



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**FIRST APPEAL NO.400/2011**

1. State of Maharashtra through  
Collector, Nagpur and Ex-officio,  
Secretary, Housing and Special Assistance  
Department, Government of Maharashtra.
2. The Deputy Collector and Competent  
Authority, U.L.C., Nagpur.
3. The Deputy Commissioner,  
Sales Tax, Eastern Division,  
Kamdar Bhavan, Ramdaspath,  
Nagpur.

... **APPELLANTS**

...**VERSUS**...

1. Smt. Usha wd/o Pravin Kamdar,  
Aged about 56 years,  
Occupation: Housewife,
2. Smt. Meghna w/o Anirudh Joshi,  
Aged about 32 years,  
Occupation: Business,
3. Smt. Harshada w/o Roopak Puni,  
Aged about 30 years,  
Occupation: Household,  
All R/o. 504, Neelgagan Hampyard Road,  
Dhantoli, Nagpur through their power of  
Attorney Holder Shri Aniruddha Joshi

...**NON-APPLICANTS**

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Shri Akshay Naik, Senior Advocate a/w Mrs. D.I. Charlewar, AGP for appellants  
Shri F. Mirza, Senior Advocate a/w Shri V.A. Kilor with Shri A.P. Bhuibhar, Advocate for  
respondents  
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**CORAM : PRAVIN S. PATIL, J.**

**DATE OF RESERVING THE JUDGMENT: 29.01.2026**

**DATE OF PRONOUNCEMENT OF JUDGMENT: 16.02.2026**

**JUDGMENT**

. Heard.

2. By way of present appeal, the challenge is to the judgment and order dated 30.11.2020 passed by Civil Judge Senior Division, in Mesne Profit Case No.04/2003, whereby the learned Court has directed the present appellants to jointly and severally pay an amount of Rs.1,02,72,112/- to the present respondent.

3. In brief the facts of the present case are as under:

One Pravin Jethalal Kamdar was the owner of the property bearing Nazul plot No.120 situated in Ward No. 73 Ramdaspath, Nagpur admeasuring 1656, sq.mtrs. having total built up area of about 6000 sq.ft. He has filed Special Civil Suit No.569/1998 against the present appellants before the Civil Court seeking a declaration that sale-deed obtained by the appellants by purporting to exercise a right of preemption under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (in short 'the said Act') be declared as null and void and also prayed for a decree of possession

of the suit property. In the same suit, the specific submission was made that he was always ready and willing to refund the amount of Rs.2,60,000/- to the appellants and, therefore, according to him, the possession taken by them is illegal and hence, further seeks relief to direct the inquiry into the mesne profit for determining the damages caused to him on account of illegal occupation and possession over the property of the appellants.

4. The suit filed by Pravin Kamdar was dismissed by the Civil Court by its judgment and decree dated 31.01.1992. Against the said judgment and decree, he has preferred First Appeal No.366/1992 before this Court. This Court allowed the appeal as per its judgment and order dated 26.04.1995. In paragraph No.34 of the judgment, this Court observed as under:

*“a) The decree for possession of the suit property, as described in the Schedule which is a part and parcel of the plaint, is passed against the defendants on the condition that within 2 months from the date of this order the plaintiff shall deposit in the trial court an amount of Rs.2,60,000/- which amount shall be paid to the defendants.*

*b) Claim for damages in the amount of Rs. 7,20,000/- is rejected.*

*c) On an application being made under Order 20 Rule 12 C.P.C., there shall be an inquiry into the future mesne profits from the date of deposit of the amount of Rs.2,60,000/- by the plaintiff in the trial Court till the date the possession is delivered to him if within one week from the date of the deposit of the consideration of Rs.2,60,000/- in the trial Court by the plaintiff the possession of the suit property is not restored to him by the defendants.*

*d) In the circumstances, however, the costs shall be as incurred by the parties.”*

5. As per the directions of this Court, he has deposited an amount of Rs.2,60,000/- on 23.06.1995. As such, considering the said facts, it was obligatory for the appellants to deliver the possession of the property within a period of one week from the date of deposit of the amount. However, the possession was not delivered to the present appellants.

6. According to appellant, against the judgment of this Court, they have preferred the Civil Appeal No.7291/1995 before the Hon'ble Supreme Court of India. Before the Hon'ble Supreme Court, earlier, ex-parte stay was granted in the matter. However, after appearance of the parties and pointing out the entire factual as well as legal position, the Hon'ble Supreme Court by its judgment dated 07.03.2000 has dismissed the petition.

7. After the judgment of the Hon'ble Supreme Court, the present appellants have handed over the possession of the suit property to the respondents on 20.04.2000. The present respondents are the legal representatives of Pravin Kamdar. As such, they received the possession of the suit property on 07.03.2000 after deposit of amount of Rs.2,60,000/- on 23.06.1995.

8. In the background of above said factual position, as liberty was granted by this Court, the respondents have filed the proceedings for inquiry of mesne profit vide Mesne Profit Case No.4/2003. Learned Civil Court after conducting inquiry in the matter by its judgment dated 05.07.2007 decreed the application and directed the present appellants to jointly and severally pay the amount of Rs.1,02,72,112/- to the respondents.

9. The said judgment of the Trial Court was challenged before this Court in First Appeal No.1462/2009. The said appeal was disposed of by this Court by judgment dated 19.12.2009, whereby the present respondents have filed the pursis by giving concession to appellants that if the appellants deposit 50% of the

decretal amount as per the judgment and decree dated 05.07.2007 in Misc. Petition No.04/2003 and permitted them to withdraw the same, then they have no objection to remit back the case to trial Court and grant permission to the appellants to cross-examine the respondents and to adduce evidence if any, within a time-bound period of three months. As the concession has been given by the present respondents in the said appeal, the appeal was allowed and the matter was remanded back to the Trial Court subject to deposit of 50% of decretal amount.

10. After reminding the matter to the Civil Court, the Civil Court has granted an opportunity of hearing to the appellants and also permitted to cross-examine the witnesses as directed by this Court. Thereafter, considering the submission of both the parties and evidence adduced on record by its judgment and order dated 30.11.2010, allowed the application and directed the present appellants to jointly and severally pay the amount of Rs.1,02,72,112/- with future interest at the rate of 9% per annum from the date of possession till its realisation.

11. The said judgment of the Trial Court is now challenged by way of present appeal in the matter. In the present appeal, the appellants have raised three grounds to challenge the judgment of the Civil Court. The first contention of the appellants is that there was no intimation at any point of time from the respondents about the deposit of Rs.2,60,000/- as directed by this Court. As such, they were not aware about the same. It is first time came to their knowledge while executing the possession receipt. Therefore, as they were not intimated about the deposit of Rs.2,60,000/-, there was no reason for them to handover the possession immediately to respondents.

12. The second contention raised by the appellants is that after the judgment delivered by this Court, on 26.04.1995, the prayer was made to continue the stay for further period of one month from the date of order. The same was continued and thereafter they have preferred the appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court of India initially granted a stay to the order of this Court and later on by its judgment dated 07.03.2000 dismissed the appeal. Immediately, after the dismissal of the appeal, within a period of two months,

they have delivered the possession to the respondents vide possession receipt dated 20.04.2000. Hence, according to them, there is no delay on their part to comply the directions given by this Court by its judgment dated 26.04.1995.

13. The third contention, which is raised by the appellants is that as per the provisions of Section 34 of the Civil Procedure Code, if there is no commercial transaction between the parties, the rate of interest on such amount should be at the rate of 6% per annum, however, in the present case, the rate of interest, which is prescribed as 9% per annum is not justified in terms of the provision of the Civil Procedure Code.

14. Per contra, learned Counsel appearing for respondents have strongly opposed the present application. It is pointed out by the respondents that initially when the trial Court has allowed the application under mesne profit by its judgment dated 05.07.2007, the appeal was preferred before this Court. In the said appeal, in view of the concession given by the present respondents, the matter was remanded back to the trial Court. At that time, the respondents have agreed to deposit 50% of the decretal amount and nowhere

raised the objections stating that no amount is required to be deposited as they have delivered the possession within time.

15. It is further pointed out that the present appellant then seeks application for modification of the order passed by this Court dated 19.12.2009 by moving Civil Application No.720/2010. In the said application, the same submission was made which is made in the present appeal that as the appellants have challenged the judgment and order of this Court before the Hon'ble Supreme Court and stay was operating in the said appeal, the possession of the appellants cannot be termed as illegal and inquiry into the mesne profit, therefore, impermissible. This Court, while deciding with the said application, has observed that when the inquiry into the amount of mesne profit was not stayed, parties were not just free but were bound to proceed with the inquiry into the mesne profit and hence, the grounds urged for modification of the order was permitted only to extend, the present respondents are allowed to withdraw 25% of decretal amount and furnishing an undertaking in the event of adverse decision in the application as to inquiry on mesne profit passed by the trial Court. As such, it is the submission of the present respondents that once this issue was raised and

decided by this Court, now the same issue cannot be raised in the present appeal.

16. It is the submission of respondents in the matter that this Court has passed conditional order in the matter. If respondents/plaintiffs would not have deposited the amount, there was no reason for appellants to approach before the Hon'ble Supreme Court of India. Hence, there submission to the effect that respondents did not intimate about deposit of amount cannot be accepted in the facts and circumstances of the matter. So also, the appeal before the Hon'ble Supreme Court was filed after expiry of extension of period of one month by this Court. Hence, on all counts, it is not established on record that appellants were not aware about the deposit of amount of Rs.2,60,000/- by respondents.

17. In respect of interest awarded by the learned trial Court at the rate of 9%, it is the submission of the present respondents that through the evidence, it was established on record by them that the property, which is in dispute was located within a commercial place. It is also pointed out that considering the

locality, the trial Court has considered the amount of mesne profit in the matter. Hence, the rate of interest awarded by the learned trial Court cannot be said to be *prima facie*, illegal in the facts and circumstances of the case. Hence, on the count of this submission, it is prayed that the present appeal being devoid of merit and same is liable to be dismissed.

18. In light of the submissions of both the parties made before this Court, I have perused the entire record. After perusal of the record, *prima facie*, it is clear that this Court while delivering the judgment dated 26.04.1995 in First Appeal No.366/1992, which is reproduced above, particularly clause (a) specifically states that the decree of possession of suit property was granted subject to conditions that within two months from the date of the judgment, the original plaintiffs/respondents shall deposit the amount of Rs.2,60,000/- in the trial Court.

19. Therefore, considering these facts, in my opinion, if the original plaintiffs/respondents would have failed to deposit the said amount in the trial Court, there was no need for the appellants to prefer the appeal before the Hon'ble Supreme Court. As such, only

because the amount has been deposited before the trial Court, they have preferred the appeal before the Hon'ble Supreme Court of India. So also, the appellants failed to point out from the judgment of the Hon'ble Supreme Court, that ground has been raised by the appellants that the original plaintiffs/respondents failed to deposit the amount within two months and on that count, they obtained the stay or get decided the appeal on its own merits. Hence, this submission which is made by the appellants is *prima facie* do not seem to be trustworthy in the matter.

20. Second contention of the present appellants is that during the pendency of appeal before the Hon'ble Supreme Court, the stay was operating to the order of this Court and, therefore, there was no reason for them to hand over the possession to the original plaintiffs/respondents in the matter. However, after scrutiny of record, it is seen that appeal was filed before the Hon'ble Supreme Court on 14.08.1995. As per the judgment of this Court dated 26.04.1995, the period of stay was in operation till 26.05.1995. The period of deposit of amount to respondent was up to 26.06.1995. As such, it is clear that appeal before the Hon'ble Supreme Court of India was filed on 14.08.1995. Hence, in absence

of clarification of all these material aspects, submission of appellants cannot be accepted in the matter.

21. In my opinion, the order of this Court dated 26.04.1995, being a conditional one and the respondents have complied that condition, it is obligatory on the part of the appellants to handover the possession to the respondents immediately after the order passed by this Court in the matter. Merely, obtaining of stay after expiry of given period that too without any clarification cannot be a reason to retain the possession from year 1995 to 2000.

22. It is further pertinent to note that in the present matter after the decision of the trial Court on the application for mesne profit, in earlier round of litigation, the matter was came up before this Court vide First Appeal No.1462/2009. In the said proceedings, after remanding back the matter, the present appellants have moved the application for modification of the order. The same was decided by this Court on 13.04.2010 and the same ground, which is raised in the present appeal, was rejected and only the modification was granted that instead of 50% of decretal amount, the

respondents shall permitted to withdraw 25% of decretal amount. Hence, once this Court has already rejected the contention of the appellants, the same cannot be considered afresh under the same set of facts and circumstances of the matter.

23. In respect of the rate of interest, the submission of the appellants seems to be justified in the matter. Section 34 of the Civil Procedure Code has provided the rate of interest at the rate of 6% and only in the commercial transaction, the Court is empowered to grant the interest at higher rate. In support of this submission, the appellants have rightly relied upon the judgment of the Hon'ble Supreme Court in case of ***Ramnik Vallabhdas Madhvani and others Vs. Taraben Pravinlal Madhvani reported in (2004) 1 SCC 497***, wherein in paragraph No.15 observed as under:

*“15. Coming to the legal aspect of the amendment of plaint allowed in the present case by the High Court, it is to be noted that Section 34 of the Code of Civil Procedure deals with the question of award of interest. Section 34 CPC, as it stood before amendment in February 1977, deals with the question of interest in three stages. First is, interest prior to the date of institution of suit, the second stage is interest from the date of institution of suit till the date of decree and the third stage is from the date of decree till realisation of the decretal amount. About the first stage, Section 34*

*does not say anything while about the second stage it says that the interest to be awarded should be as considered reasonable by the court. About the third stage i.e. from the date of decree till realisation, the power of the court to award interest is circumscribed i.e. it cannot be more than 6% per annum.”*

24. Hence, considering Section 34 of the Civil Procedure Code and judgment, which appellants have relied upon the rate of interest at the rate 6%, would have been awarded by the trial Court in the present matter. It is further pertinent to note that there are no reasons recorded by the learned trial Court while awarding the interest at the rate of 9%, particularly when, the mandate under Section 34 of the Civil Procedure Code is that rate of interest should be at the rate of 6% per annum.

25. It is also pertinent to note that initially when the judgment came to be passed ex-parte in the matter, the learned Trial Court did not award any interest, however, after remanding back the matter by this Court, by the impugned order, learned trial Court has awarded the compensation at the rate of 9% that too without any reasons. Hence, to that extent, the modification to the judgment and order of the trial Court is necessary in the matter.

26. Hence, I proceed to pass the following order:

**ORDER**

- i) The First Appeal is partly allowed.
- ii) The judgment and order dated 30.11.2010 passed in Mesne Profit Case No.04/2003 is modified to the extent that rate of interest be charged at the rate of 6% per annum on Rs.1,02,72,112/- for a period from 23.06.1995 to 20.04.2000.
- iii) Rest of the judgment and order is hereby confirmed.

27. The appeal stands disposed of. No order as to the costs.

**(PRAVIN S. PATIL, J.)**

*R.S. Sahare*