

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

CS/229/2004

IA NO: GA/3/2005 (Old No: GA/204/2005)

**SREEJIT KUMAR TAGORE
VS
RADHA KISHEN BHATTER & ORS.**

For the Plaintiff : Mr. Souvik Sen, Advocate,
Mr. Kaustav Chandra Das, Advocate,
Ms. Aditi Dutta, Advocate.

Hearing concluded on : 14.06.2023

Judgment on : 19.06.2023

Sugato Majumdar, J.:

The suit was decreed in terms of order dated 20th March, 2015, in terms of prayer "A" of the plaint. Plaintiff was held to be entitled to a decree a sum of Rs.7,34,816/- from the Defendants jointly and severally. Plaintiff was also held to be entitled to a decree of interests at a rate of 12% per annum on and from 18th March, 2004 on the principle of sum of Rs.7,34,816/- against the Defendants jointly and severally. The Plaintiff

was also held to be entitled to a decree of costs of Rs.1,50,000/- against the Defendants jointly and severally. In the selfsame judgment Mr. Kaushik Choudhuri, Advocate, Bar Library Club was appointed as Special Referee to inquire into the quantum of mesne-profit from the date of filing of the suit till the receipt of possession by the Plaintiff.

An application being GA No. 1576 of 2015 was filed at the instance of Defendant No. 11 praying for recalling of the judgment dated 20th March, 2015. The said judgment was recalled, allowing the application, in terms of the Order dated 23rd September, 2015.

An appeal was preferred being APO No. 455 of 2015 against the Order dated 23rd September, 2015. In terms of order dated 7th December, 2017 the Appellate Court set aside the Order dated 23rd September, 2015.

The Special Referee submitted a report on 11th January, 2018 before this Court. The Defendants 6 and 11 contested the matter. The liberties were given to them to file an application for exception to the report of the Special Referee by the Order dated 24th January, 2018. Subsequently, the Defendant did not appear.

On direction notice of hearing was sent to the Defendants No. 1 - 10 and affidavit of service is in the record.

The Report, as of now, of the Special Referee Mr. Kaushik Choudhuri dated 23/07/2015 is unopposed. It is the conclusion of the report that

a) The amount of Rs.20,13,59,648/- ought to be the amount of mesne-profit for the period of August 1, 2014 to April 31, 2015.

b) Mesne-profit for the period beyond April, 2015 ought to be increased 10% every year till the receipt of the possession by the Plaintiff.

Let a report accepted with following modifications that

1. The amount of mesne-profit, as mentioned in (a) above should be from 01/08/2004 till 31/04/2015.
2. Interest rate mentioned in para (b) above shall be 6% per annum.
3. The area of the suit property is 69,200 sq.ft. located at 13A Prasanna Kumar Tagore Street, Kolkata – 700006 which is one of the prime locations of Kolkata. The Special Referee took into consideration various factors including market value. Therefore, the quantum of mesne-profit be accepted as Rs.20,13,59,648/-.

The Defendant No. 1 - 10 shall be jointly and severally liable to pay the aforesaid amount to the Plaintiff within a period of three months in default the Plaintiff shall be at liberty to draw up the execution proceeding. Let the final decree in respect of mesne-profit be drawn up. In case the Defendants fail to pay the decretal amount within a period of three months from the date of filing decree, the Plaintiff shall be at liberty to draw up the execution proceeding.

The suit is disposed of.

(SUGATO MAJUMDAR, J.)