleging that the Defendant No. 1 had, without the consent of the Plaintiffs (Landlord), unlawfully sublet the Suit Premises to the Defendant No. 2. The Plaintiffs further alleged that the use and occupation of the Suit Premises by Defendant No. 2 amounted to nuisance and annoyance and constituted a breach of the terms and conditions of the tenancy. It is the case of the Defendants that Defendant No. 1 was not using the Suit Premises and was in need of funds amounting to Rs. 3,00,000/-. According to the Defendants, Defendant No. 2, being a bank, required the Suit Premises and pursuant to the suggestion of Mr. Dhankumar Javeri,

the Suit Premises were sublet to Defendant No. 2 against the financial assistance of Rs. 3,00,000/-, which was to be repaid by adjustment against the rent payable in respect of the Suit Premises.

5. The learned Trial Court, by its order dated 15th October, 2018, decreed the suit and held that Defendant No. 1 had unlawfully sublet the Suit Premises to Defendant No. 2. The learned Trial Court accordingly directed the Defendants to hand over vacant possession of the Suit Premises.

6. Being aggrieved by the said order, Defendant No. 2 preferred Appeal No. 3 of 2019 challenging the judgment and decree passed by the learned Trial Court. During the pendency of the said Appeal, the Applicant filed cross-objections and, *inter alia*, raised a claim in respect of mesne profits.

7. The Appellate Court, by its order dated 5th February, 2026, dismissed Appeal No. 3 of 2019 and confirmed the decree of eviction passed by the learned Trial Court. The Appellate Court, however, modified the judgment and decree passed in R.A.E. Suit No. 41/69 of 2005 by additionally directing as follows :-

“A separate inquiry into mesne profits shall be held from the date of the suit till delivery of possession.”

8. Accordingly, the Appellate Court directed that the issue of mesne profits be determined by way of a separate inquiry for the

period commencing from the date of institution of the suit until delivery of possession of the Suit Premises.

9. It is the contention of Defendant No. 2/Applicant that the sub-lease was created with consent of the landlord. However, factual findings of both the Courts below in this regard is against the Applicant. The Courts have discussed the evidence in detail and no error can be traced to the findings on sub-letting. Defendant No. 2 has not been able to establish the consent of Trust/Plaintiff to create sub-tenancy in favour of Defendant No. 2. Both the Courts have concurrently held that the premises is sub-let to Defendant No. 2 and Defendant No. 2 has challenged the order of learned Trial Court while Defendant No. 1 accepted the order of learned Trial Court.

10. Defendant No. 2 being aggrieved by such order of inquiry into mesne profits without the initial pleadings in the suit and confirming the decree of eviction has preferred the present Revision Application.

11. The important issue before this Court is :-

a. "Whether the Appellate Court could grant mesne profit from the date of institution of suit without there being pleadings and prayer in the suit for mesne profit till delivery of possession? i.e. this Court is called upon to examine the power of the Appellate Court under Order XLI, Rule 33 of the Code of Civil Procedure, 1908 ("**CPC**") to grant mesne profits when the same is not pleaded and prayed in the suit."

12. The law with regard to the power of Appellate Court under Order XLI, Rule 33 of the CPC is discussed in the case of **Banarsi & Ors. v/s. Ram Phal**¹. The Hon'ble Supreme Court has considered the scope of the powers of Appellate Court under Order XLI, Rule 33 of the CPC, in the absence of a cross-appeal or cross-objection. In Paragraph 13, the Hon'ble Supreme Court has held as below :-

“13. We are, therefore, of the opinion that in the absence of cross appeal preferred or cross objection taken by the plaintiff-respondent the First Appellate Court did not have jurisdiction to modify the decree in the manner in which it has done. Within the scope of appeals preferred by the appellants the First Appellate Court could have either allowed the appeals and dismissed the suit filed by the respondent in its entirety or could have deleted the latter part of the decree which granted the decree for specific performance conditional upon failure of the defendant to deposit the money in terms of the decree or could have maintained the decree as it was passed by dismissing the appeals. What the First Appellate Court has done is not to set aside the decree to the extent to which it was in favour of the appellant but also granted an absolute and out and out decree for specific performance of agreement to sell which is to the prejudice of the appellants and to the advantage of the respondent who has neither filed an appeal nor taken any cross objection.”

13. The Hon'ble Supreme Court in the case of **Banarsi** (*supra*) has held that, in the absence of a cross-appeal or cross-objection by the respondent, the First Appellate Court did not have jurisdiction to

¹ (2003)9 SCC 606.

modify the decree in a manner which granted an additional or enhanced relief in favour of the respondent and to the prejudice of the appellant. The Hon'ble Supreme Court further observed that a party seeking to challenge a part of the decree adverse to it must ordinarily avail itself of the remedy of an appeal or cross-objection.

14. In the case of ***Sattarsha Dibarsha & Ors. v/s. Ajizabi Dilbarsha & Ors.***,² in Second Appeal No. 280 of 2016, this Hon'ble Court held that the Appellate Court, while exercising its powers under Order XLI Rule 33 of the CPC, may, in appropriate circumstances, grant relief even in the absence of a specific prayer to that effect, where such exercise of power is considered necessary in the interests of justice. The relevant observations of this Hon'ble Court in the case of ***Sattarsha Dibarsha*** (*supra*) are contained in Paragraph 14 of the said order, which is reproduced hereinbelow :-

“14. From aforesaid, it can be seen that the Appellate Court is vested with wide powers to enable it to do complete justice between the parties so as to pass such decree or order as the case may require even in absence of any appeal or cross-appeal. Though it was urged on behalf of the appellants that only such relief that was prayed for in the plaint could be granted in exercise of such powers, I am not in a position to accept said submission. The exercise of these wide powers is not trammled by the absence of any prayer being made in the plaint. This exercise of power is, however, circumscribed for being exercised only in rare cases and when the facts of such case demand its exercise. Reference may be made to the judgment of the

² MANU/MH/1519/2017.

Honourable Supreme Court in Narayanrao (dead) through LRs. And others v. Sudarshan [1995 Supp (4) SCC 463]. Therein, a suit for partition and separate possession was filed. The trial Court decreed the suit. In the appeal filed by the defendant, the High Court while dismissing the same granted mesne profits to the plaintiffs. It was held that even though there was no prayer for grant of mesne profits and no issue in that regard was framed by the trial Court, the High Court rightly invoked the powers under Order XLI, Rule 33 of the Code for doing complete justice between the parties. Thus, the relief of mesne profits was granted even in absence of any prayer for the same.”

15. In the case of ***Narayanrao (Dead) through his Legal Heirs & Ors. v. Sudarshan***³, the Hon'ble Supreme Court considered a case where the Trial Court had not adjudicated upon the claim for mesne profits, as no specific pleadings and prayer for mesne profits and consequently no issue in that regard had been framed. The Hon'ble Supreme Court in the facts and circumstances of that case, has held that the High Court was justified in granting mesne profits. The said order of Hon'ble Supreme Court applies to the facts of the present case. The relevant observations of the Hon'ble Supreme Court are contained in Paragraphs 1 and 2 of the said order. The same are noted below :-

“1. The respondent-plaintiff instituted a suit for partition and possession of the suit property. The trial court decreed the suit. Before the trial court there was no issue regarding the mesne profits nor there was any prayer for the grant of mesne profits. The trial court, therefore, did not make any order so far as the

³ 1995 Supp (4) Supreme Court Cases 463.

entitlement of the respondent-plaintiff for mesne profits was concerned. The appellant-defendant went in appeal before the High Court. The High Court while dismissing the appeal granted mesne profits to the respondent-plaintiff. The High Court purported to act under order XLI, Rule 33 Civil Procedure Code in granting further decree for mesne profits.

2. We have heard learned counsel for the appellant. It is not necessary for us to go into the scope and interpretation of Order XLI, Rule 33 Civil Procedure Code in the facts and circumstances of this case. The High Court invoked order XLI, Rule 33 Civil Procedure Code for doing complete justice between the parties. The High Court was of the view that it was not a case where the trial court had denied decree for mesne profits but it was a case where it omitted to raise an issue in that respect. We see no infirmity in the judgment of the High Court in granting mesne profits in the facts and circumstances of this case. The appeal is dismissed with no order as to costs throughout.”

16. The order of Hon’ble Supreme Court in the case of ***Narayanrao (Dead) through his Legal Heirs*** (*supra*), squarely applies to the facts of the present case. In the case of ***Narayanrao (Dead) through his Legal Heirs*** (*supra*), although the learned Trial Court had not granted mesne profits as there was no prayer for the same, the Appellate Court in exercise of its powers under Order 41, Rule 33 of the CPC, granted mesne profits from the date of suit. The mesne profits are granted from the date of suit and not from the period prior to filing of the suit. This Court finds that the Appellate Court was justified in granting mesne profits in the present case. This Court therefore finds no error in the impugned judgment and order

warranting interference of this Court. Hence, the Civil Revision Application stands dismissed.

17. Civil Revision Application No. 285 of 2026 stands disposed of accordingly.

[ARUN R. PEDNEKER, J.]

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KRISHNA
KOTAWADEKAR

Digitally signed by
GITALAXMI KRISHNA
KOTAWADEKAR
Date: 2026.09.18
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