2024 INSC 445

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURSIDICTION

I.A. No.120219/2020
IN
Special Leave Petition (C) No.4049 of 2020

BIJAY KUMAR MANISH KUMAR HUF … PETITIONER(S)

VERSUS

ASHWIN BHANULAL DESAI … RESPONDENT(S)

With

I.A. No.120227/2020 in SLP(C)No.4050/2020,
I.A. No.120235/2020 in SLP(C)No.4051/2020
&
I.A. No.120248/2020 in SLP(C)No.4052/2020

J U D G M E N T

SANJAY KAROL, J.

1. These petitions for special leave to appeal seek to lay a challenge to the judgment and order dated 7th November 2019 passed in C.O.Nos.1582-85 of 2019 by the High Court of Calcutta. The learned Single Judge while deciding the issue as to whether the West Bengal Tenancy Act, 1997[1] or the Transfer of Property

[1] Tenancy Act

Act, 1882[2] was to be applied for framing of the issues in the instant landlord-tenant dispute, held that the Tenancy Act would govern the same.

2. Impugning the judgment of the learned Single Judge, the present Special Leave Petitions were filed before this Court. However, the reasoning adopted therein is not within the scope of the present adjudication. During the pendency of these Special Leave Petitions interlocutory applications have been filed seeking direction for payment of rent and other associated benefits in connection with the property which is the subject matter of the present dispute. It is these Interlocutory Applications that are sought to be disposed of by way of the present judgment.

3. It would, however, be apposite to have a bird's eye view of the controversy. It is not in dispute that the *lis* governs four different tenancies. Due to alleged non- payment of rent, the lease was forfeited, and the petitioner-applicant initiated proceedings for ejectment under the T.P. Act. Suit(s) were filed before the City Civil Court at Calcutta seeking *inter alia, a)* recovery of possession by eviction of defendant (respondent- tenant herein); *b)* permanent injunction against the present respondents and his agents, servants, employees or associates etc., from alienating, transferring or parting with possession of the property. The respondent-tenant, in opposition thereto, filed an application seeking the rejection of the plaint, on the grounds of jurisdiction, and for the premises to be governed under the Tenancy Act alleging particularly that, possession has been sought in

[2] T.P. Act

respect of a lease that is yet undetermined; the claim is bad in law, illegal and arbitrary; the suit has been misvalued and the plaint is insufficiently stamped, among others. The same came to be rejected by the concerned Court by order dated 3rd February 2015[3]. It was observed: –

> "…Without a full-fledged trial and evidence the court cannot come to conclusion that the averments made in the plaint are false and frivolous or that there is any suppression of material fact. Notice of determination of lease, if not at all served upon the defendant and if it is mandatory, then the suit may fill in future. But that cannot come under the ambit of the provision of O 7 R 11 CPC. This court cannot take the view for rejection of plaint without giving or affording opportunity to the parties to bring evidence justifying their plea. On the other hand, because of action of the suit has to be found out on the conjoint reading of all paragraphs of the plaint. Because of action does not mean only a date. Above all, the Plaintiff has specifically mentioned cause of action in paragraph 15 of the plaint. The allegations or the averments made in the plaint has to be proved by the Plaintiff had the time of trial by producing evidence and it is the duty of the Plaintiff to prove that the lease has been determined properly or not."

Allowing the matter not to rest there, the respondent-tenant pursued the matter further. The High Court, in its Civil Revisional Jurisdiction under Article 227 of the Constitution of India, *vide* order dated 31st March 2015[4] upheld the dismissal of the application under Order VII Rule 11. Eventually, this Court *vide* judgment and order dated 12th December 2018[5] directed the remand of the matter, observing thus: –

> "9. Taking into consideration the peculiar facts and circumstances of the case, since the suit is still in the preliminary stage, we dispose of the appeal is directing the trial court to frame the issue, relating to the maintainability of the suit and applicability of enactments, as

[3] Annexure P 11 of the paper book at page 132
[4] Annexure P 12 of the paper book at page 138
[5] Annexure P -29 of paper book

> mentioned supra and decide the same in accordance with law as a preliminary issue as expeditiously as possible, preferably within a period of 6 months from the date of communication of this judgment."

4. The Trial Court thereafter framed the following issues:-

> "1. Is the suit triable under the provisions of the W.B.P.T Act, 1997 or the Transfer of Property Act 1882?
>
> 2. Whether the suit is maintainable as framed or at all?"

5. The Trial Court in all four suits, answered the issues in favour of the plaintiff, primarily on the ground that since the tenancy, subject matter of the suit, was created with w.e.f. 20th November 1992 and the Tenancy Act came into force w.e.f. 10th July 2001. The agreement *inter se* the parties, therefore, was governed only by the T.P. Act. The observation of the trial court is extracted as under: –

> "… It is pertinent to mention here that the lease deed was executed on 20.11.1992 for the period of 99 years and the W. B. P. T. Act, 1997 came into force on 10. 07. 01 i.e. much more earlier than the enforcement of the W. B. P. T. Act, 1997 and there is or was no express word in the W. B. P. T. Act, 1997 that alright accrued by any party from the prevailing any law will be extinguished since the W. B. P. T. Act, 1997 came into force on 10. 07.01. Therefore, it can be said that the present suit squarely governed by the T. P. Act and no under West Bengal Premises tenancy act, 1997 and in view of such factual aspect the present is perfectly maintainable…"

6. It is in appeal from such order of the Trial Court that the impugned judgment with particulars as noticed above, came to be passed. The High Court while upholding the jurisdictional issue in favour of the respondent-tenant, dismissed all the four suits of the plaintiff for the same not to be maintainable. Thus, the issue as already observed is as to whether the order passed by the High

Court holding the respondent-tenant to be governed by the Tenancy Act, is legally sustainable or not.

7. In these Special Leave Petitions preferred by the landlord, notice was issued on 17th February 2020.

8. During the course of the hearing on 15th February 2024 petitioner-applicant (landlord) had offered time to the tenants to vacate the premises. Certain suggestions for amicably resolving the dispute for all times to come were exchanged, and as such the matters were adjourned. We are now informed that the petitioner-landlord's offer of giving time to the tenant to hand over the vacant possession of the premises stands rejected. Thus, the landlord insisted on the disposal of the applications asking the tenant to pay the rent at the market rate for the *lis* to have been determined at the institution of the plaint.

I.A. No.120219/2020 in SLP(C)No.4049/2020 :

9. The Interlocutory Application bearing the above particulars has been taken as the primary application for the sake of facts. It is noted that similar applications seeking similar prayer have been filed in other special leave petitions which shall be disposed of in accordance with this order.

10. We notice that these applications in issue have been pending for almost three years.

11. The applicant (petitioner in the SLP) seeks direction for payment of '*monthly occupational charges*' following the prevalent market rate. The prayer as made, is reproduced below:-

> "(a) Direct the Respondent to forthwith pay monthly occupational charges at the rate of INR 41/- (Indian Rupees Forty One) per Square feet, for 1208 Sq.ft = INR 49528/- since August, 2007 during the pendency of the present Special Leave Petition in respect of the present lease in dispute…"

12. Certain facts are required to be taken note of. The property in question is situated in the Dalhousie area, which has been termed as a commercial hub in Kolkata. The lease Agreement *inter se* the parties was entered into on 23rd February 1991 executed by the predecessor-in-interest of the petitioner. It is alleged that the respondent has been in default on payment of rent since 2002 and in default on payment of his share of municipal tax since 1996.

13. On account of non-payment of rent, the lease was forfeited/determined. However, the respondent has neither delivered the possession of the property nor paid the rent. The petitioner has submitted a report of an independent valuer dated 12th March 2020. The assessment of the rentals, made by the valuer, it is submitted, is fair and reasonable @ INR 41/- per Sq.ft.

14. It is submitted on behalf of the respondent that since no court has declared the end of the landlord-tenant relationship, the petitioner-applicant asking the respondent to pay occupational charges as opposed to contractual rent would amount to the re-writing of the tenancy Agreement. Further, it is argued that occupation charges are only payable after the lease is validly determined or after the decree of eviction. Since both these eventualities are yet to occur, no question of such payment arises. It is also urged that the petitioner-applicant accepted rent

from the respondent till August 2002 but thereafter refused to do so. According to the respondent-tenant, a total amount of Rs,2,06,400/- is payable on their part to the petitioner-applicant in the following terms :-

PARTICULARS

	ARREARS OF RENT FROM SEPTEMBER, 2002 TO FEB, 2024	INTEREST CALCULATED @10% TILL FEB, 2024	TOTAL
Tenancy 1 (Car Parking)	Rs.50/- X 258 months = Rs.12900/-	Rs.14625/-	Rs.27525/-
Tenancy 2 (Godown1)	Rs.150/- X 258 months = Rs.38700/-	Rs.43875/-	Rs.82575/-
Tenancy 3 (Godown 2)	Rs.250/- X 258 months = Rs.64500/-	Rs.73125/-	Rs.137625/-
Tenancy 4 (Office Space)	Rs.350/- X 258 months = Rs.90300/-	Rs.102375/-	Rs.192675/-
TOTAL 2,06,400 + 2,34,400 =			Rs.4,40,400/-

15. On the other hand, the petitioner-applicant's(landlord) calculation is tabulated as under:-

SLP No.	**SLP(C) 4049 of 2020**	**SLP(C) 4050 of 2020**	**SLP(C) 4051 of 2020**	**SLP(C) 4052 of 2020**
Date of Lease Deed	23.02.1991	20.11.1992	20.11.1992	20.11.1992
Area	1208 sqft	2500 sqft.	1650 sq.ft	800 sq.ft
Rent Amount per month	Area * Rs.41 per sq.ft =Rs.49,258/-	Area * Rs.41 per sq.ft =Rs.1,02,500	Area * Rs.41 per sq.ft =Rs.67,650	Area * Rs.41 per sq.ft =Rs.32,800/-
Rent due till date (from 2007)	Amount * (17 years * 12 months) =Rs.1,01,03712	Amount * (17 years * 12 months) =Rs.2,09,10,000/-	Amount * (17 years * 12 months) =Rs.1,38,00,600/-	Amount * (17 years * 12 months) =Rs.66,91,200
TOTAL				**Rs.5,15,05,512/-**

16. Landlord-tenant disputes often make their way to this Court, and obviously, the payment of rent/mesne profit/occupation charges/damages becomes, more often than not a matter of high contest. Determination, as alleged to have taken place by the petitioner, can take place at the instance of both the landlord and the tenant. Halsbury's Laws of England 3rd Edn. Vol.23 defines 'determination by landlord' as follows :

> "The tenancy is impliedly determined by the landlord when he does any act on the premises which is inconsistent with the continuance of tenancy; for example, when he re-enters to take possession (b), or puts in a new tenant (c), or cuts down trees or carries away stone (d), the trees and stone not being excepted from the demise (e), and also when he does an act off the premises which is inconsistence with the tenancy, as when he conveys the reversion (f), or grants a lease of the premises to commence forthwith (g). An act done off the premises, however, does not determine the tenancy until the tenant has notice of it (h)."

16.1 According to the petitioner, as already taken note of above, the lease was 'forfeited' due to non-payment of rent. Forfeiture, as defined by *Corpus Juris Secundum* is "the right of the lessor to terminate a lease because of lessee's breach of covenant or other wrongful act". Further, it mentions as under :

> "The word as used in a lease does not, strictly speaking, refer to any right given to the lessee to terminate the lease. Accordingly, it has been held that provisions for forfeiture, cancelation or termination of a lease are usually inserted for the benefit of the lessor and because of some default on the part of the lessee. A forfeiture is in the nature of a penalty of doing of failing to do a particular thing, and results from failure to keep an obligation."

16.2 It would also be useful to refer to the concept of tenant at sufferance. As defined in the very same treatise, such a tenant is a person who enters upon a land

by lawful title,but continues in possession after the title has ended without statutory authority and without obtaining consent of the person then entitled.

16.3 Wharton's Law Lexicon Seventeenth Edn. discusses 'tenancy at sufferance' in the following terms :

> "**Sufferance, Tenancy at**, This is the least and lowest estate which can subsist in realty. It is in strictness not an estate, but a mere possession only it arises when a person after his right to the occupation, under a lawful title, is at an end, continues (having no title at all) in possession of the land, without the agreement or disagreement of the person in whom the right of possession resides. Thus if A is a tenant for yes, and his terms expires, or is a tenant at will, and his lessor dies, and he continues in possession without the disagreement of the person who is entitled to the same, in the one and the other of these cases he said to have the possession by sufferance – that is, merely by permission or indulgence, without any right : the law esteeming it just and reasonable, and for the interest of the tenant, and also of the person entitled to the possession, to deem the occupation to be continued by the permission of the person who has the right, till it is proved that the tenant withholds the possession wrongfully, which the law will not presume. As the party came to the possession by right, the law will esteem that right to continue either in point of estate or by the permission of the owner of the land till it is proved that the possession is held in opposition to the will of that person."

17. Before adverting to the present facts and claims advanced by the parties it would be appropriate to refer to certain pronouncements of this Court where mesne profit, which is the mainstay of the interlocutory application(s) before us, have been awarded.

17.1 The respondent has referred to **Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.**[6] to submit that the landlord's claim for mesne profit is not

[6] (2005) 1 SCC 705

maintainable, given that, no decree of ejectment stands passed by the concerned civil court. We may refer to the observations made in the said judgment, which are, thus:

> "**9**…….The power to grant stay is discretionary and flows from the jurisdiction conferred on an appellate court which is equitable in nature. To secure an order of stay merely by preferring an appeal is not a statutory right conferred on the appellant. So also, an appellate court is not ordained to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has been made. Therefore, an applicant for order of stay must do equity for seeking equity. Depending on the facts and circumstances of a given case, an appellate court, while passing an order of stay, may put the parties on such terms the enforcement whereof would satisfy the demand for justice of the party found successful at the end of the appeal. In *South Eastern Coalfields Ltd.* v. *State of M.P.* [(2003) 8 SCC 648] this Court while dealing with interim orders granted in favour of any party to litigation for the purpose of extending protection to it, effective during the pendency of the proceedings, has held that such interim orders, passed at an interim stage, stand reversed in the event of the final decision going against the party successful in securing interim orders in its favour; and the successful party at the end would be justified in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (*a*) the delivery to it of benefit earned by the opposite party under the interim order of the High Court, or (*b*) compensation for what it has lost, and to grant such relief is the inherent jurisdiction of the court. In our opinion, while granting an order of stay under Order 41 Rule 5 CPC, the appellate court does have jurisdiction to put the party seeking stay order on such terms as would reasonably compensate the party successful at the end of the appeal insofar as those proceedings are concerned.
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> x x x x
>
> **18.** That apart, it is to be noted that the appellate court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the appellant tenant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate court. While ordering stay the appellate court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In *Marshall Sons & Co. (I) Ltd.* v. *Sahi Oretrans (P)*

Ltd. [(1999) 2 SCC 325] this Court has held that once a decree for possession has been passed and execution is delayed depriving the judgment-creditor of the fruits of decree, it is necessary for the court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property."

(Emphasis supplied)

17.2 A Bench of three learned Judges in **State of Maharashtra & Anr. v. Super Max International Private Limited and Ors**[7] observed as under :

"67. The way this Court has been looking at the relationship between the landlord and the tenant in the past and the shift in the Court's approach in recent times have been examined in some detail in the decision in *Satyawati Sharma* v. *Union of India* [(2008) 5 SCC 287] . In that decision one of us (Singhvi, J.) speaking for the Court referred to a number of earlier decisions of the Court and (in para 12 of the judgment) observed as follows: (SCC pp. 304-05)

"*12*. Before proceeding further we consider it necessary to observe that there has been a definite shift in the Court's approach while interpreting the rent control legislations. An analysis of the judgments of 1950s to early 1990s would indicate that in majority of cases the courts heavily leaned in favour of an interpretation which would benefit the tenant—*Mohinder Kumar* v. *State of Haryana* [(1985) 4 SCC 221] , *Prabhakaran Nair* v. *State of T.N.* [(1987) 4 SCC 238] , *D.C. Bhatia* v. *Union of India* [(1995) 1 SCC 104] and *C.N. Rudramurthy* v. *K. Barkathulla Khan* [(1998) 8 SCC 275] . In these and other cases, the Court consistently held that the paramount object of every rent control legislation is to provide safeguards for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute scarcity thereof. However, a different trend is clearly discernible in the later judgments."

x x x x x

68. The learned Judge then referred to some later decisions and (in para 14 at SCC p. 306 of the judgment) quoted a passage from the decision in *Joginder Pal* v. *Naval Kishore Behal* [(2002) 5 SCC 397] , to the following effect: (*Joginder Pal case* [(2002) 5 SCC 397] , SCC p. 404, para 9)

"*14. … '9. ... The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as to take care of the interest of the landlord the court should not hesitate*

[7] (2009) 9 SCC 772

> *in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.'* "
>
> (emphasis in original)
>
> x x x x x
>
> **79.** Before concluding the decision one more question needs to be addressed: what would be the position if the tenant's appeal/revision is allowed and the eviction decree is set aside? In that event, naturally, the status quo ante would be restored and the tenant would be entitled to get back all the amounts that he was made to pay in excess of the contractual rent. That being the position, the amount fixed by the court over and above the contractual monthly rent, ordinarily, should not be directed to be paid to the landlord during the pendency of the appeal/revision. The deposited amount, along with the accrued interest, should only be paid after the final disposal to either side depending upon the result of the case."

17.3 It has been held that tenants shall be liable to pay a rent equivalent to mesne profit, from the date they are found not to be entitled to retain possession of the premises in question. In **Achal Misra** v. **Ram Shanker Singh & Ors.**[8] this Court held -

> **"23.** From the material available on record it does not appear that any rate of rent was appointed at which rent would be payable by the respondents to the landlord. The respondents also do not seem to have taken any steps for fixation of rent of the premises in their occupation. They have been happy to have got the premises in a prime locality, occupying and enjoying the same for no payment. We make it clear that the respondents shall be liable to pay the rent equivalent to mesne profits with effect from the date with which they are found to have ceased to be entitled to retain possession of the premises as tenant and for such period the landlord's entitlement cannot be held pegged to the standard rent. Reference may be had to the law laid down by this Court in *Atma Ram Properties (P) Ltd.* v. *Federal Motors (P) Ltd.* [(2005) 1 SCC 705]."

This position was reiterated in **Achal Misra (2)** v. **Rama Shankar Singh & Ors.**[9].

[8] (2005) 5 SCC 531
[9] (2006) 11 SCC 498

17.4 The power to grant stay on the execution proceedings which would then result into an order for payment of mesne profit is what has been described as incidental or subject to the final outcome of the case. This Court has observed, in **G.L. Vijain** v. **K. Shankar**[10] as under -

> **"10.** It must be borne in mind that incidental power is to be exercised in aid to the final proceedings. In other words an order passed in the incidental proceedings will have a direct bearing on the result of the suit. Such proceedings which are in aid of the final proceedings cannot, thus, be held to be on a par with supplemental proceedings which may not have anything to do with the ultimate result of the suit.
>
> **11.** Such a supplemental proceeding is initiated with a view to prevent the ends of justice from being defeated. Supplemental proceedings may not be taken recourse to in a routine manner but only when an exigency of situation arises therefor. The orders passed in the supplemental proceedings may sometimes cause hardships to the other side and, thus, are required to be taken recourse to when it is necessary in the interest of justice and not otherwise. There are well-defined parameters laid down by the Court from time to time as regards the applicability of the supplemental proceedings.
>
> **12.** Incidental proceedings are, however, taken recourse to in aid of the ultimate decision of the suit which would mean that any order passed in terms thereof, subject to the rules prescribed therefor, may have a bearing on the merit of the matter. Any order passed in aid of the suit is ancillary power."

17.5 This Court in **Martin and Harris (P) Ltd.** v. **Rajendra Mehta**[11] speaking through one of us (J.K. Maheshwari, J.) observed that -

> **"18.** Thus, after passing the decree of eviction the tenancy terminates and from the said date the landlord is entitled for mesne profits or compensation depriving him from the use of the premises. The view taken in *Atma Ram* [*Atma Ram Properties (P) Ltd.* v. *Federal Motors (P) Ltd.*, (2005) 1 SCC 705] has been reaffirmed in *State of Maharashtra* v. *Super Max International (P) Ltd.* [*State of Maharashtra* v. *Super Max International (P) Ltd.*, (2009) 9 SCC 772 : (2009) 3 SCC (Civ) 857] by three-Judge Bench of this Court. Therefore, looking to the fact that the decree of eviction passed by

[10] (2006) 13 SCC 136
[11] (2022) 8 SCC 527

> the trial court on 3-3-2016 has been confirmed in appeal; against which second appeal is pending, however, after stay on being asked the direction to pay mesne profits or compensation issued by the High Court is in consonance to the law laid down by this Court, which is just, equitable and reasonable.
>
> **19.** The basis of determination of the amount of mesne profits, in our view, depends on the facts and circumstances of each case considering the place where the property is situated i.e. village or city or metropolitan city, location, nature of premises i.e. commercial or residential area and the rate of rent precedent on which premises can be let out are the guiding factor in the facts of individual case."
>
> (Emphasis supplied)

18. A perusal of the judgments extracted above as also other cases where **Atma Ram Properties** (supra) one common factor can be observed, i.e., the decree of eviction stands passed and the same having been stayed, gives rise to the question of payment of mesne profit. As observed above, the respondent contends that since, in the present case no decree of eviction is passed, and there is no stay awarded, the question of such payment does not arise.

19. While the above-stated position is generally accepted, it is also within the bounds of law, that a tenant who once entered the property in question lawfully, continues in possession after his right to do so stands extinguished, is liable to compensate the landlord for such time period after the right of occupancy expires. In this regard, we may refer to **Indian Oil Corporation Ltd. v. Sudera Realty Private Limited**[12], wherein this Court in para 64 observed as under :

> **"64.** 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

[12] 2022 SCC OnLine 1161

> 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."
>
> (Emphasis supplied)

20. It is to be noted that the Court in **Sudera Realty** (supra) observed that mesne profits become payable on continuation of possession after 'expiry' of lease. In our considered view, the effect of the words 'determination', 'expiry', 'forfeiture' and 'termination' would, subject to the facts applicable, be similar, i.e., when any of these three words are applied to a lease, henceforth, the rights of the lessee/tenant stand extinguished or in certain cases metamorphosed into weaker iteration of their former selves. Illustratively, Burton's Legal Thesaurus 3rd Edn. suggests the following words as being similar to 'expire' - cease, come to an end; 'determine' is similar to - come to a conclusion, bring to an end; 'forfeiture' is similar to – deprivation/destruction of a right, divestiture of property; and 'terminate' is similar to – bring to an end, cease, conclude. Therefore, in any of the these situations, mesne profit would be payable.

21. Having considered the submissions made across the Bar, we note that the disputed nature of the lease deed, in other words, its continuation or forfeiture on account of non-payment is heavily contested and stemming therefrom, so is the nature of payment to be made. We also note that the location of demised premises is in the heart of Kolkata and if the submissions of the petitioner are to be believed, they have been deprived of rent for a considerable period of time. Taking a lock

stock and barrel view of the present dispute, the averments and the documents placed before us, we may record a *prima facie* view, that the respondent-tenant has for the reasons yet undemonstrated, been delaying the payment of rent and/or other dues, payable to the petitioner-applicant landlord. This denial of monetary benefits accruing from the property, when viewed in terms of the unchallenged market report forming part of the record is undoubtedly substantial and as such, subject to just exceptions, we pass this order for deposit of the amount claimed by the petitioner-applicant, to ensure complete justice *inter se* the parties, After all, we cannot lose sight of the fact that the very purpose for which a property is rented out, is to ensure that the landlord by way of the property is able to secure some income. If the income remains static over a long period of time or in certain cases, as in the present case, yields no income, then such a landlord would be within his rights, subject of course, to the agreement with their tenant, to be aggrieved by the same. The factors considered by us have been referred to in **Martin and Harris** (Supra). We are supported in our conclusion by the observations and guidelines issued by this Court in **Mohammad Ahmed & Anr. *v.* Atma Ram Chauhan & Ors.**[13]. We reproduce the ones relevant to the adjudication of the present dispute hereinbelow-

> **"21.** According to our considered view majority of these cases are filed because the landlords do not get reasonable rent akin to market rent, then on one ground or the other litigation is initiated…
> (*i*) The tenant must enhance the rent according to the terms of the agreement or at least by ten per cent, after every three years and enhanced rent should then be made payable to the landlord. If the rent is too low (in comparison to market rent), having been fixed

[13] (2011) 7 SCC 755

> almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently.
>
> (*ii*) Apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant only so that the landlord gets the actual rent out of which nothing would be deductible. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges then the same shall also be borne by the tenant only.
>
> x x x x
>
> (*v*) If the present and prevalent market rent assessed and fixed between the parties is paid by the tenant then the landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of 5 years. Thus for a period of 5 years the tenant shall enjoy immunity from being evicted from the premises.
>
> (*vi*) The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the matter.
>
> (*vii*) The rent so fixed should be just, proper and adequate, keeping in mind the location, type of construction, accessibility to the main road, parking space facilities available therein, etc. Care ought to be taken that it does not end up being a bonanza for the landlord."

22. Since the Special Leave Petitions are pending adjudication, we make it clear that directions made in the above-stated Interlocutory Applications herein are subject to the final outcome of the former. Keeping in view the location of the demised premises, the rent as agreed, the alleged non-payment of rent, the default in payment of interest, as alleged, and other such like factors we are inclined to accept the calculation of dues as made by the petitioner-applicant, submitted to this Court during hearing, as reproduced hereinabove.

23. Consequently, keeping in view the observations made in **Super Max International** (supra) and **G.L. Vijain** (supra), we direct the respondent to deposit the above-stated amount of Rs.5,15,05,512/- with the Registry of this Court within four weeks from today. An affidavit of compliance shall be filed in the Registry

of this Court within a week thereafter. Failure to comply with the aforementioned shall entail all consequences within the law, including wilful disobedience of the order. The Registry is directed to place the amount received in a short-term, interest-bearing fixed deposit.

24. The Interlocutory Applications for directions seeking similar relief filed in SLP(C)Nos.4050 (I.A. No.120227/2020), 4051 (I.A. No.120235/2020), and 4052 (I.A. No.120248/2020) of 2020 shall stand disposed of in the same and similar terms as the I.A. No.120219/2020 filed in SLP(C)No.4049/2020, discussed above.

25. Let the Special Leave Petitions appear in the month of July, 2024.

……..J.
(J.K. MAHESHWARI)

……..J.
(SANJAY KAROL)

New Delhi;
May 17, 2024.