

M/S. MARSHALL SONS AND CO. (I) LTD.

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v.

M/S SAHI ORETANS (P) LTD. AND ANR.

JANUARY 29, 1999

[G.B. PATTANAIK AND M.B. SHAH, JJ.]

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*Code of Civil Procedure, 1908 : Section 2(12)—Mesne profits—Reasonableness of—Delay in Court Proceedings—Need for protection of interest of decree holder—Eviction suit filed by appellant landlord against four defendants—Grounds—Failure to pay rent and subletting—Decree granted by Trial Court against defendant No.1 only upheld by the Appellate Court—High Court granted decree against all the four defendants—Special Leave Petition filed by one of the defendants—Petition dismissed by this Court—Direction that decree shall not be executed on or before 31st December, 1984—However, decree in favour of appellant not executed—Thereafter, suit filed by respondent claiming tenancy rights through one of the original defendants—In this suit appellant landlord praying for possession and mesne profits from 1.1.1984 to 30.6.1996—Direction by Trial Court to pay mesne profits at the rate of Rs. 443.93 p. per month—Appeal preferred by appellant before High Court dismissed—Appeal before this Court—Held, Respondents should pay the mesne profits/compensation at the rate of Rs. 10 per sq. ft. from 1984 till date of this order and at the rate of Rs. 20/- thereafter till the disposal of the suit.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 420 of 1999.

From the Judgment and order dated 17.11.97 of the Bombay High Court in W.P. No. 5230 of 1997.

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D.A. Dave, Gopal Jain, Mrs. Nandini Gore and Mrs. M. Karanjawala for the Appellant.

T.R. Andhyarujina, H.N Salve, Ms. Indu Malhotra, Trideep Pais, Ms. Madhu and Ms. Anjolie Singh for the Respondents.

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The following Order of the Court was delivered :

Leave granted. This appeal has been filed under the following circumstances. The present appeal had obtained a decree for eviction in Rent

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- A Suit No. 594/5333 of 1962 as early as on 16th June, 1969. The suit was filed against (i) M/s. United Artists Corporation (Original Defendant No. 1), (ii). The Western India Theaters Ltd. (iii) M/s. Halda Engineering Co., and (iv) Anti Friction Bearing Corporation Limited (Original Defendant Nos. 2, 3 and 4 respectively) for obtaining vacant possession of the said premises on the ground that original defendant No. 1 had failed to pay rent for a period of six months and for unlawful subletting the premises. The Trial Court decreed the suit against defendant No. 1. On appeal being Appeal No. 534 of 1969, the decree against original defendant No. 1 was confirmed and the decree of dismissal against defendant Nos. 2 to 4 was also confirmed. Against that order appellant preferred Writ Petition No. 1695 of 1979 before the High Court. The High Court confirmed the decree against the original defendant No. 1 and the order passed by the Trial Court dismissing the suit against them was also reversed by passing a decree against original defendants 2, 3 and 4. Against the judgment and decree M/s. Halda Engineering Company filed special leave petition before this Court. That petition was dismissed on 4th May, 1984 with a direction that decree shall not be executed on or before 31st December, 1984 on condition that petitioner shall file an undertaking on the terms stated therein. For some reason or other the said decree has not been executed until and application was filed under Order XXI Rule 22 of the C.P.C. and in that application the Court passed an order on 9.9.1991 for execution of the decree and for delivery of possession. The present respondent obstructed the delivery of possession on the ground that he was in possession of the property.

- Pending Obstruction Application, respondent filed Declaratory Suit being R.A.D. Suit No. 2152 of 1991 in the Court of Small Causes at Bombay for a declaration of his tenancy rights by contending that there was a tenant of the premises since 1973 through M/s. Halda Engineering Company. In the said suit, the present appellant (judgment creditor) appeared and indicated the fact that how the decree for eviction granted in his favour had not been executed and prayed that possession should be delivered to him immediately and also respondent should be directed to deposit mesne profits from 1.1.1984 till 30.6.1996 at the prevailing market rent. The Trial Court did not accept the prayer for handing over possession, but directed the respondent who is the plaintiff in the suit, that he should pay at the rate of Rs. 443.93 p. per month for the said period as mesne profit. The appellant carried the matter to the High Court unsuccessfully. Against that

order, the present appeal is filed by special leave. When this matter was pending before this Court, parties took several adjournments to get the matter amicably settled. However, till today the matter has not been amicably settled.

From the narration of the facts, though it appears to us, *prima facie*, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Because of the delay unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also known fact that after obtaining a decree for possession of immovable property, its execution takes long time. In such a situation for protecting the interest of judgment creditor, it is necessary to pass appropriate order so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, Court may appoint Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour decree is passed and to protect the property including further alienation.

In the present case, suit was filed in November, 1962 on the ground as stated above including the ground that there was unlawful subletting. The High Court has decreed the suit on that ground. Special Leave Petition filed by M/s. Halda Engineering Co. has dismissed. Now, it is the contention of the respondent that they got possession of the property admeasuring 2500 sq. ft. from M/s. Halda Engineering Co. in or about 1973 and thereafter in 1978 entered into a partnership agreement with M/s. Halda Engineering Co.

Having considered the relevant submissions of the parties including the submissions with regard to market rent and without expressing any opinion on the merits of the contentions of the parties in the pending suit,

A we think it appropriate to dispose of this matter with the following directions:

(1) That the suit in question be disposed of as expeditiously as possible, preferably within one year from today;

B (2) The respondents are directed to pay the mesne profits/compensation at the rate of Rs. 10 per sq. ft. from 1984 till today and at the rate of Rs. 20 from today till the disposal of the suit. While making this payment, the payments already made shall be adjusted. So far as the arrears are concerned, it be paid in 12 equal monthly instalments.

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The appeal is disposed of accordingly. No order as to costs.

T.N.A.

Appeal disposed of.