



IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT – 86

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 : 26/02/2024

: ORDER :

This is an application filed by defendant No.2 for permission to produce architect report of D.W.No. 4 Mr. Sujit Joglekar on record.

2. Defendant No.2 submitted that he has filed an affidavit of examination-in-chief of D.W.No. 4 Mr. Sujit Joglekar at Exhibit 86. At that time, he realized that original architect report prepared by D.W.No.4 was not produced on record earlier. In the reply filed to the main application, Defendant No. 2 has submitted that the opinion of the valuer was obtained. He submitted that the architect has prepared his report by visiting the suit premises and the said report needs to be taken on record.

3. Plaintiff has filed reply at Exhibit 87 and submitted that the application is misconceived, not maintainable and filed without cause of action. He submitted that the present application is around 14 to 15 years old and defendant No.2 is deliberately attempting to delay the proceeding. Plaintiff submitted that defendant No.2 is trying to fill up lacuna left in the original reply filed by him and now the report cannot be allowed to be produced. Plaintiff further submitted that the delaying tactics of defendant No.2 must be curbed and he must be saddled with compensatory costs while rejecting the present application.

4. Defendant No.2 has filed the re-joinder at Exhibit 88 and denied all the contentions in the reply filed by the plaintiff. Defendant No.2 submitted that it is necessary to take Architect report on record. It will not cause harm or prejudice to the plaintiffs. It will help this court in determination of mesne profit.

5. Plaintiff has filed sur-re-joinder at Exhibit 89 and reiterated the material contentions in the reply filed at Exhibit 87. He submitted that the court cannot function at the whims and fancies of the parties who have slept over their rights for more than 15 years. Therefore, plaintiff has prayed for rejection of the application.

6. I perused the the entire record. Heard the learned advocates for both the parties. Proceedings has been kept for further evidence of D.W.No.2. D.W.No.2 has examined 2nd witness D.W.No.4 - Mr. Sujit Joglekar. The said witness has filed his affidavit at Exhibit 84. He has stated in his affidavit that he visited the suit premises and after inspecting the suit premises, prepared the original report dated

10/07/2023. He has also produced on record the documents such as Leave and Licence agreements for comparable instances. Now defendant No.2 is seeking permission to produce the original report as well as the copies of registered Leave and Licence Agreements. The report and Leave and Licence Agreements have been produced alongwith list Exhibit 85. On perusal of report, it is seen that the report has been signed by D.W.No.4. In Annexure-A, D.W.No.4 has mentioned Leave and Licence Agreements which have been taken by him as comparable instances. This witness has prepared the report and therefore, it can be taken on record. If the said report as well as other documents such as Leave and Licence Agreements are taken on record, then plaintiff would get an opportunity to cross-examine the witness. In the proceeding for determination of mesne profit, the valuation made by the Architect and Valuer assumes much importance. Such report will help the court to determine mesne profits. Therefore, important piece of evidence cannot be overlooked. Hence, I am of the view that defendant No.2 can be permitted to produce the valuation report and Leave and Licence Agreements referred as a comparable instances. Therefore, I proceed to pass the following order :

ORDER

1. The application [**Exhibit – 86**] is allowed.
2. The valuation Report and agreements as per annexure A to the report are taken on record.

3. As the plaintiff has filed say on Valuation Report and other documents, proceeding is kept for argument on admissibility of documents filed at exhibit 85.
4. Costs in cause.

Date :26/02/2024
Mumbai

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

Dictated On : 26/02/2024
Transcribed on : 26/02/2024
Checked and signed on : 26/02/2024