

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

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

APDT 3 of 2024

With

CS/185/2018

IA NO: GA/1/2024, GA/2/2024

UCO BANK

-Vs-

B.P.PODDAR HOSPITAL AND MEDICAL RESEARCH LIMITED

For the Appellant : Mr. Soumabho Ghosh,
Mr. Shashwat Nayak,
Ms. Antalika Guha.

For the State Respondent : Mr. Abhrajit Mitra, Sr. Adv.
Mr. Satadeep Bhattacharyya,
Mr. Samriddha Sen,
Mr. Surajit Biswas,
Mr. Arijeet Bera.

Judgment on : August 14, 2025.

Madhuresh Prasad, J.:

1. The present appeal arises out of an order dated December 20, 2023, passed in CS No. 185 of 2018 and IAGA No. 3. Of 2021 by the Hon'ble Single Judge. The order of eviction and mesne profit was passed by the Trial Court on an application filed by the plaintiff under Chapter 13-A of the Original Side Rules. By an order dated 9th September 2019 defendants have been directed to vacate the suit premises which they have done on 28th of February 2020. In so far as the determination of

the mesne profit a Special Referee was appointed by the Trial Court for determination of the same with respect to the suit premises. The Special Referee submitted a report on 31.08.2021 assessing the mesne profits for the suit premises to be at the rate of Rs.139 per sq.ft per month for the period 01.03.2017 to 01.03.2020.

2. The plaintiff filed application seeking confirmation of the report submitted by the Special Referee and for passing the final Decree. The report of the Special Referee was accepted by the plaintiff. The defendant however filed exception to this report praying for setting aside the report. The defendants also sought appointment of independent valuer to ascertain fresh market rent for the suit premises. The Hon'ble Single Judge has allowed IAGA No. 3 of 2021 filed by the plaintiff. The Hon'ble single Judge held report of the Special Referee dated 31.08.2021, to be justified requiring no interference and the same was confirmed. The defendant was thus directed to pay mesne profit accordingly, being monthly rent for the suit premises at the rate of Rs. 139 per sq.ft. per month for a total of 4,800 sq.ft with effect from 01.03.2017 till 28.02.2020, with interest at the rate of 9 per cent per annum with effect from 1st March 2017 till realization of the total amount.
3. The defendant has contested the fixation of the mesne profit and interest accrued thereon before the Special Referee. According to the defendant mesne profit comes to an amount of Rs. 88.99 sq.ft based on report dated 16.02.2022, of a valuer appointed by the defendant

for assessing fair market value of the suit premises. It is the defendant's case that the Special Referee has determined the mesne profit by comparing the suit premises with two distant properties. The defendants have also taken a ground that plaintiff itself had earlier proposed to increase the lease rent to the tune of Rs. 120 per sq.ft. which proposal was based on their own assessment of rental value of the suit property. However, the same was rejected by the Bank/defendants. The fixation of mesne profit of Rs. 139 per sq.ft. per month, was a highly exorbitant fixation without any acceptable comparison.

4. Mr. Abhrajit Mitra, learned Senior Counsel has drawn attention of this Court towards the exception to Special Referee's report filed on behalf of the defendants in the suit. Learned Senior Counsel has referred to the provisions contained in Order XX Rule 12 of the Code of Civil Procedure to submit that the report of the Special Referee has to be considered like a decree. He submitted that no ground worth consideration has been made out for challenging the determination of the mesne profit. The report dated 16.02.2022 of the Valuer appointed by the defendant being relied upon, was obtained much after report of the Special Referee dated 31.08.2021 and therefore, cannot be made a basis to discredit an earlier determination made by the Special Referee. The defendant did not deny or dispute the method of valuation adopted by the Special Referee, during cross-examination.

Otherwise also, no tenable grounds have been raised by the defendant to challenge the Special Referee's report.

5. Upon a through consideration of the rival submissions the Hon'ble Single Judge found the report of the learned special referee to be legally sustainable requiring no interference.
6. The Hon'ble single judge has taken note of the fact that report of the valuer dated 19/02/2020 was taken on record and examined before the special referee. The special referee allowed the defendant an opportunity to file an exception to the report of the special referee. The valuer was examined as a witness by the plaintiff. The defendant was allowed an opportunity to cross examine the valuer and also to lead evidence and examine any witness in support of its contention/s.
7. The defendant on their behalf examined two witnesses. In Cross examination the defendant has not disputed the method adopted by the valuer, for determining the mesne profit.
8. Upon going through the exception filed by the defendants and the Cross examination of the valuer, by the defendants we find that the defendant raised an issue regarding the valuation not being based on valuation of an adjacent property.
9. We also find that the valuer is a qualified civil engineer and an empanelled valuer of the Calcutta High Court, nationalized banks and financial institutions, Debts Recovery Tribunal as well as the City Civil Court. The valuer is a specialist. The assessment has been done

keeping in view relevant factors that the suit premises lies in the front portion of 1st floor of a commercial building, which is a basement plus 7-storey building. The building is directly abutting on Strand Road, Kolkata in the hub of the Central Business District ("CBD" for short). As per the report the valuer has undertaken a thorough survey of the interior as well as exterior of the suit property. He has taken measurements. He has also surveyed the surrounding area and referred to 3 comparable premises also located in the CBD, situated within a distance of 1 km from the suit premises. The location of these 3 premises and the nature of lease, contemporaneous with the lease of the suit property has also been taken into consideration. The age and specifications of the 3 comparable properties have also been considered. Thus from the report of the valuer it is apparent that a thorough exercise has been undertaken by the valuer. The valuer, after a meticulous exercise, has specifically stated that the valuation is based on comparable properties which are similar in all respects.

10. During his evidence given before the special referee the valuer has placed the international valuation standards, based on which he has valued the suit premises.
11. The defendant on the other hand has raised an issue regarding assessment not being done of an adjacent property occupied by a bank. This aspect has been explained by the valuer by taking a stand that there are few banks in the vicinity, and that it was not possible to obtain the documents pertaining to these banks.

12. The defendant Bank, on its part has examined Mr. Nishitosh Kumar Pandey, a chief manager of the defendant bank. This witness is not a specialist. In his affidavit-of-evidence he has placed reliance on an indenture of lease deed dated 31.08.2009, 11.05.2013 and 22.05.2014 of another branch of the bank located elsewhere. These documents are in respect of the period prior to the period in question (March 2017 to March 2020).
13. A second witness Mr. Somenath Visnu has also disposed on behalf of the defendant. Relying on his deposition it was contended on behalf of the defendants that because of inadequate facilities and location of the suit premises the defendant Bank has suffered loss of customers and as a result loss of business. Such evidence does not in any way putforth any relevant material to discredit the determination of mens profit done by a specialist based on relevant factors and internationally recognized method of valuation.
14. The defendant has also relied upon a report dated 16.02.2022, of a valuer appointed by the defendant, which is of a date much after the report of the special referee dated 31.08.2021. This report was not brought on record before the Special Referee and cannot be relied upon to discredit or dispute determination of mesne profit by the special referee
15. We find that the defendant's failure to cross examine the valuer as regards the method adopted for valuation has also been taken into

consideration by the Hon'ble Single Judge. Thus relying upon decisions of this court in the case of **A.G.E. Carapiet Vs A.Y. Derderian** reported in **1960 SCC online Cal 44** and Apex court decision in the case of **Indian oil Corporation Ltd Vs. Saroj Baweja and Another** Reported in **(2005) 12 SCC 298**, it has been held by the trial court that the defendants have not availed the opportunity of Cross examination, to question the valuer on the method of determination of market rent and therefore it must follow that the method of determination is not doubted or disputed by the defendant. The Hon'ble Single Judge has therefore rightly accepted the submission on behalf of the plaintiff that no grounds have been made out by the defendant to discredit the valuer's determination of mesne profits.

16. As regards the stand of the defendant that the plaintiffs had offered a rent of ₹ 120 per square feet in a proposal dated 21.01.2017, it is not in dispute that it was only an offer made to an existing tenant, and did not go beyond being an offer. Therefore, the same in our opinion has rightly not been relied upon to doubt or discredit the assessment done by the valuer, a specialist, with reference to comparable property based on international valuation standards.

17. From the above consideration we are of the considered opinion that the defendant has not been able to make out any case for assailing the report of the special referee.

18. We, therefore, find no reason to interfere with the judgment of the trial court dated 20.12.2023 passed in IA No. GA 3 of 2021 in CS 185 of 2018.
19. The appeal is dismissed without any order as to costs. Pending application(s), if any, are accordingly disposed of.
20. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)