

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APDT/20/2024
WITH
CS/42/2006
IA NO: GA/1/2024, GA/2/2024

COAL INDIA LTD
VS
APEEJAY HOUSE PVT LTD

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 4th November, 2024.

Appearance:
Mr. Pradip Kumar Dutt, Sr. Adv.
Mr. Abir Debnath, Adv.
Mr. P. Bose, Adv.
...for the appellant.

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Sanjiv Kumar Trivedi, Adv.
Mr. Aritra Basu, Adv.
Ms. Iran Hassan, Adv.
Mr. Sanket Sawargi, Adv.
Mr. Himanshu Bhawsingka, Adv.
Mr. Dipak Verma, Adv.
...for the respondent.

The Court : By consent of the parties, the appeal and the applications are taken up together and disposed of by this common order.

The delay in filing the appeal is condoned and, accordingly, the application for condonation of delay being IA No.GA/1/2024 is allowed.

The appellant has assailed the order passed by the learned Single Judge in a proceeding for determination of mesne profits in which the learned Single Judge on

consideration of the evidence on record determined mesne profits at the rate of Rs.85/- per month per square feet for carpet area along with interest at the rate of 8% per annum with 15% increase with the mesne profits after three years from the month of February, 2006 till the month of September, 2013.

Mr. Pradip Kumar Dutt, learned Senior Counsel appearing on behalf of the appellant has submitted that the learned Single Judge has failed to consider the report of the referee in connection with another floor and also erred in relying upon orders in respect of different floors overlooking features that distinguished the present case from the other, if such distinguishing facts were taken into consideration, the amount determined towards mesne profits by the learned Single Judge is not sustainable. However, it has been fairly submitted by Mr. Dutt that in **Punjab National Bank –versus- Apeejay House Private Limited** reported in **2021 SCC Online Cal 1421**, the Co-ordinate Bench has determined mesne profits in respect of fourth floor of the same building at Rs.91/- per square feet per month for the period 2008-2010 relying upon the order passed by the learned Single Judge on 8th June, 2015 in respect of another lessee/tenant in same premises.

Mr. Abhrajit Mitra, learned Senior Counsel appearing on behalf of the decree-holder has submitted that the determination of the mesne profits of Rs.91/- per square feet, was more or less consistent with orders passed in respect of other floors including the order dated 8th June, 2015. Mr. Mitra has submitted that the decree-holder has accepted the finding of the learned Single Judge notwithstanding the fact that it was less than what was decided in respect of other floors upheld by the Co-ordinate Bench in *Punjab National Bank (supra)* with a view to put an end to the litigation.

In view of the order passed in *Punjab National Bank (supra)* and taking into consideration that the determination of mesne profits was in respect of fourth floor of the building and the present determination relates to third floor of the same building with same facilities, we are inclined to follow the decision in *Punjab National Bank (supra)* and affirm the order passed by the learned Single Judge.

Accordingly, the appeal fails. The application for stay being GA/2/2024 also stands disposed of.

However, there shall be no order as to costs.

[SOUMEN SEN, J.]

[APURBA SINHA RAY, J.]