IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Chaitali Chatterjee (Das)

FAT 1 of 2024
With
IA No.: CAN 2 of 2025

The West Bengal State Electricity Distribution Company Limited
Vs.
Sevoke Properties Private Limited

For the appellant : Mr. Joydip Kar, Ld. Sr. Advocate (through VC)
Mr. Supriyo Chattopadhyay, Advocate (through VC)
Mr. Mayank Bhandari, Advocate

For the respondent : Mr. Jishnu Saha, Ld. Sr. Advocate (through VC)
Mr. U.S. Menon, Advocate (through VC)
Mr. Zeeshan Haque, Advocate (through VC)
Mr. Abhirup Chakraborty, Advocate
Ms. Sriya Basu, Advocate
Ms. Esha Acharya, Advocate

Heard on : January 7, 2026 & January 8, 2026

Judgment on : **January 8, 2026**

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a defendant in a suit for eviction and directed against Order No.240 dated October 7, 2023 passed in Title Suit No.65 of 2005.

2. By the impugned order, the learned Trial Judge accepted the report of the Commissioner appointed for the purpose of calculation of mesne profit and passed a decree for mesne profit.

3. Learned Senior Advocate appearing for the appellant refers to a list of events. He submits that, the appellant was put into possession of the immovable property concerned on May 25, 1991. A suit for eviction and mesne profit was filed by the respondent on October 20, 2001. Decree for eviction was passed on November 30, 2005. An appeal was preferred against such decree on May 18, 2006 when an interim order was passed. The Appeal Court permitted the learned Trial Judge to proceed with the ascertainment of mesne profit in terms of thereof. The Advocate Commissioner submitted a report before the learned Trial Judge. Such report was rejected by the learned Trial Judge by an order dated April 3, 2008. Thereafter, the learned Trial Judge accepted the suggestion of the respondent to appoint M/s Talbot and Co. as a Commissioner by an order dated November 25, 2014 and appointed M/s Talbot and Co. as the Commissioner to quantify the mesne profit.

4. Learned Senior Advocate appearing for the appellant submits that, on December 18, 2014, M/s Talbot and Co. prepared a report which was accepted by the learned Trial Judge on September 7, 2016. Such order of September 7, 2016 was assailed by way of a revisional application being CO No.456 of 2017 which was dismissed by an order dated May 1, 2018.

5. Learned Senior Advocate appearing for the appellant submits that, the Division Bench allowed the appeal of the appellant directed against the decree of eviction by an order dated November 14, 2018. In a Special Leave Petition directed against an order dated November 14, 2018, the

Hon'ble Supreme Court set aside the same and permitted the appellant to vacate the premises by April 10, 2020.

6. Learned Senior Advocate appearing for the appellant submits that, appellant also assailed the order dated May 1, 2018 passed by the Revisional Court. The Hon'ble Supreme Court by an order dated October 27, 2020 permitted the appellant to raise all points with regard to the calculation of mesne profit before the learned Trial Judge. He points out that, the appellant vacated the immovable property on December 31, 2020 and thereafter, the impugned order was passed.

7. Learned Senior Advocate appearing for the appellant submits that, in view of the order dated October 27, 2020 passed by the Hon'ble Supreme Court leaving all points open to be considered by the learned Trial Judge while quantifying the mesne profit, the learned Trial Judge erred in proceeding on the basis of that, all points raised by the appellant with regard to the quantification of the mesne profit stood settled by the order dated September 7, 2016. He submits that, learned Trial Judge misconstrued and misapplied the directions contained in the order dated October 27, 2020 passed by the Hon'ble Supreme Court.

8. Learned Senior Advocate appearing for the appellant refers to the report of the Commissioner quantifying the mesne profit. He submits that, the Commissioner proceeded on the basis of hearsay evidence. No documentary evidence was made available with the report of the Commissioner for the purpose of arriving at the rental income of the

properties in the surrounding area. Moreover, he points out that, the commissioner did not take into account the rentals of the properties in which the Government or Government agencies are tenants in or around the vicinity of the immovable property concerned. Consequently, according to him, the calculation of mesne profit as done by the Commissioner is without any basis. According to him, the Commissioner proceeded on the basis of hearsay evidence and took into consideration abstract figures.

9. Learned Senior Advocate appearing for the appellant relies upon ***(2004) 5 Supreme Court Cases 304 (Union of India vs. Banwari Lal & Sons (P) Ltd.)*** and submits that, in the facts and circumstances of the present case, since the Court extended the time for the appellant to vacate the premises concerned, the date on which the appellant vacated the property should be taken into consideration as the point of commencement for calculation of mesne profit and not otherwise. In the facts and circumstances of the present case, he points out that, the Commissioner took into account the period of June 1, 1996 to December 31, 2014 as the period for calculation of the mesne profit. Since, according to him, the appellant was permitted by the order dated April 11, 2019 passed by the Hon'ble Supreme Court to vacate the premises within a period of one year and since the appellant vacated the property on December 31, 2020, the calculation of the mesne profit should commence from the date vacating the immovable property concerned. He

also points out that, there is a suit for mesne profit pending for the period from January 1, 2015 to December 31, 2020 filed by the respondent.

10. Learned Senior Advocate appearing for the respondent draws the attention of the Court to the order dated May 1, 2018 passed by the Revisional Court. He contends that, all grounds now sought to be raised assailing the report of the Commissioner quantifying the mesne profit were considered in the earlier round resulting in the order dated September 7, 2016 passed by the learned Trial Judge. He points out that, such order dated September 7, 2016 was assailed by way of a revisional application which resulted in the order dated May 1, 2018 passed by the revisional Court. He contends that, the appellant did not urge any of the grounds as sought to be agreed presently, at that material point of time.

11. Learned Senior Advocate appearing for the respondent submits that, the report of the Commissioner cannot be classified as based on hearsay evidence. He points out that, the Commissioner did not proceed on the basis of the rental income of the surrounding area. Rather, the Commissioner took into account the circle rate of the property in question. Commissioner obtained the circle rate from the appropriate authority as will appear from the report of the Commissioner. The Commissioner thereafter applied an accepted method for the purpose of

calculation of the rental income on the basis of the valuation of the immovable property concerned.

12. Learned Senior Advocate appearing for the respondent submits that, in the facts and circumstances of the present case, since, the valuation of the immovable property concerned was taken on the basis of the circle rate, the same cannot be faulted. The methodology of calculating the rental income out of such an immovable property also cannot be faulted. Therefore, the conclusion arrived at by the Commissioner evidencing the rental income of the immovable property concerned cannot also be faulted. In any event, these grounds were never urged before the learned Trial Judge. Moreover, the memorandum of appeal in the present appeal does not contain any ground which is sought to be urged by the appellant in the present appeal.

13. As noted above, the appeal is directed against an order of the learned Trial Judge accepting the report of the Commissioner appointed for the purpose of calculation of mesne profit. Learned Trial Judge proceeded to pass a decree on the same.

14. A suit for eviction and for mesne profit was instituted by the respondent before the learned Civil Judge (Senior Division) at Jalpaiguri being Title Suit No.65 of 2005 subsequently renumbered as Title Suit No.2583 of 2014 (CIS). So far as eviction is concerned, a decree was passed on November 30, 2005 in favour of the respondent herein as against the appellant.

15. Aggrieved by the decree of eviction, the appellant filed an appeal being FAT No.683 of 2006 which was renumbered as FA No.135 of 2006. In such appeal, an interim order dated May 18, 2006 was passed requiring the appellant to deposit Rs.50,000/- as occupation charges. Apparently, the appellant complied with such interim order.

16. The interim order dated May 18, 2006 permitted the learned Trial Judge to proceed with the ascertainment of mesne profit in terms of Order 21 Rule 12 of the Code of Civil Procedure, 1908. By virtue of such interim order passed in such appeal, learned Trial Judge proceeded with the suit for the purpose of calculation of the mesne profit.

17. Initially, an Advocate Commissioner was appointed for the purpose of calculation of the mesne profit. Advocate Commissioner submitted a report with regard thereto. Such report was rejected by an order dated April 3, 2008.

18. Thereafter, learned Trial Judge accepting the suggestion on behalf of the respondent and appointed M/s Talbot and Co. as the Commissioner for the purpose of calculating the mesne profit.

19. M/s Talbot and Co. prepared and submitted its report dated December 18, 2014 with the learned Trial Judge. The appellant herein contested the acceptance of such report of M/s Talbot and Co. before the learned Trial Judge *albeit* unsuccessfully. Learned Trial Judge by an order dated September 7, 2016 accepted such report.

20. Being aggrieved by such acceptance, the appellant filed a revisional application being CO No.456 of 2017 which was dismissed by an order dated May 1, 2018.

21. Aggrieved by such order of rejection, the appellant filed a Special Leave Petition being Special Leave Petition (Civil) Diary No.851 of 2020 which was disposed of by an order dated October 27, 2020.

22. The order dated October 27, 2020 is as follows:

> ***"1. There is a delay of 526 days in filing the Special Leave Petition. The delay has been satisfactorily explained. Hence, the delay in filing the Special Leave Petition is condoned. The delay of 219 days in re-filing the Special Leave Petition is also condoned.***
>
> ***2. The learned Single Judge of the Calcutta High Court has declined to interfere with the order of the Civil Judge, Senior Division, Jalpaiguri dated 7 September 2016, observing that while the trial Judge had accepted the report of the Commissioner for the purpose of valuation, a final decree of mesne profits is yet to be passed. Hence, the learned Single Judge observed that the petitioners would be at liberty, after the passing of the final decree, to pursue their remedies in accordance with law.***
>
> ***3. The final decree that may be passed by the trial Judge on mesne profits, will be subject to the remedies available in law, including on the grounds which have been raised in the present proceedings. The petitioners would be heard before the passing of the final decree.***
>
> ***4. The Special Leave Petition is dismissed.***
>
> ***5. Pending application(s), if any, stand disposed of."***

23. In our view, the order dated October 27, 2020 of the Hon'ble Supreme Court, as noted above, kept all points raised by the parties with regard to the acceptance of the report of the Commissioner as also the quantification of the mesne profit open for the purpose of adjudication by the learned Trial Judge prior to passing of the final decree. Such order also permitted the appellant before us to be heard before passing a final decree with regard to the mesne profit.

24. In the facts and circumstances of the present case, by the impugned order, learned Trial Judge proceeded on the basis that the report of the Commissioner quantifying the mesne profit stood accepted by the order dated September 7, 2016 and therefore, a decree was required to be passed on such basis. With the deepest of respect, the learned Trial Judge failed to consider the direction of the Hon'ble Supreme Court dated October 27, 2020 as noted above.

25. The learned Trial Judge in the impugned order does not allude to the grounds raised. It does not discuss the merit or demerits of the respective contentions with regard to the points raised as against the acceptance of the report of the Commissioner. It merely proceeds on the basis of an earlier acceptance.

26. The earlier acceptance of such report as recorded by the order dated September 7, 2016 was the subject matter of challenge right up to the Hon'ble Supreme Court when the Hon'ble Supreme Court by the order

dated October 27, 2020 was pleased to keep the points raised open for the purpose of fresh adjudication. Learned Trial Judge did not enter into a fresh adjudication on the merits and demerits of the rival contentions with regard to the report of the Commissioner.

27. The impugned order proceeds on the basis of that, the order dated September 7, 2016 was never assailed by the parties. Again, with the deepest of respect, such is an erroneous appreciation of the conduct of the parties subsequent to the order dated September 7, 2016. A revisional application was filed assailing the order dated September 7, 2016 which resulted in the dismissal of the revisional application. The Special Leave Petition resulted in the order dated October 27, 2020.

28. ***Banwari Lal & Sons (P) Ltd.*** (supra) is with regard to the calculation of mesne profit. In the facts and circumstances of the present case, since, we are minded to set aside the impugned order purely on the basis that, the learned Trial Judge failed to take into account the directions contained in the order dated September 27, 2020 passed by the Hon'ble Supreme Court, we need not enter into such arena. We keep such point open to be adjudicated by the learned Trial Judge, if so raised.

29. So far as the grounds of appeal is concerned, we find that the grounds canvassed before us are available in Ground Nos.IV and VIII of the memorandum of appeal. In any event, a point of law can be raised at any stage of a proceeding.

30. In such circumstances, we set aside the impugned order.

31. We remand the matter for fresh adjudication on the quantum of mesne profit in terms of the directions contained in the order dated October 27, 2020 passed by the Hon'ble Supreme Court.

32. We are informed that, the appellant deposited a substantial amount with the Registrar General during the pendency of the appeal.

33. Since we are remanding the matter for fresh calculation on the quantum of mesne profit and some amount is payable on account of mesne profit, we deem it appropriate that, the amount presently deposited with the Registrar General will continue to remain as a credit in respect of Title Suit No. 65 of 2005 renumbered as Title Suit No.2583 of 2014 till adjudication of the mesne profit in such Title Suit. Such amount will abide by the directions passed in Title Suit No.65 of 2005.

34. Registrar General will keep the fixed deposit with any nationalized bank bearing interest and keep the same renewed from time to time till the decision in such Title Suit.

35. **FAT 1 of 2024** along with connected applications, if there be any, are **disposed of** without any order as to costs.

36. Trial Court records be sent down forthwith.

(Debangsu Basak, J.)

37. I agree.

(Chaitali Chatterjee (Das), J.)

(AD)