



Swapnil

7-WP-10888-2013.docx

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10888 OF 2013**

Bank Of Baroda ...Petitioner
Vs.
M/s. Natwarlal H. Mistry and Brothers ...Respondent

**WITH
INTERIM APPLICATION NO. 4226 OF 2026**

WITH
WRIT PETITION NO. 10818 OF 2013
Bank Of Baroda ...Petitioner
Vs.
M/s. Vanmalidas H. Mistry and Brothers ...Respondent

**WITH
INTERIM APPLICATION NO. 4227 OF 2026**

Mr. Anant R. Bamne i/b/ M/s. A. R. Bamne & Co for the petitioner.

Mr. Pradeep Wagh h/f. Ms. Vaishnavi Gujrati for respondent no.1.

CORAM : GAURI GODSE, J.

DATE : 29th AUGUST 2026

ORDER :

1. This writ petition is filed by the original defendant to challenge the orders dated 17th April 2009, 25th July 2013 and

3rd September 2013 in Appeal No. 715 of 2008. Order dated 17th April 2009 is not annexed to the writ petition. However, learned counsel for the applicant submits that it was an interim order which is already complied with. So far as order dated 25th July 2013 is concerned, it rejects the petitioner's application below Exhibit '20' for direction that the petitioner would not be liable to pay *mesne profits*. The said application is dismissed by the appellate bench of the Small Causes Court. It is held that the trial court had framed issues and held that the plaintiff is entitled to *mesne profits* from the date of filing of the suit by way of a separate inquiry. However, in the operative part there was no reference of the said inquiry to be conducted. It is further held that the said issue would be decided in the main appeal filed by the petitioner. By the third order that is impugned, the appeal against the eviction decree is dismissed.

2. Learned counsel for the petitioner submits that though in the operative part there is no direction by the trial court that there should be an inquiry under Order XX Rule 12 of the Civil Procedure Code, 1908 ("CPC"), the appeal court has not clarified that in the decree no such operative

directions are issued. He, therefore, submits that without any operative directions, there cannot be an inquiry of *mesne profits*.

3. I have perused the papers. In paragraph 16 of the trial court's judgment, the inquiry under Order XX Rule 12 of the CPC is directed. With reference to the said direction, the appeal court has observed in paragraph 21 of the impugned judgment that the trial court has specifically directed the inquiry under Order XX Rule 12 of the CPC. Hence, in view of the observations and directions of the trial court, the appellate court has observed that the findings of point no.3 regarding penal compensation cannot be faulted. The trial court has declined to grant any penal compensation prayed by the plaintiff. However, has directed a separate inquiry for *mesne profits*. Hence, the appeal court by framing a specific point for consideration, has refused to interfere with the direction of the trial court that there should be a separate inquiry for *mesne profits*.

4. Learned counsel for the petitioners submits that since the petitioner had offered to surrender the possession from 30th September 2011, the petitioner would not be liable to

make the payment of any *mesne profits* from 1st October 2011. So far as these contentions are concerned, both the courts have dealt with the grounds raised on behalf of the petitioner and has disbelieved that the possession was handed over as per the offer made by the petitioner. In view of these findings of facts, I do not find any substance in these arguments.

5. In view of the findings recorded by the trial court in paragraph 16 and the appeal court's observation in paragraph 21, I see no reason to exercise the powers under Article 227 of the Constitution of India to interfere with the impugned order. The directions for an inquiry under Order XX Rule 12 of the CPC has not caused any prejudice to the petitioner.

6. The writ petitions are devoid of any merits. Hence, the writ petitions are dismissed.

7. Pending interim applications, if any, are disposed of as infructuous.

[GAURI GODSE, J.]