



IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT – 83

IN

MESNE PROFIT APPLICATION NO. 244 OF 2009

[C.N.R. NO. MHSCA2-0034852009]

IN

T. E. & R. SUIT NO.244/265 OF 2002

Prime Properties Private Limited

.....Plaintiff

Versus

Central Bank of India

.....Defendants

Coram : D.R.Mali
Judge, C. R. No. 9

Date : 17/08/2023

: ORDER :

This is an application filed by the defendant No. 2 for setting aside “Evidence Close Order” dated 30/06/2023 and granting permission to defendant No. 2 to lead further evidence .

2. The defendant No. 2 submitted that the matter was kept on 30/06/2023 for leading the evidence. However, on that day defendant No. 2 could not appear due to heavy rain. On that day, this court passed ‘No evidence order’. The defendant submitted that he wish to file affidavit of evidence. The circumstances leading to non-filing of evidence were beyond the control of defendant No.2 and therefore, ‘evidence closed’ order has been passed. He submitted that no prejudice or injustice will be caused to the plaintiff if ‘no evidence’ order is set aside and defendant No. 2 is permitted to lead evidence.

3. The plaintiff has filed reply on the overleaf of the application and submitted that the application is not filed alongwith evidence and therefore, it is liable to be dismissed. The plaintiff further submitted that on 30/06/2023, the evidence of defendant No.2 was not ready. He submitted that there is no sufficient reason for setting aside 'no evidence' order.

4. I perused the entire proceedings. This is a proceeding for inquiry of mesne profit under Order 20 Rule 12 of The Code of Civil Procedure, 1908. The plaintiff is claiming huge amount of mesne profit from the defendant. Therefore, the opportunity of leading evidence needs to be granted to the defendant. If opportunity of leading evidence is granted to defendant No.2, then matter can be adjudicated on merits. It will not cause any prejudice to the plaintiff. Therefore, I am of the view that no evidence order can be set aside and defendant No. 2 can be permitted to lead evidence. Therefore, I proceed to pass the following order :

ORDER

1. The application [**Exhibit – 83**] is allowed
2. The order of 'No evidence' passed on 30/06/2023 is set aside and defendant No. 2 is permitted to file affidavit of evidence of the witness.

Date :17/08/2023
Mumbai

[D.R. Mali]
Judge, C.R. No. 09

Dictated On : 17/08/2023
Transcribed on : 17/08/2023
Checked and signed on : 27/08/2023