
(1990) 01 CAL CK 0004
In the Calcutta High Court
Case No : C.R. No. 826 of 1969

Dipak Basu

APPELLANT

Vs

Loch Lomond Lodge (P) Ltd.

RESPONDENT

Date of Decision : 25-01-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1
Transfer of Property Act, 1882 — Section 108
West Bengal Premises Tenancy Act, 1956 — Section 13(1), 13(6)

Citation : (1991) 1 CALLT 269

Hon'ble Judges : Monoranjan Mallick, J

Bench : Single Bench

Judgement

Monoranjan Mallick, J.—The plaintiff who has been appointed Receiver by the High Court Calcutta in Suit No. 1683 of 1964 (Sitaram Dhelia v. Basdeo Dhelia and Ors.) has brought this suit for eviction against the defendant.

2. He states as follows :

He has been appointed Receiver, inter alia, of the premises No, 26, Tarachand Dtitta Street now re-numbered as premises No. 13, Pretoria Street, Calcutta.

The defendant was a monthly tenant of the said premises under the plaintiff as Receiver at a rent of Rs. 885.50 p. per month payable according to English Calender month.

The plaintiff in or about 2nd September 1967 came to know that the defendant without the knowledge and consent of the plaintiff had wrongfully and illegally made material and substantial structural additions and alterations to the said premises particulars whereof are set out below :

Particulars of additions and alterations.

(1) Construction of a two rooms cottage with bathroom and privies in the Lawn on the Northern Side of the premises.

- (2) Constructed pucca verandah on Eastern Side of the premises.
- (3) Constructed pucca garages on the Eastern Side of the premises.
- (4) Constructed 6 shop-rooms in front of the premises i.e. on the Western side.
- (5) Constructed a store room in the lawn of the said premises.

The defendant without previous consent in writing of the plaintiff has wrongfully sub-let different portion of the premises in suit to several subtenants, particulars of such sub-tenancies are set out hereunder :

1. Raj Balli (washerman) .. Road side shop room Rent 50/- 2. M. Makail (Tailor) .. -do- 58/- 3. Jamul Meah (Panwallah) .. -do- 50/- 4. B. C. Rawal (Plumber) .. -do- 20/- 5. Mullick & Co. (Electric shop) -do- 25/- On 6th November 1967 the plaintiff duly served a combined notice u/s 13(6) of the West Bengal Premises Tenancy Act, 1956 and u/s 106 of the Transfer of Property Act requiring the defendant to quit and vacate the premises on the expiry of the month of December 1967. Notwithstanding such notice, the defendant is continuing in wrongful occupation of the same. The plaintiff, therefore, claims mesne profit in respect of the suit at the rate of Rs. 50/- per diem from 1st January 1968 till the recovery of possession thereof.

The plaintiff also claims damages for the said wrongful additions and alterations to the said premises which is assessed at Rs. 22,250/-.

Hence this present suit for eviction, mesne profits and damages.

3. The defendant has filed a written statement contesting the suit for eviction etc.

The defendant contends that the suit is mis-conceived and not maintainable inasmuch as the purported notice to quit dated November 6, 1967 on the basis of which the suit was instituted has been withdrawn by the plaintiff by the plaintiff's solicitor's letter dated December 7, 1968. The defendant denies that the defendant made material additions and alterations to the premises in suit. The defendant states that all these constructions were existing all along and even prior to the introduction of the defendant company as a tenant under the predecessor-in-title of the plaintiff.

4. The defendant states that the defendant at all material times carried on and still carried on the business of boarding and lodging establishment in the suit premises and in usual course of business it was and still is the duty of the defendant company to provide for facilities to its boarders, such as Dhobis, Barbers, Tailors, Panwallahs and similar amenities. To facilitate such requirements barbers, cigaratte vendors, dhobis and the like have been given the accommodation in the small servant quarters of the premises on purely leave and licence basis. At no point of time, any portion of the premises was sub-let to anybody.

5. The defendant contends that the notice to quit dated 6th November 1967 was

illegal and not binding upon the defendant.

6. The defendant also denies the plaintiff's claim for mesne profits and damages.

From the pleadings the following issues have been framed.

ISSUES

1. Has the defendant made material and substantial structural additions and alterations to the suit tenancy without the knowledge and consent of the plaintiff, the particulars whereof are given in Paragraph 4 of the plaint?

2. Has the defendant sub-let the premises to different persons as mentioned in paragraph 5 of the plaint without written consent of the plaintiff?

3. Has the tenancy of the defendant been determined by a valid notice u/s 13(6) of the West Bengal Premises Tenancy Act and u/s 106 of the Transfer of Property Act ?

4. Has the notice to quit dated 6th November, 1967 been withdrawn and/or waived by the plaintiff by his acts and conduct ?

5. Is the plaintiff entitled to a decree for possession of the suit premises ?

6. Is the plaintiff entitled to mesne profits @ 50/- per diem from 1st January 1968 ?

7. Is the plaintiff entitled to a decree for Rs. 22,250/- as damages as stated in paragraph 8 of the plaint?

8. To what relief or reliefs, if any, are the plaintiff entitled?

7. Issue Nos. 3 and 4 : The plaintiff has proved that the defendant was served with the ejectment notice dated 6th November 1967 by which the defendant was asked to quit and vacate the suit premises on the expiry of the month of December 1967.

The defendant does not dispute the service of the notice, but challenges the validity of the notice in two ways. Firstly, the Receiver who has issued the notice of ejectment and brought the suit did not take leave of the Court before issuing such notice and consequently the ejectment notice and the suit brought on the basis thereof is illegal and invalid and no ejectment decree can be passed on the basis of this notice and the suit.

Secondly, the plaintiff through his Solicitor withdraw the notice and on such withdrawal of notice, no ejectment suit can be brought without issuing a fresh ejectment notice.

As regards the first point the plaintiff's learned Advocate urges that the Court appointing Receiver granted the Receiver the leave to file suit for rent and for ejectment and that even if it be conceded that leave for this ejectment suit is required to be taken, such leave has now been obtained from Umesh Chandra

Banerjee, J. by his order dated 27.7.1989 and the learned Judge has granted the plaintiff Receiver ex-post facto leave and any defect that was initially there has now been cured and the defendant who did not take the plea in the written statement cannot be permitted to take such plea at the stage of the trial and in support of the submission that ex-post facto leave is quite permissible refers to me the decision of the Supreme Court in Everest Coal Company (P) Ltd. Vs. State of Bihar and Others,

8. The first point for decision is whether the fact that Receiver has not taken leave from the Court prior to issuing notice of ejectment renders the ejectment notice and the suit filed thereon invalid.

9. On a perusal of the relevant portion of the order dated 7th December 1964 passed in the Partition suit being suit No. 1683 of 1964 it is found that the Receiver has been given by the Court to exercise all the powers under Order 40 Rule 1 (d) of the C.P. Code except that he shall not without the leave of the Court, among others, bring suits except suit for rent and ejectment when the rent is in arrears for more than two months.

10. The present suit for ejectment is on the ground of making additions and alterations of the premises without the permission of the landlord and for sub-letting the portion of the premises to sub-tenants without previous consent of the landlord. So, it is not a suit for eviction on the ground of default. So the Receiver had to obtain the leave of the court before initiating such suit. Admittedly before the ejectment notice was issued and the suit instituted in the High Court, Original Side the plaintiff Receiver did not take the leave. However, it is an admitted position that the plaintiff Receiver obtained such leave dated 27.7.1989 from the learned Judge of High Court who is now competent to grant such leave. The signed copy of the order which has been produced before me clearly shows that the learned Judge knowing fully well that the suit had been instituted without such leave granted such leave specifically mentioning the number of the suit. It was the ex post facto leave to institute and continue with the present suit.

11. On behalf of the defendant it is contended that the ex post facto leave will neither cure the institution of the suit nor would validate the issuing of the ejectment notice without such leave.

12. In support, the defendant's learned Advocate has referred to me the Division Bench judgment of Calcutta High Court reported in ILR 14 Cal 324 (Drobomoye Gupta and Ors. v. C. T. Dairs and Ors.) in which the Division Bench has held that when the order appointing Receiver by the Court did not give him the power to serve notice of ejectment or to institute such suit for ejectment without the leave of the court the Receiver is not authorised to institute such suit and the suit is liable to be dismissed. On the other hand, the learned Advocate for the plaintiff referred to me the decision of the Supreme Court in Everest Coal Company (P) Ltd. Vs. State of Bihar and Others, . In that decision the question arose as to

whether the Court appointing the Receiver could grant leave to a party filing a suit against the Receiver during the pendency of such suit when such leave was not obtained without such leave. The Supreme Court has observed at page 2300 as follows :

"When a court puts a Receiver in possession of property, the property comes under court custody, the Receiver being merely an officer or agent of the court. Any obstruction or interference with the Court's possession sounds in contempt of the court. Any legal action in respect of that property is in a sense such an interference and invites the contempt penalty of likely invalidation of the suit or other proceedings. But, if either before starting the action or during its continuance, the party takes the leave of the court, the sin is absolved and the proceeding may continue to a conclusion on the merits. In the ordinary course no court is so prestige conscious that it will stand in the way of a legitimate legal proceeding for redressal or relief against its Receiver unless the action is totally meritless. Previous or vexatious or otherwise vitiated by any sinister factor grant of leave is the rule, refusal the exception. After all the court is not in the usual run of cases affected by a litigation which settles the right of parties and the Receiver represents neither party, being an officer of the court. For this reason ordinarily the court accords permission to sue, or to continue. The jurisdiction to grant leave is undeobted and inherent, but not based on black-letter law in the sense of enacted law. Any litigative disturbance of the court's possession without its permission amounts to contempt of its authority, and the wages of contempt of court in this jurisdiction may well be voidability of the whole proceeding. Equally clearly prior permission of the court appointing the Receiver is not a condition precedent to the enforcement of the cause of action. Nor is it so grave a vice that later leave sought and got before the decree has been passed will not purge it. If, before the suit terminates, the relevant court is moved and permission to sue or to prosecute further is granted, the requirement of law is fulfilled. Of course, failure to secure such leave till the end of the lis may prove fatal."

13. On behalf of the defendant it is submitted that the above Supreme Court decision does not make any whisper that when the Receiver files the suit without the leave of the court, the court can grant such leave after such institution and it only lays down the law that if a suit is brought against the Receiver without leave and the leave is sought for during the pendency of the suit court can grant leave and if such leave is granted it would validate the institution against the Receiver.

14. I am of the view that the principle laid down in the above Supreme Court decision can be applied even when the leave is obtained by the Receiver after he instituted the suit without leave but obtained such leave before the court passes the decree, but if no leave is obtained before the decree is obtained, the decree passed is liable to be set aside. But when during the pendency of the suit the court appointing the Receiver grants leave to be institution and continuation of the suit already filed, then there can be no doubt that the defect must be held to

be cured. The property is in custody of the court. Receiver is an officer of the court. If he institutes the suit without leave, he commits contempt of court and the court on being moved by its officer can purge him of contempt and grant such leave even during the continuation of the suit. So, I am of the view that by taking leave during the pendency of the suit the defect has been cured.

15. So far as the issuing the ejectment notice is concerned, the order of the court appointing the Receiver did not restrict such power. The power was restricted in respect of filing a suit for ejectment except on the ground of default without the leave of the court. But the Receiver can exercise his power under Order 40, Rule 1(d) C.P. Code and could issue such notice without taking leave he had only to take leave for filing suit. He has taken leave during the pendency of the suit and the court has granted it. So there is no invalidity in the ejectment notice on the ground that the leave of the court was not obtained before such issuance of notice.

16. Another ground on which the ejectment notice has been challenged is that the suit is not maintainable because the notice for eviction dated 6th November, 1967 Ext. A was waived/abandoned by the letter dated 7th December 1988 being part of Ext. B the plaintiff agreed to withdraw the notice dated 6th November 1967 if the rent was enhanced. My attention has also been drawn, the evidence of the plaintiff Receiver in question Nos. 11 and 21 in this respect. It is also pointed out that the plaintiff has in his evidence (Question No. 102 and 103) has clearly admitted that after the letter dated 7th December 1968 no fresh ejectment notice was issued. It is therefore contended that when the ejectment notice was withdrawn by the letter dated 7th December 1968 without issuing a fresh notice of ejectment the present ejectment suit is not entertainable.

17. On behalf of the plaintiff it is submitted that the Solicitor's letter dated 7th December 1988 was sent without prejudice, that as the defendant did not accept the proposal so there was no question of the ejectment notice being withdrawn and consequently there was no obligation for the plaintiff to issue a fresh notice and could file the present suit on the basis, of the original ejectment notice dated 6th November 1967.

18. I have carefully perused the solicitor's letter Ext. B. That letter indicates that in a meeting of the Receiver held on 25th November 1968 parties in the suit No. 1683 of 1964 agreed to withdraw the said notice to quit served upon the defendant on the defendant agreeing to- enhance the rent of the said premises to Rs. 1500/- per month from the existing rent Rs. 885.20. The defendant was asked to inform the plaintiff, if it agreed to that proposal, then to tender rent at Rs. 1500/- per month. By that letter the defendant was asked to confirm about it within seven days and on hearing them the plaintiff had to take steps further in the matter. It is an admitted fact that the defendant did not agree to the terms of the solicitor's letter to enhance the rent of Rs. 1500/- nor did they pay any such rent to the plaintiff Receiver. Therefore, the defendant did not abide by the terms and conditions on which the said letter was issued. If the defendant

agreed to enhance the rent then and then only there was a question of withdrawal of the said notice by the plaintiff Receiver. When that condition was not fulfilled then there was no question by the plaintiff withdrawing the notice of ejectment issued on 6th November, 1967. Therefore, that letter was not an unequivocal withdrawal of the notice to quit. It was conditional on the defendant agreeing to enhance the rent. The defendant did not agree to enhance the rent. Therefore, no question of the plaintiff withdrawing the notice, of ejectment would arise. I am therefore unable to hold that the plaintiff had any obligation to issue a fresh notice of ejectment after the solicitor's letter Ext. B. Therefore, this contention of the defendant also fails.

19. In the result, I answer the issue No. 3 in the affirmative and issue No. 4 in the negative.

20. Issue No. 1 : One of the grounds on which the plaintiff seeks to evict the defendant from the premises in suit is that the defendant made material and substantial structural addition and alterations to the suit tenancy without the knowledge and consent of the plaintiff. This is a ground for ejectment contained in Section 13(1) (b) of the West Bengal Premises Tenancy Act. Clause (b) of Section 13 rendered a tenant liable for eviction if he has done any act contrary to the provisions of Clause (m), Clause (o) or clause (p) of Section 108 of the Transfer of property Act 1882. As a matter of fact, in this case according to the plaintiff, the tenants have violated clause (p) of the Transfer of Property Act. Clause (p) of Section 108 of the Transfer of Property Act prohibits a tenant from erecting any permanent structure in the suit premises without the consent of the landlord. In the plaint the plaintiff has given the particulars of additions and alterations alleged to have been made without the knowledge and consent of the plaintiff. The plaintiff also claimed that he derived such knowledge on or about 2nd September 1967. On behalf of the defendant, however, this allegation has been squarely denied. The case of the defendant is that the defendant is using the premises in the same way as it was let out and all the constructions that are now existing in the suit premises" were there from the date when tenancy was given. It is also urged that even though in the plaint several new constructions were alleged but in the evidence there was no sufficient proof of that. It is also submitted that the plaintiff who has been appointed as Receiver did not have any personal knowledge as regards what structures were really there when the tenancy was let out and he is not competent to substantiate the allegations of the defendant making any substantial additions and alterations in the suit premises as alleged. Mr. Dipak Basu, the Receiver has stated in his evidence that on 17.12.1964 he took only symbolical possession of the premises on being appointed as Receiver. Therefore, he admittedly did not take physical possession of the premises. His evidence in chief (question Nos. 9 and 10) shows that he came to know about the additions and alterations on being informed by the parties. On the first day of his examination, he claims that only in March 1969 he has visited the suit property after the filing of the suit and on such visit, he found certain constructions on the premises. On the next day of his examination-in-

chief, however, he has stated that in December 1964 when he took symbolical possession he found that on the premises there was a two storied building and on the northern side of it there was a lawn and also there was a lawn on the eastern side (question No. 63).

21. He has further stated in question No. 64 that in few months prior to the issue of notice of ejectment, he had pointed out that there was some additions and alterations. According to him at that time when he visited the premises with the parties he discovered that on both the lawns new constructions had been made, that in northern side there was a masonry building and in the eastern side there was one room and a garage and that it was in or about few months prior to November 1967. According to him prior to this visit, he did not see those constructions. In question No. 73 he has stated that those new constructions were brick built construction with the Asbestos sheet roof. On being cross-examined he has stated in answer to question No. 87 that he visited the premises in a number of occasions after his appointment and the tenants accommodated him and there was no difficulty. But after the institution of the suit, he had to obtain an order from the court before he visited. He has also stated that after the institution of the suit he visited the suit premises for about four times. On behalf of the defendants, it is submitted that the evidence of the receiver has been contradicted by the evidence of Mr. Dhelia, one of the co-owners of the premises in suit, and that in view of the above the evidence adduced on behalf of the plaintiff, the allegations of making substantial additions and alterations in the premises cannot be held to have been properly proved. I would now consider the evidence of Mr. Dhelia. The evidence of Mr. Dhelia is to the effect that the suit premises that was let out was a two storied building constructed on the 10th cattedas of the land in the middle of the premises out of the total area of 22 cottas of land and that there was a lawn on the northern side of the building and a small lawn on the eastern side of the premises. So, in this respect, there was no contradiction in between Mr. Basu and Mr. Dhelia. His evidence in question No. 17 is that they came to know that certain additions and alteration had been made in November 1967 and he reported it to the Receiver, that thereafter they along with Mr. Basu, the Receiver, went and took a note for themselves and found that cottages were constructed which were brick built with Asbestos roof on the eastern side of the building, that a garage along with a store room was also constructed. It is his further evidence that after this construction has been discovered they held a meeting with the Receiver and a letter was sent to the tenant. His further evidence is that after institution of the suit with the permission of the court, a Special Officer was appointed who went to the premises and inspected the building and on inspection it was found that two cottages were constructed on the bigger lawn amongst which one was demolished and other still remained there, that there were two rooms originally in the ground floor of the building and that when they went there they found that the wall was demolished and two rooms were converted into one big room.,

22. On behalf of the defendant, one Raj Kumar Sharma has been examined. He

claims that he has been connected with the defendant company since early 1960 when he used to go and stay at that lodge as licensee and to supervise their work. But he became a Director of the company, only in March 1969 and there is no satisfactory evidence as to whether he had any connection with the defendant company prior to that. Therefore he does not appear to have any knowledge whatsoever prior to March 1969. His evidence in-chief is to the effect that the defendant did not implement any structural change in the suit premises and that the structure has been existing there from the beginning. But I have already indicated that he having been appointed Director sometime in March 1969 and there is no satisfactory evidence that he was staying as licensee in the lodge since 1960 when he was a student, he does not appear to have any personal knowledge as to what structures were there when the lease was taken and as to whether there was any new additions and alterations were made prior to his appointment as Director. He being the only witness to prove the case of the defendant. I am of the view that the evidence of Mr. Dipak Basu, the Receiver and Mr. Dhelia as regards the additions and alterations does not appear to have adequately controverted. Moreover, it is an admitted position that on the allegations of the plaintiff that the defendant had made substantial additions and alterations of the permanent nature in the premises in suit, a Surveyor had been appointed and he has submitted a report. It is true that the said Surveyor not been examined and the report of the Surveyor which is marked as Ext. "D" has been objected to by the defendant as not admissible in evidence on the ground that Mr. Sarkar the Surveyor has not been examined as a witness. I agree with the defendant that until and unless Mr. Sarkar is examined the report submitted by him does not appear to have any value whatsoever. Therefore, I do not place any reliance on his report. But along with the Surveyor Mr. Sarkar, Mr. Dhelia and Mr. Dipak Basu had gone to the premises and they in their evidence clearly stated that they had also seen along with Surveyor some new additions and alterations of permanent nature. When that evidence has not been controverted by the defendant by producing some competent witness, then I have to accept the evidence of Mr. Dhelia and Mr., Basu as true. I also agree with the defendant that all the additions and alterations of which the plaintiff has complained in the plaint, could not be substantiated by the plaintiff's witnesses but that there was some permanent structures were made recently have been clearly substantiated from the evidence of the plaintiffs witnesses. Those structures according to the plaintiff are permanent in nature. They are brick built structures with asbestos roof. It is not the case of the defendant that those structures were temporary structure or that any previous consent from the landlord was obtained prior to making such permanent structures. Therefore, I am inclined to hold that the defendant has contravened the provisions of clause (p) of Section 108 of the Transfer of Property Act and is therefore liable to be evicted under clause (b) of Section 13(1) of the West Bengal Premises Tenancy Act. Issue No. 1 is therefore answered in favour of the plaintiff.

23. Issue No. 2 : The other ground on which the plaintiff seeks the eviction of

the defendant is that without the consent and knowledge of the plaintiff, the defendant sub-let the premises to the various sub-tenants whose names were disclosed in the plaint. The defendant in the written statement does not deny and dispute the existence of those five persons occupying some-rooms in the premises, namely, (1) Raj Balli (washerman), (2) M. Makail (Tailor), (3) Jamul Meah (Panwallah), (4) B. C. Rawal (Plumber) and (5) Mullick & Co. (Electric shop). In the plaint it is alleged that they are occupying the road, side shop rooms and rents as specified in the plaint are alleged to be collected by the defendant.

24. It is the case of the defendant that for the purpose of business of boarding and lodging in order to provide amenities to the lodgers, the services of those persons were essentially required and those persons were given the rooms on leave and license basis and that three of them have already vacated and only two are still continuing on the same leave and licence basis. It is emphatically denied that any one of them was inducted as a sub-tenant in those premises. On behalf of the plaintiff it is urged that for the purpose of their lodging business, their services could not be required and that there were sub-tenants from where the defendant realised rents.

25. It is an admitted position that all the five persons who were alleged to be the sub-tenants of the defendant, two of them, namely, Jamul Meah (Panwalla) and Mullick & Co. an electric shop are still there., It is also found that Jamul Meah filed a suit in the City Civil Court at Calcutta against the defendant for declaration of his tenancy right and the learned Judge of the City Civil Court granted him the decree declaring him as a tenant under the defendant. This is an undisputed position. On behalf of the defendant, however, it is urged that an appeal has been preferred before the High Court at Calcutta against such judgment and decree passed by the City Civil Court and the same is still pending. It is therefore contended on behalf of the defendant that Jamul Meah was nothing but a licensee and the defendant being aggrieved by the judgment and decree of the City Civil Court has preferred an appeal for setting aside the said decree and the defendant still maintains the Jamul Meah is merely a licensee.

26. On behalf of the plaintiff not only the original judgment has been produced but also some of the rent receipts which have, been exhibited before the learned trial Judge has also been exhibited in this suit as Ext. "G" collectively.

27. The Title Suit No. 477 of 1977 of the City Civil Court clearly shows that a competent court of law has already declared Jamul Meah to be a premises tenant under the defendant. It is true that the said judgment is under appeal but the rent receipt exhibited in the T.S. also shows that the defendant appears to have given the alleged sub-tenant receipts realising rents. It is urged on behalf of the defendant that those are merely receipts for collecting the license fees. But I fail to understand as to how the services of Panwallah occupying a road side shop would be such an essential requirement in running a lodging business that he has to be kept as a licensee. So, I am of the view that he was a sub-tenant and the

rent was collected from him month by month. Another occupier of the shop room runs an electric shop there. Mr. Sharma has been constrained to admit that both Mr. Panwallah and the owner of the Electric shop also cater the need of the general public. I also fail to understand as to how a licensee was required to be given to an electric shop for the purpose of lodging business. That was absolutely unconnected with the lodging business. He is still occupying the premises and it is to be presumed that such occupation was by way of a tenant when there was no satisfactory evidence except verbal testimony of Mr. Sharma, that the occupier of the said shop was a licensee., I am, therefore, convinced that the defendant has inducted five sub-tenants of which three had already left and two are still continuing in occupation in two shop rooms which are the part of the premises in suit. No previous consent of the landlord was obtained before inducting such sub-tenants. So, the plaintiff has succeeded in proving that the defendant having sub-let the portion of the suit premises to sub-tenants have also lost protection against eviction under clause (a) to Section 13(1) of the West Bengal Premises Tenancy Act.

Issue No. 2 is therefore answered in the affirmative.

28. Issue No. 5 : In view of the above findings of the Issue Nos. 1 and 2, I am of the view that the plaintiff is entitled to get a decree for possession of the suit premises from the defendant.

29. Issue No. 6 : The plaintiff has claimed mesne profits from the defendant from 1st January 1968 in the plaint., In the plaint, the plaintiff has claimed mesne profits at the rate of Rs. 50 per diem. The plaintiff in answer to Question No. 60 has urged that in view of the prevailing rent in the locality he claims mesne profit of Rs. 5000/- per diem.

30. However, Mr. Basu in his evidence indicated that he did not have any substantial basis and his claim is based on his idea in this matter. In the circumstances, even though I am of the view that the plaintiff is entitled to mesne profits from 1st January 1967 but the plaintiff must get a preliminary decree for that and final decree for mesne profits shall be passed after a Special Officer appointed by this Court makes proper assessment of the mesne profits to which the plaintiff would be entitled from 1st January 1968 till the date on which delivery of the possession is obtained by the plaintiff from the defendant.

The Issue No. 6 is disposed of accordingly.

31. Issue No. 7 : The plaintiff has also claimed Rs. 22,250/- as damages mentioned in paragraph 8 of the plaint. It is submitted that as a result of additions and alterations made the plaintiff has suffered damages which he assessed at Rs. 22,250/-.

32. The defendant does not appear to have been caused any damages to the suit premises by making some permanent additions and alterations. Apart that such new constructions have enhanced the value of the premises, and the plaintiff on

getting eviction order from this court would be entitled to the benefits of such permanent structures made by the plaintiff in the suit premises. As this has virtually enhanced the value of the property, so I do not find any substantial basis for the plaintiff claiming any damages only because the defendant has made some permanent structures in the premises. I am of the view that the plaintiff has not suffered any damages because of the defendant putting any some new additions and alterations in the premises. For making such new constructions, the defendant has made itself liable for eviction and the order of eviction has been passed on that ground also. Therefore, I am unable to allow the plaintiff any decree for damages.

33. Issue No., 8 : In view of the above, I allow the plaintiff decree for eviction and the decree for mesne profits as indicated in the above. The plaintiff's suit is decreed on contest in part. The plaintiff shall get a decree for eviction against the defendant. The defendant is given three months' time to quit and vacate the suit premises failing which, the plaintiff shall be entitled to execute the decree on the expiry of the above period of three months by putting the decree into execution. The plaintiff shall also get the decree for mesne profits. The final decree shall also be passed after Special Officer is appointed by this Court and assesses such mesne profits to be payable by the defendant to the plaintiff from 1st January 1968 till the date of delivery of possession. The decree for damages is refused. The plaintiff shall get half the cost of this suit.

34. The prayer for stay by the defendant is refused. The learned Advocate for the plaintiff prays that the special Officer be appointed for ascertaining the mesne profits., The order of appointment shall be passed on Monday next. Let the matter put up for orders on Monday next.

34. All parties to act on a signed copy of the minutes of this order on the usual undertaking.