IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 1458 of 2020
Ms. Sultana Abdullah
Vs.
State Bank of India & Ors.

For the petitioner	:Mr. Anubhav Sinha, Adv. Ms. Reshmi Hossain, Adv. Mr. M. Hossain, Adv. Ms. Mohua Biswa, Adv. Ms. Antora Dey, Adv.
For the Opposite Party	:Mr. Sounak Bhattacharya, Adv. Mr. Sudip Pal Choudhuri, Adv. Mr. Avirup Halder, Adv. Ms. Shilpi Paul, Adv.
Heard On	:26.06.2024,09.07.2024, 12.08.2024, 09.09.2024, 01.10.2024,
Judgement On	**:08.10.2024**

Bibhas Ranjan De, J. :

1. Challenge, in this revision application, is the judgment and order dated 19.08.2020 passed by the Ld. Waqf Tribunal West Bengal, in connection with Ejectment Suit no. 16 of 2014 wherein an order of entitlement was passed in favour of the plaintiff with respect to arrears of rent @ of Rs. 86,735/- for the period 01.09.2013 to 08.03.2016 along with interest @ 6% per annum till the recovery of arrears rent and cost of litigation to the tune of Rs. 50,000/-.

Background in brief:-

2. On 05.02.1927, one Sk. Md. Ibrahim Barry executed a deed of Waqf dedicating all the properties including the subject property to the Board of Waqf for the purpose of welfare and maintenance of family members with the provision of appointment of Mutawalli from amongst descendants of the said Waqif. The Waqf Estate was known as "Sk. Md. Ibrahim Barry waqf Estate" and enrolled with Board of Waqf. Waqif during his life time remained as Mutawalli and thereafter his legal heirs became Mutawalli. The entire Waqf property was under direct management & control of the Board of Waqf for 12 years and thereafter the same was handed over to the petitioners i.e. daughter and granddaughter of the son of waqif, by a resolution dated 03.07.2012 which was confirmed on 06.09.2012. On and from 06.09.2012, petitioners took charge of the said Waqf Estate and their names were recorded on 17.10.2012.

3. After assuming charge of the property, petitioners noticed huge arrears of rent payable by the Bank/opposite party herein. Both the parties to the revision application held a joint meeting where opposite party/ Bank proposed to enter into an agreement for lease of 15 years but did not agree for the payment of any interest of arrears rent. As a sequel, petitioner refused to enter into any agreement for lease proposed by the opposite party /Bank.

4. Thus, being the position, petitioner sent a notice of Ejectment dated 11.01.2014 to the opposite party/bank to quit and vacate the aforesaid tenanted premises on expiry of the month of February 2014, but opposite party/ bank failed to vacate the said premises and as a sequel the petitioner filed one Ejectment Suit being no. 16 of 2014 before the Ld. Waqf Tribunal West Bengal with a decree for eviction along with other consequential reliefs including a decree for a sum of Rs. 3,81, 51,836.90 and mesne profit.

Argument Advanced:-

5. Ld. Counsel, Mr. Anubhav Sinha appearing on behalf of the petitioners has advanced his arguments on the following points:-

- The Suit was decreed ex-parte on 27.12.2016 with an order directing the opposite party/bank to pay Rs. 4,51,39, 426.25 along with pendent lite interest @ 10% per annum, to the petitioners/plaintiffs. That ex-parte order was assailed in C.O. No. 1458 of 2020 wherein Hon'ble Justice Sanjib Banerjee set aside the said ex-parte decree and remanded it back to the Tribunal for a fresh consideration on the point of limitation which was not taken into account in the said ex-parte judgement. But, the Ld. Tribunal conducted a *de novo* trial on all issues.
- Ld. Tribunal did not consider the mense profit during the period illegally occupied by the Bank in spite of receiving Ejectment notice dated 01.11.2014 till the date of surrender of possession on 09.03.2016.
- Though no interest for the period from 2010 to 2013 was paid by the opposite party/ Bank, but the Ld. Tribunal did not consider the same. Ld. Tribunal also did not consider

the interest for the period from 1977-2006 on the plea of time barred claim. In this regard, Mr. Sinha has referred Article 12 of the Constitution of India as well as Article 112 of the Limitation Act and submitted that period of limitation would be 30 years. It has been further submitted that during the said period, Board of Waqf being state within the meaning of Article 12 of the Constitution of India, was in direct control and management of the property. According to Mr. Sinha, the period of limitation ought to have been computed under Article 112 of the Limitation Act.

- Assailing the observation of the Ld. Tribunal that defendant/bank has paid admitted arrears of rent from 01.11.2010 to 31.01.2013 @ Rs. 86,735 per month along with interest @ 6% per annum on 28.03.2019, Mr. Sinha has contended that the calculation chart of arrears rent prepared by the opposite party/bank for the period from 01.11.2010 to 31.07.2013 indicates with all clarity that the arrears rent for the said period never included the interest @ 6% per annum.

- By referring to a letter dated 02.09.2013 along with calculation chart for the period of 01.11.2010 to 31.07.2013, Mr. Sinha indicated that KMC Tax @ 20% is also a part of rent which is also ratified by the provision of Section 230 of the Kolkata Municipal Corporation Act, 1980.

6. In support of his argument, Mr. Sinha, relied on the ratios of the following cases:-

- ***Rail India Technical and Economic Services Ltd vs I.M Puri & Ors.*** reported in ***2000 (52) DRJ***
- ***Martin & Harris (P) Ltd. v Rajendra Mehta*** reported in ***2022 8 SCC 527***
- ***Ganapati Madhav Sawant (Dead) through his Lrs. v. Dattur Madhav Sawant*** reported in ***2008 (3) SCC 183***
- ***State of Andhra Pradesh vs. AP State Waqf Board & Ors*** reported in ***2022 SCC OnLine 159***
- ***Syed Tahseen Huq & Anr vs Nurul Hasan & Anr*** reported in ***2022 SCC OnLine Cal 502***
- ***Mohammad Ahmad and Anr vs. Atma Ram Chauhan & Ors*** reported in ***2011 7 SCC 755***
- ***Calcutta Gujarati Education Society vs. Calcutta Municipal Corporation*** reported in ***(2003) 10 SCC 533***
- ***Karnani Properties Limited vs. Augustine (Miss)*** reported in ***AIR 1957 SC 309***

7. Per contra, Ld. Counsel, Mr. Sounak Bhattacharya, appearing on behalf of the opposite party no. 1 with regard to the submission relating to, limitation contended that the Ld. Tribunal had allowed part claim of the plaintiff which is not barred by the law of limitation that is from 01.11.2010 to 31.08.2013. The claim of the plaintiff on account of arrears of rent and arrears of interest since the year 1977 till the date of filing of the suit are barred under Article 25 and Article 52 of the Limitation Act. It is further submitted that the plaintiff in the plaint has claimed arrears of rent and arrears of interest thereupon since 1977 which is wholly barred by the law of limitation in view of Article 25 and 52 of the Limitation Act. Therefore, Mr. Bhattacharya has duly supported the Order of the Learned Tribunal wherein the claim of the petitioner from 01.11.2010 to 31.08.2013 that is immediately preceding three years from the date of filing of the suit was allowed and has added that. The other part of the monetary claim of the petitioner is definitely barred by the law of limitation.

8. Mr. Bhattacharya with regard to the submission of the petitioner that the case of the plaintiff is governed by Article 112 of the Limitation Act where the limitation is 30 years, has contended that it is not a legally sustainable argument before the Court of Law, because the monetary claim of the plaintiff as stated in the plaint is from the 1977 and the said suit has been filed on April, 2014 that is after 37 years and as such the whole monetary claim of the plaintiff is otherwise barred by limitation both in terms of arrear of rent and arrear of interest which has been filed after 30 years.

9. In connection with the claim of the petitioner that the application for grant of mesne profit was not considered by the tribunal at all, Mr. Bhattacharya commented that it is a factually incorrect submission. He further held that it has been clearly stated in the impugned order by the Learned Tribunal that the said application for assessment of mesne profit was taken up for hearing and was duly considered by the Learned Tribunal. However the Learned Tribunal could not come to a definite finding regarding assessment of mesne profit because the plaintiff could not produce any material on record regarding the assessment of mesne profit nor adduced any evidence in the said regard. As such Mr. Bhattacharya duly supported the rejection of the said application by the Learned Tribunal.

10. Before parting with, Mr. Bhattacharya with regard to the applicability of Article 112 of the Limitation Act in the present case has argued that the suit was filed by the Mutawalli on her individual capacity and neither by the board of waqf nor the State government or the Central Government. Hence the question of applicability of Article 112 of the Limitation Act does not and cannot arise at all because Article 112 is only applicable to suits which are filed by the Central Government or any State Government.

11. In support of his contention, Mr. Bhattacharya has relied on the following case:-

- ***Bharat Sanchar Nigam Limited vs. Pawan Kumar Gupta*** reported in ***(2016) 1 Supreme Court Cases 363.***

***Ratio of the cases relied on behalf of the behalf of the parties*:-**

For the petitioner:

12. In the cases of ***Rail India Technical*** (supra), ***Martin & Harris (P) Ltd.*** (supra)& ***Ganapati Madhav Sawant*** it was held that the basis of determination of the amount of mesne profits, depend on the facts and circumstances of each case considering the place where the property is situated i.e. village or city or metropolitan city, location, nature of premises i.e. commercial or residential area and the rate of rent precedent on which premises can be let out are the guiding factor in the facts of individual case.

13. In ***AP State Waqf Board*** (supra) ***& Syed Tahseen Huq*** (supra) the Hon'ble Court was of the view that the Waqf Board is a statutory authority established under the Act and is a 'State' within the meaning of Article 12 of the Constitution.

14. In ***Mohammad Ahmad*** (supra) & ***Calcutta Gujarati Education Society*** (supra) it was held that the provisions of the Act impose burden of tax to an appreciable extent on the tenants, sub-tenants and occupiers and the tax is liable to be recovered from them through the landlord or directly by attachment of rent or other coercive modes, the tenants, sub-tenants and occupants are entitled to an opportunity to participate in the process of valuation and assessment. They are entitled, therefore to written notices apart from public notice for assessment, revision of assessment or amendment of assessment of the "consolidated rate" or tax. It is also made clear that pursuant to the public notice or written notice, the returns submitted by the tenant, sub-tenant or occupier, with regard to determination of annual value shall be considered by the Corporation. The same procedure would be followed in revision of the annual valuation.

15. In ***Karnani Properties Limited*** (supra) the Hon'ble Apex Court dealt with an issue regarding determination of standard rent and the power of the controller to determine the same.

For the defendant:

16. In ***Bharat Sanchar Nigam Limited*** (supra) the Hon'ble Supreme Court clearly explained that Article 112 of the Limitation Act applies to those suits which are filed on or behalf of the Central or State Government and not by any subsidiary of the Central or State Government or any other person.

Issues:-

17. Considering the rival contention on behalf of the parties, this Court is to deliberate on the following issues:

Issue no. 1.

Whether the Tribunal rightly considered the mesne profit during the period occupied by the opposite party /bank from the date of Ejectment Notice till the date of surrender of possession i.e. from 01.11.2014 to 09.03.2016.

Issue no. 2.

Whether the opposite party/bank paid all interest on the arrears rent for the period from 01.11.2010 to 31.08.2013.

Issue no. 3.

Whether the claim for interest along with arrear rents for the period from 1977-2006 is time barred or not.

Analysis:

18. Issue no. 1

Ld. Tribunal made the following observation with regard to mense profit:

> *" …Plaintiff is entitled to mesne profit at Rs.86,735/- per month. Plaintiff has claimed current market rent @Rs.82/- per Sq.ft. and 10% interest per annum. But there is no basis of her claim. As per order of Hon'ble Supreme Court of India, the landlord may claim market rate of rent from the tenant but Plaintiff has to prove the market rent by producing evidence. In this case, no evidence has produced to show that Rs.82/- per Sq.ft. is the current market rate of rent in the area of suit premises. There is no prayer of past and future mesne profits. There is separate application for conducting enquiry relating to mesne profits from the date of institution of case till date of surrender of possession. Though, there is stipulation of report of A.G. West Bengal but he has not been examined by Plaintiff during evidence. Unilateral computation of market rent along with hyper rate of interest cannot be accepted…"*

19. It is an admitted fact that Ejectment notice dated 11.01.2014 was sent to the Bank with a direction to vacate the tenanted premises on the expiry of the month of February, 2014, but the opposite party/bank vacated the said premises on 09.03.2016.

20. Mesne profit is the amount paid to the lawful owner of the property in damages by the wrongful possessor. The Court has to determine the amount by a comparative assessment of the nature of the subject property, its location, age and condition as well as an analysis of the valuation of the leases in the concerned area, the rental price of the property as determined by the court-appointed valuer, the rental price claim in the plaint among several other factors.

21. Section 2 (12) of the Code of Civil Procedure defines mesne profit as follows:

> *" mesne profits " of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession;"*

22. According to Order 20 Rule 12 of the Code of Civil Procedure the Court may direct an inquiry for ascertainment of the amount of mesne profit payable. In that case burden of proof lies upon the claimant to show that other party is in illegal possession of the property of which the claimant is the rightful owner.

23. In the case at hand, Ld. Tribunal held the mesne profit at Rs. 87,735/- per month ignoring the claim of the plaintiff @ Rs. 82 per sq. ft. with interest.

24. On careful scrutiny of the observation, it appears that Ld. Tribunal considered the rent of the subject property as mesne profit i.e. Rs. 86,735 per month. Therefore, this Court has no hesitation to hold that the Ld. Tribunal did not make any inquiry according to procedure prescribed therefor prior to determining mesne profit.

Issue no. 2

25. Before delving into the discussion about this issue it would be pertinent to reproduce the specific observation of the Ld. Tribunal in this regard which runs as follows:

> *"…Here we find that almost all the decisions relied upon by the Ld. Advocate of Defendant-Bank is roving around time barred claim. It is true that the landlord cannot claim arrears of rent beyond three years prior to institution of the suit. The present suit was filed on 11.04.2014 but Plaintiff is claiming interest w.e.f. 1977. At the same time, this suit is not mainly for recovery of rent and interest but also mesne profit. In the written statement Defendant-Bank has not specifically pleaded that the suit is time barred but even that it is the duty of*

the Tribunal to dismiss the suit, if it is filed after prescribed period of limitation. It is worth noting that present suit is not time barred but some of the claim in the suit is time barred. The whole suit cannot be dismissed merely because the time barred interest on actual rent is being claimed by the Plaintiff. Admittedly, the Defendant- Bank has admitted unpaid rent w.e.f. 01.11.2010 to 31.08.2013 @Rs.86,735/- per month and same was paid during the pendency of this suit on 28.03.2019 by way of draft of Rs.29,48,993/-. It would not be out of place to mention here that the amount of Rs.29,49,983/- was accepted by with the Plaintiff reservation.

Defendant/Bank has paid admitted arrears of rent from 01.11.2010 to 31.08.2013 @ Rs. 86,735/- per month alone with interest @ 6% per annum on 28.03.2019. …"

26. Aforesaid observation of the Ld. Tribunal was primarily based on the calculation chart of the arrear rent submitted by the defendant-bank for the period from 01.11.2010 to 31.07.2013 through the letter dated 02.09.2013 to the petitioner/Joint Mutawallis of Waqf Estate which was eventually paid on 28.03.2019.

27. After careful scrutiny of the said documents, it has come to the notice of this Court that even though admittedly the defendant-bank paid the outstanding due amount of Rs. 29,48, 983/- but that amount only includes basic rent, KMC Tax, Commercial Surcharge & maintenance charge. However, it does not include any interest whatsoever. Therefore, the observation of the Ld. Tribunal in this regard with emphasis to payment of interest along with arrear rents cannot be said to be sustainable.

28. **As a result, the petitioners are rightly entitled to the interest @ 6% per annum for the time frame between 01.11.2010 to 31.08.2013.**

Issue No. 3

29. Now coming to the claim of the petitioner regarding the interest along with the arrear rents for the period from 1977-2006, I think it would be just to first discuss the relevant provisions of Article 25 & 52 of the Limitation Act, 1963 which runs as follows:-

25. For money payable for interest upon money due from the defendant to the plaintiff.	**Three years**.	When the interest becomes due.
52. For arrears of rent.	**Three years**.	When the arrears become due.

30. It is apparent from the records that the suit was filed on April 2014 by the plaintiffs/ Joint Mutawallis of the subject Waqf Estate. Article 25 of the Limitation Act says that - if a claimant sues for money payable for interest upon money due from the defendant to the plaintiff, he has to file the suit within three years when the interest became due. Article 52 says that if a plaintiff wants to recover arrears of rent from the defendant, he has to file a suit within three years when the arrears became due. But, in the case at hand, admittedly the delay is well beyond the period of limitation.

31. In connection with the aforesaid argument Ld. Counsel on behalf of the petitioner has tried to take assistance of Article 112 of the Limitation Act which runs as follows:-

112. Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir.	**Thirty years.**	When the period of limitation would begin to run under this Act against a like suit by a private person.

32. In light of the contents laid down in Article 112 of the Limitation Act, Mr. Sinha has tried to convince this Court that the claim of the petitioners will come under the purview of Article 112 of the Limitation Act and therefore the period of limitation shall be 30 years. But, I am sorry to subscribe to this view as the suit was filed by the Mutawalli of the subject Waqf Estate in her individual capacity and not by the Board of

Waqf or the State Government or the Central Government. Hence, the question of applicability of Article 112 of the Limitation Act to the case at hand is devoid of any merit. Therefore, I find hardly any scope to interfere with this specific portion of the impugned order wherein the monetary claim of the petitioner for the specific time frame of 1977-2006 was rejected being barred by law of limitation.

33. In the aforesaid view of the matter, the impugned order dated 19.08.2020 passed by the Ld. Waqf Tribunal is hereby set aside and the matter is remanded back only to decide the following limited points in accordance with the observation made hereinabove-

- **The Ld. Tribunal is directed to determine the mesne profit for the period of 01.11.2014 to 09.03.2016 which is payable to the plaintiffs/petitioner herein by the defendant-bank.**
- **The plaintiffs/petitioner are also entitled to get interest @ 6% per annum for the time frame between 01.11.2010 to 31.08.2013.**

34. With the aforesaid observation the instant civil revision application being no. C.O. 1458 of 2020 stands disposed of.

35. Interim order, if there be any, stands vacated.

36. Connected applications, if there be, also stand disposed of accordingly.

37. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

38. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]