

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

**APD/14/2023
WITH
CS/12/2013**

**NATIONAL INSURANCE COMPANY LIMITED
VS
THE HANUMAN ESTATES LIMITED**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Debajyoti Datta, Sr. Adv.
Mr. Arijit Doss Mullick, Adv.
Ms. Pallabi Sardar, Adv.

For the Respondent : Mr. Sabyasachi Choudhury, Sr. Adv.
Ms. Urmila Chakraborty, Adv.
Mr. Amit Meharia, Adv.
Ms. Paramita Banerjee, Adv.
Mr. Rohan Raj, Adv.
Mr. Tamoghna Chattopadhyay, Adv.

HEARD ON : 06.05.2026

DELIVERED ON : 06.05.2026

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a defendant in a suit for eviction and directed against the judgment and decree dated December 20, 2022. By the impugned judgment and decree, learned Trial Judge, accepted the report of the Special Referee, fixing mesne profit.

2. Learned Advocate appearing for the appellant refers to the sequence of events occurring in the suit. He submits that, on May 7, 2015, a decree for eviction was passed under Chapter XIII A of the Original Side Rules. He points out that, the Commercial Courts Act, 2015 came into force on October 23, 2015. He refers to the fixation of specified value subsequent thereto. He submits that, on November 15, 2018, State Government issued a Notification declaring specified value of commercial suit to be not less than Rs.1 crore. He points out that, on February 20, 2020, an application was filed for appointment of Special Referee to assess the mesne profit. A Special Referee was appointed on February 27, 2020. Subsequently, the Special Referee submitted a report. The appellant took the exception to the report by way of an application being IA No. GA/6/2020 while, the respondent filed an application being IA No. GA/5/2020 for acceptance of the report.
3. Learned Advocate appearing for the appellant submits that, the suit was not transferred to the Commercial Division although, the subject matter of the suit involved commercial disputes within the meaning of the Act of 2015. He relies upon the judgment and order dated April 20, 2026 passed in **APO/25/2025 (Rajshri Productions Pvt. Ltd. Vs. T.E. Thomson and Company Ltd.)**, **AIR 1954 SC 340 (Kiran Singh Vs. Chaman Paswan)**, judgment and order dated April 1, 2026 passed in APO/144/2023 **(Awam Marketting LLP Vs. M/S. Orient Beverages Limited and Ors.)**, **2019 SCC Online Cal 3215 (Surajit Sen Vs. Royal Bank of**

Scotland NV), 2026 SCC Online Cal 468 (Tractel Tirfor India Pvt. Ltd. Vs. Tractel International S.A.S) and APO/48/2021 (Starlift Services Private Limited Vs. Syama Prasad Mookerjee Port, Kolkata) in support of proposition that, the Court passing the impugned judgment and decree did not possess requisite jurisdiction under the Act of 2015 and therefore, the same is a nullity.

4. Referring to the merits of the case, learned Advocate appearing for the appellant submits that, the Special Referee erred in fixing the rate of mesne profit in the manner as done. He submits that, although the learned Special Referee as also the learned Trial Judge failed to take into consideration the fact that, the property concerned was without any amenities as available to the other properties which were taken into consideration for the purpose of fixation of the mesne profit. He points out that, facilities such as car parking spaces, lifts and V. Satellite facility, ATM and other amenities were not available at the subject premises while, they were available to other properties.
5. Learned Senior Advocate appearing for the respondent refers to the order dated April 22, 2026 passed by the Hon'ble Supreme Court in **Civil Appeal No. 006873 of 2026 [SLP (C) No. 8111 of 2026] (Shri Balaji Industrial Engineering Ltd. Vs. Steel Authority of India Ltd.)** to contend that, since, the learned Judge passing the impugned order was also with the relevant determination/roster of the Commercial Division, the impugned judgment and order

cannot be faulted on the basis as sought to be contended by the appellant.

6. On the aspect of the merits of the matter, learned Senior Advocate appearing for the respondent submits that, both the learned Special Referee as also the learned Trial Judge, took into consideration the correct parameters for the purpose of calculation of mesne profit. He submits that, no interference is called for on the merits.
7. In **Shri Balaji Industrial Engineering Ltd. (supra)**, Supreme Court held that, a judgment delivered by a Judge designated as a Commercial Court in respect of a matter which involves a commercial dispute within the meaning of the Act of 2015, but not transferred to the Commercial Division, cannot be faulted on the ground of lack of jurisdiction.
8. In view of such pronouncement of the Supreme Court in **Shree Balaji Industrial Engineering Ltd. (supra)**, the authorities relied upon by the appellant on such score need no further consideration.
9. On the merits of the present disputes between the parties, in a suit for eviction and recovery of mesne profit, a decree for eviction was passed on May 7, 2025. In such suit for eviction, GA/3/2020 was filed seeking appointment of a Special Referee to assess the mesne profit. By an order dated February 27, 2020, a Special Referee was appointed. Mandate of the Special Referee was extended by the

High Court. The Special Referee submitted a report fixing the mesne profit.

- 10.** Before the learned Special Referee, parties adduced evidence as to the rent for the period for which, the mesne profit was required to be adjudicated upon. Learned Special Referee, considered the respective materials and arrived at a finding while arriving at such finding, learned Special Referee took into consideration the location of the building, the amenities available and the prevailing rate of rent at the material point of time in the surrounding building.
- 11.** The contention of the appellant that, the Special Referee and the learned Trial Judge failed to take into consideration that three important amenities were not available in the building under construction, in the facts and circumstances of the present case, does not possess requisite importance. Both the learned Special Referee as well as the learned Court noticed the features of the building concerned as also the rent of the adjoining area and arrived at a finding. Both the learned Special Referee and the learned Trial Judge gave reasons for acceptance of the rate of rent.
- 12.** The findings returned by the learned Special Referee and by the learned Trial Judge, on the aspect of calculation of the mesne profit, are not established to be perverse.
- 13.** Both the Special Referee and the learned Trial Judge referred to and considered the valuer reports submitted before them. They formed an opinion on the basis of materials placed before them. In

absence of the findings of the Special Referee and the learned Trial Judge with regard to the calculation of the mesne profit being established to be perverse, we are not minded to interfere with the impugned judgment and decree.

14. There being no merit in the present appeal, the same is dismissed.

15. APD/14/2023 is dismissed, without any order as to costs.

(DEBANGSU BASAK, J.)

16. I agree.

(MD. SHABBAR RASHIDI, J.)