

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

***APO/25/2025
WITH CS/257/2018***

***RAJSHRI PRODUCTIONS PVT. LTD.
-VERSUS-
T. E. THOMSON AND COMPANY LTD.***

***APD/1/2025
IA No.GA/1/2025***

***RAJSHRI PRODUCTIONS PVT. LTD.
-VERSUS-
T. E. THOMSON AND COMPANY LTD.***

Present :

The Hon'ble Justice Debangsu Basak

-And-

The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant : *Mr. Rajarshi Dutta, Adv.
Mr. Varun Kothari, Adv.
Mr. A. P. Agarwalla Adv.*

For the Respondent : *Mr. K. R. Thaker, Sr. Adv.
Mr. Chayan Gupta, Adv.
Mr. Rittick Chowdhury, Adv.
Mr. Dwip Raj Basu, Adv.*

HEARD ON : 20.04.2026

DELIVERED ON : 20.04.2026

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a defendant in a suit for eviction and directed against a judgment and decree dated October 7, 2024 passed in IA No.GA/5/2024 and IA No.GA/6/2024 in CS/257/2018.

2. Appellant suffered a decree for eviction on December 13, 2022 passed under Chapter XIII A of the Original Side Rules. Decree for eviction was assailed before the Appeal Court and affirmed by order dated February 3, 2023. A Special Leave Petition (SLP) carried was dismissed.
3. Judgment and decree dated December 13, 2022 not only directed eviction but also referred the calculation of mesne profit to the Special Referee.
4. In terms of the judgment and decree dated December 13, 2022, Special Referee calculated the mesne profit. Report of the Special Referee was assailed by both the parties to the suit.
5. IA No.GA/5/2024 is an application by the appellant before us as the defendant in the suit for mesne profit challenging the calculation of mesne profit by the Special Referee while IA No.GA/6/2024 is by the respondent as the plaintiff.
6. Materials placed on record establish that, the suit for eviction was in respect of an immovable property which was being used for commercial purposes. An office was being run by the appellant in such tenanted premises. Appellant made over possession of the tenanted premises to the respondent before us during the pendency of the suit.
7. Commercial Courts Act, 2015 came into effect on and from October 23, 2015. Under Section 15 of the Act of 2015, the suit was required to be transferred to the Commercial Division on its establishment and constitution. Commercial Division was established by this Hon'ble Court on July 16, 2016.
8. None of the parties to the suit nor the Court transferred the suit to the Commercial Division till date.

9. The judgment and decree dated October 7, 2024 was passed by the Court in the non-commercial division. By virtue of Section 7 of the Act of 2015 read with Section 15 thereof, the non-commercial division lost jurisdiction to try and decide the pending suit, which was required to be transferred to the commercial division which was not done.
10. Learned Senior Advocate appearing for the respondent submits that, the claim of the respondent is for mesne profit. It is independent of the contract of tenancy. A subsequent suit for mesne profit is also maintainable. Since the claim for mesne profit is not relating to any agreement involving a commercial dispute within the meaning of Section 2(1)(c) of the Act of 2015, the calculation of mesne profit, therefore, should not be treated to be one involving commercial dispute within the meaning of the Act of 2015 so as to hold that the Court which passed the impugned decree, was without jurisdiction. In support of his contention, he relies upon **(1965) 2 SCR 661 (Chittoori Subbanna vs. Kudappa Subbanna & Ors.)** and **2023 SCC OnLine SC 1614 (Bharat Petroleum Corporation Ltd. & Anr. vs. ATM Constructions Pvt. Ltd.)**.
11. With deepest of respect, we are unable to agree with the contentions advanced on behalf of the respondent. Initially, on the date of filing of the suit, the tenancy premises was being exploited for commercial purposes. An office was being run from the tenancy premises. The suit fell within the meaning of Section 2(1)(c)(vii) of the Act of 2015 when it was filed.
12. The suit was decreed on December 13, 2022 for eviction and mesne profit. The suit, therefore, did not lose the character of involving a commercial

dispute within the meaning of the Act of 2015 subsequent to the decree for eviction mesne profit dated December 13, 2022 being passed.

13. In ***Chittoori Subbanna (supra)*** Supreme Court observed that there was no provision of law other than the provisions of Order XX Rule 12 of the Code of Civil Procedure, 1908 which empowers the Court to decree mesne profit subsequent to the institution of the suit for recovery of possession of the immovable property and mesne profit.
14. In ***Bharat Petroleum Corporation Ltd. & Anr. (supra)*** the Supreme Court noted various authorities of various High Courts. It noted one Full Bench decision of the Allahabad High Court reported at ***AIR 1931 All 429 (Ram Karan Singh vs. Nakchhed Ahir)*** which held that a subsequent suit claiming mesne profit where in an earlier suit claiming possession and mesne profit upto the date of the suit was already decided, was maintainable. Significantly, in the facts of the Allahabad High Court suit, the second suit for mesne profit was filed within the period of limitation of the institution of the suit and the date of delivery of possession.
15. The issue of a commercial dispute being heard and decided by the non-Commercial Division subsequent to the Act of 2015 coming into effect did not fall for consideration for obvious reasons in the two authorities as noted above.
16. In view of our understanding of the law as noted above, the impugned judgment and decree is set aside as being passed by a non-commercial Court in spite of commercial dispute within the meaning of the Act of 2015 subsequent to the Act of 2015 coming into effect, being involved in the suit.

- 17.** In course of Section 15 of the Act of 2015, we direct the department to transmit records of CS 257 of 2018 including IA GA/5/2024 and IA GA/6/2024 to the Commercial Division. On such transfer being effected and the suit being registered in the Commercial Division, Department will treat CS/257/2018 and the interlocutory applications made thereunder being IA GA/5/2024 and IA GA/6/2024 as disposed of in the non-commercial Division.
- 18.** We clarify that we did not enter into the merits of the rival claims and the calculation of mesne profits. The same are left open to be decided by the learned Judge in the Commercial Division.
- 19.** APD/1/2025, AP/25/2025 along with all pending applications are disposed of without any order as to costs.

20. I agree.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)