

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

**FAT No.5 of 2023
IA No: CAN 2 of 2025**

**Sri Bimal Kumar Ghosh, since deceased,
represented by his legal heirs and representatives,
Sri Biplab Ghosh and others**

-Versus-

Indian Overseas Bank and others

For the appellants : Mr. Ajay Singhal,
Ms. Heena Yasmin Shaikh ... Adv.

For the respondents : Mr. Prasanta Joardar,
Ms. Esha Achrya,
Ms. Khusbu Agarwal ...Adv.

Heard on : 09.06.2026

Reserved on : 09.06.2026

Judgment on : 12.06.2026

Sabyasachi Bhattacharyya, J.:-

1. The present first appeal has been preferred against a judgment and decree dated September 19, 2022, passed by the learned Civil Judge (Senior Division) at Siliguri, District – Darjeeling, in Title Suit No.17 of 2026,

whereby the appellants' suit was dismissed on contest against the defendants/respondents.

- 2.** The appellants are admittedly co-owners of the suit properties along with others. The respondent no.1-Bank had been in occupation of the suit properties since long. However, the relevant narrative leading to the present appeal begins from two registered lease deeds, respectively dated February 28, 2005 (Deed No.718 of 2005) and June 12, 2005 (Deed No.781 for 2006). By the Lease Deed dated February 28, 2005, 4375 Sq.Ft. in the front portion of the first floor of the building 'Joydeep', situated at Hill Cart Road, P.O. & P.S. – Siliguri, was let out by the original plaintiffs and their co-owners to the respondent no.1-Bank for being used as its Siliguri Branch, including lockers, vaults etc. On the other hand, by dint of the Lease Deed dated June 12, 2005, 90 Sq.Ft. on the ground floor of the same building was let out by the original plaintiff no.1 Bimal Kumar Ghosh (since deceased) to the respondent no.1-Bank for the purpose of operating its Automated Teller Machine (ATM).
- 3.** The tenure of the first Lease Deed dated February 28, 2005, was for 10 years (December 6, 2003 to December 5, 2013), whereas that of the second Lease Deed dated June 12, 2005 was 15 years (June 4, 2005 to June 3, 2020).
- 4.** Subsequently, in the month of March 2016, Title Suit No.7427 of 2016 (later re-numbered as Title Suit No.17 of 2016) was instituted by the appellants and their father, Bimal Kumar Ghosh, *inter alia* for eviction of the defendants/respondents from the plaintiffs' portion of the suit properties,

for *mesne* profits and surplus of arrear lease rent at the enhanced rate as well as damages, apart from a decree for waiver of interest in respect of certain loan accounts of the plaintiff with the respondent no.1-Bank and for ancillary reliefs.

5. The said suit was dismissed on contest by the impugned judgment, prompting the appellants to prefer the present appeal. During the pendency of the appeal, plaintiff/appellant no.1, Bimal Kumar Ghosh met his demise and his name was expunged from the records. The present appellants, being his sole heirs and legal representatives, were already on record.
6. Learned counsel appearing for the appellants argues that the learned Trial Judge dismissed the suit primarily on the premise that even after expiry of the lease dated February 28, 2005, the plaintiffs/appellants permitted the lessee-Bank to continue in possession of the suit properties and accepted rent in respect thereof. Thus, in the opinion of the learned Trial Judge, since the appellants accepted such rent, which was adjusted with their loan accounts with the respondent no.1-Bank, such continuance of the lessee in possession tantamounted to holding over. The learned Trial Judge also took note of the fact that *vide* certain communications in writing, the appellants had requested the lessee-Bank not to shift from the suit premises in a hurry, although the lessee wanted to vacate the suit property.
7. Consequentially, the learned Trial Judge came to the conclusion that the possession of the lessee, even after the expiry of the lease, was not unauthorised or unlawful; hence, the appellants were not entitled to *mesne* profits.

- 8.** However, it is contended by the appellants that the learned Trial Judge erred in law in construing mere acceptance of rent by the appellants as holding over, since there was no consent on the part of the lessors/appellants at any point of time to the lessee continuing as a tenant. Rather, by several letters, the appellants had not only claimed enhanced rent as per the relevant clauses of the lease deeds, but also categorically claimed *mesne* profits and had given a notice to the lessee-Bank to vacate the suit premises within one month from the expiry of the lease.
- 9.** Learned counsel cites *Govind Impex (P) Ltd. v. Income Tax Deptt.*, reported at (2011) 1 SCC 529, in support of the proposition that one term of the lease cannot be taken into consideration in isolation and the entire document has to be seen to decipher the terms and conditions of the lease. Clause 4(iii) of both the lease deeds contained a stipulation that the lease rent would be enhanced at 15 per cent of the original rent after five years from the commencement thereof. Thus, it is argued that the learned Trial Judge overlooked such clauses to deny the arrear rents at the enhanced rates to the appellants.
- 10.** Learned counsel next cites *Sarup Singh Gupta v. S. Jagdish Singh and others*, reported at (2006) 4 SCC 205, for the proposition that mere acceptance of rent does not constitute waiver of notice to quit. Learned counsel also relies on *Indian Oil Corpn. Ltd. v. Sudera Realty (P) Ltd.*, reported at (2023) 16 SCC 704, where the Hon'ble Supreme Court had highlighted the status of a tenant at sufferance, which is a shade higher than that of a mere trespasser, since the original entry was lawful, but

distinguished such status from that of a tenant by holding over. It was further observed by the Hon'ble Supreme Court that a tenant at sufferance, while continuing in possession after the expiry of the lease, becomes liable to pay *mesne* profits.

- 11.** Lastly, learned counsel for the appellants relies on *Sanjay Kumar Singh v. State of Jharkhand*, reported at (2022) 7 SCC 247, to argue that additional evidence is required to be permitted if it has a direct bearing on the pronouncement of the judgment and the Appellate Court requires such evidence to be adduced to enable it to pronounce judgment or for any other substantial cause.
- 12.** In consonance with the said proposition, learned counsel relies on CAN 2 of 2025, which is an application for production of additional evidence filed by the appellants in the present appeal, annexing the photocopy of a registered lease deed entered into by the respondent no.1-Bank with a third party to the suit after vacating the suit premises. It is argued that from such lease deed dated March 23, 2015, it would be evident that the Bank is paying rent of Rs.1,31,040/- per month for an area measuring 2730 Sq.Ft. on the first floor of a building situated at Hill Cart Road itself.
- 13.** Thus, it is contended that the Court may rely on the said document to assess the *mesne* profits at the present market rate, payable by the respondents to the appellants.
- 14.** Learned counsel for the appellants further submits that the learned Trial Judge misconstrued the written correspondence between the parties and overlooked the fact that the plaintiffs/appellants did not agree to the

respondent no.1-Bank holding over as tenant in the suit property or entered into any fresh agreement of tenancy, nor was there any waiver of the eviction notice issued by the appellants. In any event, it is contended that after expiry of the lease deed in respect of the Schedule-A property (covered by the first lease deed dated February 28, 2005) by efflux of time, the jural relationship of lessor-lessee between the parties automatically stood severed.

- 15.** Insofar as the letters sent by the appellants to the respondents asking for delayed shifting, it is contended that the contents of those letters would themselves reveal that the premise of such request was the apprehension of the appellants that the building would be structurally damaged if the respondents removed the lockers and other structures affixed by them in the suit property all on a sudden. The appellants merely insisted that due procedure should be followed and appropriate permissions and approvals should be taken from the statutory authorities as required by law before such shifting, in order to protect themselves from any unwarranted violation of law and/or damage to the building due to hasty shifting.
- 16.** Learned counsel for the respondents, on the other hand, submits that the respondent no.1-Bank admittedly vacated the suit properties on May 4, 2016. It is further submitted that the Bank is agreeable to pay the arrears of rent at the enhanced rate, as per the Banks' calculation, to the appellants.
- 17.** However, it is contended that the learned Trial Judge was justified in observing that the appellants themselves had requested the Bank to

gradually shift from the suit premises and had obstructed the shifting even though the Bank wanted to vacate the suit property earlier. By the conduct of the appellants, it is submitted, they waived the quit notice and permitted the bank to continue in possession of the suit properties. By virtue of acceptance of rent even after the expiry of the lease in respect of the Schedule-A property, the appellants consented to the continuance of possession, thus rendering the status of the Bank that of a tenant by holding over even after expiry of the first lease.

- 18.** Insofar as the claim of waiver of loan is concerned, learned counsel for the respondents submits that there was no such clause in the lease deeds and, as such, the same is entirely beyond the purview of the present suit. Thus, learned counsel seeks the dismissal of the present appeal.
- 19.** Upon hearing learned counsel for the parties, it transpires to be an admitted position that the respondents vacated the suit premises on May 4, 2016. PW-1, in his cross-examination, also reiterated such position. Thus, the plaint prayer of eviction was rendered a non-issue much prior to the disposal of the suit itself and, as such, is not required to be considered in the present appeal.
- 20.** In the context of the arguments advanced by both parties, the following questions fall for consideration in the present appeal:

(i) Whether the respondent no.1/lessee was a tenant at sufferance or tenant by holding over after expiry of the Lease Deed dated February 28, 2005, in respect of the Schedule-A property;

- (ii) *Whether the plaintiffs/appellants are entitled to mesne profits in respect of the Schedule-A property after the expiry of their lease in respect thereof;*
- (iii) *Whether the plaintiffs/appellants are entitled to the balance arrears of unpaid enhanced rent.*

21. The above questions are answered as follows:

- (i) **Whether the respondent no.1/lessee was a tenant at sufferance or tenant by holding over after expiry of the Lease Deed dated February 28, 2005, in respect of the Schedule-A property**

22. Section 116 of the Transfer of Property Act, 1882 (hereinafter referred to as “the TP Act”) recognizes the concept of holding over in Indian Law. The said Section is set out below:

“116. Effect of holding over.—If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

Illustrations

(a) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year."

23. The essence of the distinction between 'tenancy by holding over' and 'tenancy at sufferance' is the assent of the lessor or the absence of it. In both cases, the lessee continues to remain in possession of the let-out property even after the expiry of the lease. However, the status of such lessee would be that of a tenant by holding over in the event the lessor assents to the continuance of such possession, whereas such status would be relegated to that of a tenant at sufferance in the event there is no such assent. This principle has been recognized in several judgments.

24. In *Indian Oil Corpn. Ltd. (supra)*¹, the Hon'ble Supreme Court succinctly identified the distinction between the two. The relevant paragraph of the said report is set out below:

"81. A tenant continuing in possession after the expiry of the lease may be treated as a tenant at sufferance, which status is a shade higher than that of a mere trespasser, as in the case of a tenant continuing after the expiry of the lease, his original entry was lawful. But a tenant at sufferance is not a tenant by holding over. While a tenant at sufferance cannot be forcibly dispossessed, that does not detract from the possession of the erstwhile tenant turning unlawful on the expiry of the lease. Thus, the appellant while continuing in possession after the expiry of the lease became liable to pay mesne profits."

¹ ***Indian Oil Corpn. Ltd. v. Sudera Realty (P) Ltd., reported at (2023) 16 SCC 704***

- 25.** It is to be noted that in Section 116 of the TP Act, the term “accepts rent” has been qualified by the expression “otherwise assents”. The term “otherwise” signifies that the acceptance of rent, by itself, does not signify holding over but has to be concomitant with the assent of the landlord. Such assent, as per the said provision, can be by acceptance of rent or otherwise.
- 26.** Again, in *Sarup Singh Gupta (supra)*², the Hon’ble Supreme Court held that mere acceptance of rent does not by itself constitute an act of the nature envisaged by Section 113 of the TP Act, which provides that a notice given under Section 111(h) is waived with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting. It was further observed that in any event, even if rent was neither desired nor accepted, the landlord in the event of success would be entitled to the payment of the arrears of rent.
- 27.** Paragraph Nos.6 to 8 of the said judgment, which are germane in the present context, are quoted hereinbelow:

“6. The learned Senior Counsel also relied upon a decision of a learned Single Judge of the Calcutta High Court in Manicklal Dey Chaudhuri v. Kadambini Dassi [AIR 1926 Cal 763 : 43 Cal LJ 272] wherein it was held that where rent is accepted after the notice to quit, whether before or after the suit has been filed, the landlord thereby shows an intention to treat the lease as subsisting and, therefore, where rent deposited with the Rent Controller under the Calcutta Rent Act is withdrawn even after the ejectment suit is filed, the notice to quit is waived. In our view, the principle laid down in the aforesaid judgment of the High Court is too widely stated, and cannot be said to be an accurate statement of law. A mere

² ***Sarup Singh Gupta v. S. Jagdish Singh and others, reported at (2006) 4 SCC 205***

perusal of Section 113 leaves no room for doubt that in a given case, a notice given under Section 111 clause (h), may be treated as having been waived, but the necessary condition is that there must be some act on the part of the person giving the notice evincing an intention to treat the lease as subsisting. Of course, the express or implied consent of the person to whom such notice is given must also be established. The question as to whether the person giving the notice has by his act shown an intention to treat the lease as subsisting is essentially a question of fact. In reaching a conclusion on this aspect of the matter, the court must consider all relevant facts and circumstances, and the mere fact that rent has been tendered and accepted, cannot be determinative.

7. A somewhat similar situation arose in Shanti Prasad Devi v. Shankar Mahto [(2005) 5 SCC 543]. That was a case where the landlord accepted rent even on expiry of the period of lease. A submission was urged on behalf of the tenant in that case that Section 116, Transfer of Property Act was attracted and there was a deemed renewal of the lease. Negating the contention, this Court observed that mere acceptance of rent for the subsequent months in which the lessee continued to occupy the premise even after the expiry of the period of the lease, cannot be said to be a conduct signifying his assent to the continuing of the lease even after the expiry of the lease period. Their Lordships noticed the conditions incorporated in the agreement itself, which provided for renewal of the lease and held that those conditions having not been fulfilled, the mere acceptance of rent after expiry of period of lease did not signify assent to the continuance of the lease.

8. In the instant case, as we have noticed earlier, two notices to quit were given on 10-2-1979 and 17-3-1979. The suit was filed on 2-6-1979. The tenant offered and the landlord accepted the rent for the months of April, May and thereafter. The question is whether this by itself constitutes an act on the part of the landlord showing an intention to treat the lease as subsisting. In our view, mere acceptance of rent did not by itself constitute an act of the nature envisaged by Section 113, Transfer of Property Act showing an intention to treat the lease as subsisting. The fact remains that even after accepting the rent tendered, the landlord did file a suit for eviction, and even while prosecuting the suit accepted the rent which was being paid to him by the tenant. It cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting. We cannot ignore the fact that in any event, even if rent was neither tendered nor accepted, the landlord in the event of success would be entitled to the payment of the arrears of rent. To avoid any controversy, in the event of

termination of lease the practice followed by the courts is to permit the landlord to receive each month by way of compensation for the use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so intended. In the instant case, we find no other fact or circumstance to support the plea of waiver. On the contrary, the filing of and prosecution of the eviction proceeding by the landlord suggests otherwise.”

- 28.** Again in *Indian Oil Corpn. Ltd. (supra)*³, the Hon’ble Supreme Court reiterated that the lessee, while continuing in possession after the expiry of the lease in the case of a tenancy at sufferance, becomes liable to pay *mesne* profits.
- 29.** In the above backdrop, the documentary evidence adduced in the suit becomes relevant. From April 25, 2009 onwards, the appellants and the other co-owners of the suit property had been claiming enhanced rent as per the lease deed. In the suit, the plaintiffs/appellants claimed their 50 per cent share as co-owners in the said enhanced rent. Such claim was reiterated by several letters which were exhibited in the suit, including the letters dated June 17, 2009, June 24, 2011, July 5, 2011, May 15, 2012, July 23, 2012 and March 1, 2013.
- 30.** By the letter dated May 28, 2013, the lessors/owners asked the lessee-Bank to deliver vacant possession of the leasehold premises within one month from the expiry of the lease deed (that is, on or before January 6, 2014). It was reiterated therein that the lessee is to quit and vacate the leasehold premise immediately on the expiry of December 5, 2013. For abundant

³ *Indian Oil Corpn. Ltd. v. Sudera Realty (P) Ltd.*, reported at (2023) 16 SCC 704

caution, it was further stated that the lease shall stand terminated on the expiry of one month from the expiry of the lease deed.

- 31.** The notice, although captioned under Section 106 of the TP Act, was, for all practical purposes, a reminder to the lessee that the tenancy would stand terminated with its expiry on December 5, 2013 and that the lessee was to vacate the premises within one month from the said date.
- 32.** It is to be noted that seen from the perspective of Section 106 of the TP Act, the said notice was a superfluity and a misnomer since Section 106, as amended, requires notice of 15 days, whereas in the present case, the notice-in-question was issued long prior to the expiry of the lease on May 28, 2013 and asked the lessee to vacate the premises only on the expiry of the lease on December 5, 2013, and not after 15 days from the issuance of such notice.
- 33.** Such stand was never resiled from by the lessors. Rather, the lessors, by several subsequent letters, also claimed *mesne* profits for the period between the expiry of the lease and the lessee vacating the premises, thus implicitly reiterating their stand that the possession of the lessee after the expiry of the lease would be unlawful. Even in *Indian Oil Corpn. Ltd. (supra)*⁴, the Hon'ble Supreme Court held that in case of a tenant at sufferance, the lessee would be liable to pay *mesne* profits during the period of its possession after the expiry of the lease. Hence, the claim of *mesne* profits, coupled with the consistent requests of the appellants for the respondent no.1-lessee to vacate the premises, clearly indicate that there was no assent at any point of

⁴ *Indian Oil Corpn. Ltd. v. Sudera Realty (P) Ltd.*, reported at (2023) 16 SCC 704

time on the part of the lessors to the continuance of possession of the respondent no.1-Bank as a lessee. Hence, the status of the respondent no.1-Bank after the expiry of the lease was at best that of a tenant at sufferance and did not qualify at any point of time as tenant by holding over.

- 34.** The acceptance of rent has to be seen in the backdrop of the letter dated May 28, 2013, asking the lessee to quit the suit premises on expiry of the lease deed. As held in *Sarup Singh Gupta (supra)*⁵, mere acceptance of rent post-expiry of lease, sans consent on the part of the lessor, does not tantamount to waiver of notice to quit.
- 35.** In any event, since the notice to quit was a superfluity and redundant in view of the termination of the lease in terms of Section 111(a) of the TP Act being by operation of law, which took effect automatically, would render superfluous any further requirement of issuance of notice to quit, either under Section 106 or under Section 111(h) of the TP Act.
- 36.** Thus, although captioned under Section 106 of the TP Act, the notice dated May 28, 2013 is to be read merely as the assertion of the lessors that the lease would stand terminated on expiry of the lease period by efflux of time.
- 37.** The learned Trial Judge proceeded on the erroneous premise that the plaintiffs, by their conduct, not only extended the occupation of the defendants by impliedly waiving the notice to quit but also requested them not to shift in a hurry.
- 38.** However, such premise is contrary to the evidence on record. The plaintiffs, in all their correspondence, stuck to their stand that the respondents are to

⁵ ***Sarup Singh Gupta v. S. Jagdish Singh and others, reported at (2006) 4 SCC 205***

vacate the suit premises. In the letter dated July 17, 2014, the plaintiffs insisted on the respondents paying occupation charges at the prevailing market rate of lease rent, commensurate with the plaintiffs' claim of *mesne* profits for the unlawful occupation of the defendants, thereby clearly reiterating that the occupation of the Bank in respect of the suit properties after expiry of the lease deed was illegal.

- 39.** The learned Trial Judge erroneously construed the letter dated July 17, 2014 as a gesture of the plaintiffs "welcoming" the decision of the Bank to vacate the suit premises later. In the subsequent letter dated May 16, 2015, the plaintiffs made it abundantly clear that the shifting entailed breaking constructions on the first floor towards the front portion of the Bank's premise facing the Hill Cart Road, which could not be undertaken whimsically and required meticulous planning, requiring time and the active participation of the plaintiffs, since high-tension wires of the WBSEDCL were just a couple of feet from the first floor premise. Furthermore, the plaintiffs stated that the construction had become fragile on the outer side due to natural wear and tear and the position had to be ascertained before breaking. The safe deposit lockers, which were huge in size, required utmost care during removal. The plaintiffs flagged the issue that the lockers, vault and Godrej iron safety door, weighing about 2 tonnes, could not be shifted by the staircase and the plaintiffs were in doubt since the defendants' letter was silent about the necessary approvals having been taken from the Siliguri Police Station, WBSEDCL, Hill Cart Road Group Supply, Fire Brigade, Siliguri Municipal Corporation and other statutory

bodies. In the absence of such written approvals, the appellants did not give their consent for shifting heavy and hazardous items from the Bank premises, particularly since the Bank had not stated anything about the compensation and the cost for repair to be incurred during shifting. It is only in such circumstances, as clarified in the said letter, that the plaintiffs were not in favour of emergency shifting of heavy items without obtaining written approvals from appropriate statutory authorities.

- 40.** Moreover, the plaintiffs reiterated settling all their accounts regarding lease rent, etc. before the respondent no.1/lessee vacated the suit properties.
- 41.** Thus, the plaintiffs did not “welcome” the decision to postpone the shifting of their own volition but only flagged the damage imminent upon hasty removal of the heavy bank lockers and vaults from the suit premises.
- 42.** Another facet of the impugned judgment requires consideration. The learned Trial Judge observed that the Bank could hardly be expected to pay rent to anyone on mere asking without establishing their claim by supporting documents. However, it is evident from the several correspondence made by the plaintiffs that they had repeatedly disclosed the names of the heirs of the original co-owners, who had died in the meantime. That apart, there could not have been any doubt in the mind of the lessee as to who were the lessors in view of the lessee having consistently continued to pay rent at the old rate to the lessors. Hence, the plea set up by the Bank, insisting upon further proof of heirship, was a flimsy pretext, and could not be justified. On the one hand, as recorded in the impugned judgment itself, the Bank went on paying rent at the old rate to the lessors and on the other, feigned ignorance

as to who are the real lessors when the question of paying rent at the enhanced contractual rates arose.

- 43.** Thus, it is crystal clear from the materials on record that the plaintiffs consistently gave out that the occupation of the suit premises by the lessees after expiry of the lease was unlawful, for which the latter were liable to pay *mesne* profits. By no stretch of imagination can it be said that the plaintiffs consented to continued possession of the lessees in such capacity after the expiry of the lease, in the teeth of numerous letters from the plaintiffs' end asking the lessees to vacate the premises, beginning from prior to expiry of the lease period. Hence, the finding of the learned Trial Judge that there was waiver of the quit notice and/or holding over of tenancy, being contrary to evidence, is perverse.
- 44.** Accordingly, this issue is decided in favour of the plaintiffs/appellants, holding that after expiry of the lease deed in respect of the Schedule-A property, the status of the respondent no.1-Bank was that of tenant at sufferance and not tenant by holding over.

(ii) Whether the plaintiffs/appellants are entitled to mesne profits in respect of the Schedule-A property after the expiry of their lease in respect thereof

- 45.** The claim of the plaintiffs/appellants for *mesne* profits was rightly limited to the Schedule-A property, the lease in respect of which was determined by operation of Section 111(a) of the TP Act, by virtue of expiry by efflux of time

on December 5, 2013. In the absence of any holding over or consent on the part of the appellants to permit the respondents to continue as lessees, the occupation of the lessees in respect of the Schedule-A property on and from December 6, 2013 was unlawful, for which the respondents are liable to pay *mesne* profits.

- 46.** In the plaint, *mesne* profits have been claimed at the rate of Rs.70/- per square feet. The area of Schedule-A property falling in the 50 per cent share of the plaintiffs is 2187.5 Sq.Ft. Thus, as per the plaint case, the *mesne* profits for each month would be Rs.1,53,125/- (2187.5 x 70). The same multiplied by the 29 months which elapsed between the expiry of the lease on December 5, 2013 and the date of the lessee actually vacating the premise, that is, May 4, 2026, would be Rs.44,40,625/- (1,53,125 x 29).
- 47.** However, the quantum of *mesne* profits claimed by the plaintiffs/appellants was not substantiated by the plaintiffs/appellants by furnishing any material in support of the current market rate in the area.
- 48.** For such purpose, we are to look at the application under Order XLI Rule 27 of the Code of Civil Procedure filed by the plaintiffs/appellants in the present appeal, being CAN 2 of 2025. The document sought to be produced as additional evidence is nothing less than the lease deed entered into by the respondent no.1-Bank itself on March 23, 2015 with its new lessors after vacating the suit premises. Such document has not been controverted by the respondents and, as such, furnishes a tangible basis for calculating the *mesne* profits. As per the said agreement, the monthly rent for a

premise measuring 2730 Sq. Ft. in the self-same area as the suit premises is Rs.1,31,040/-.

49. Thus, the current market rate, according to the said document, would be Rs.48/- per square feet per month. Multiplied by the area of the Schedule-A property (2187.5 Sq. Ft.) into the period of unlawful occupation, that is, 29 months (December 6, 2013 – May 4, 2016), the total *mesne* profits comes to Rs.30,45,000/- (2185.5 x 29).
50. The above amount, calculated at the rate of Rs.48/- per square feet, is based on the lease deed entered into by the lessees themselves with their new lessors in the vicinity of the suit premises (which is an uncontroverted document) and, in any event, is much less than the market rate of Rs.70/- per square feet claimed in the plaint.
51. Thus, this Court comes to the conclusion that the plaintiffs/appellants are entitled to *mesne* profits to the tune of Rs. Rs.30,45,000/- for the Schedule-A property during the period of unlawful occupation by the lessees/respondents after the expiry of the lease deed.
52. Insofar as the Schedule B property is concerned, there does not arise any question of awarding *mesne* profits for the same, nor has it been claimed by the appellants, since the lessee/Bank vacated the same prior to the expiry of the lease period in respect thereof.

(iii) Whether the plaintiffs/appellants are entitled to the balance arrears of unpaid enhanced rent

- 53.** Clause 4(iii) of both the Lease Deeds dated February 28, 2005 (for Schedule-A property) and June 12, 2005 (for Schedule-B property) stipulate the enhancement of rent at 15 per cent on the original rent per month after five years of the tenancy. The balance arrears at the enhanced rate, after deducting the rent already paid by the lessee-Bank at the old rate, calculated at 15 per cent of the original rent falling in the share of the plaintiffs, comes to Rs.3,281.25p. per month. The initial five years of the lease elapsed on December 5, 2008 and the lease expired on December 5, 2013. 60 months passed in between December 6, 2008 and December 5, 2013. Accordingly, the arrears of enhanced rent for the Schedule-A property, where the local Branch of the lessee-Bank, along with its vaults, etc., was located, comes to Rs.1,96,875 /- (3281.25 x 60).
- 54.** Similarly, the first five years of the lease deed in respect of the Schedule-B property, where the ATM of the Bank was located, expired on June 3, 2014 and the premises were vacated by the lessee/Bank on May 4, 2016. Thus, 11 months elapsed in between June 4, 2015 and May 4, 2016. Calculated at the enhanced rate on the basis of 15 per cent of the original rent for the Schedule-B property, the enhanced amount would be Rs.1293.75 p. per month. Multiplied by 11 months, the total of enhanced arrears would come to Rs.14,231.25p. Hence, the enhanced arrears in respect of Schedule-B property would be Rs.14,231.25p.

- 55.** Accordingly, the total combined enhanced arrears for both Schedule A and Schedule B properties payable by the Bank to the appellants, calculated at the rates stipulated in the respective lease deeds, would come to Rs. (1,96,875 + 14231.25) = Rs. 2,11,106.25p.
- 56.** The said amount, thus, is the total entitlement of the appellant with regard to arrears of enhanced rent.

CONCLUSION

- 57.** In view of the above discussions, the learned Trial Judge acted in a perverse manner and *de hors* the law and contrary to the evidence on record in dismissing the suit altogether. The plaintiffs/appellants are, as per the above findings, entitled to *mesne* profits for Schedule-A property as well as enhanced arrears of rent in respect of both the Schedule-A and Schedule-B properties at the rates as specified above.
- 58.** Accordingly, FAT No.5 of 2023 is allowed on contest, thereby setting aside the impugned judgment and decree dated September 19, 2022, passed by the learned Civil Judge (Senior Division) at Siliguri, District – Darjeeling, in Title Suit No.17 of 2016 and decreeing the said suit partially as follows:
- (i) The plaintiffs/appellants do get a decree of **Rs.30,45,000/-** as *mesne* profits; and
 - (ii) The plaintiffs/appellants do get a further decree of **Rs. 2,11,106.25p** (1,96,875 + 14231.25) as arrears of enhanced rent for the Schedule-A and Schedule-B properties, combined together.

59. The defendants/respondents shall pay such amounts to the plaintiffs/appellants within Ninety (90) days from date.
60. In default, the respondents/defendants shall pay interest at the rate of 6 per cent per annum on the decretal amount, calculated from the 91st day from this date till the date of making the actual payment.
61. IA No: CAN 2 of 2025 is also disposed of in the light of the above observations.
62. A formal decree be drawn up accordingly.
63. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)