

## Jayantilal Ojha and Co. Vs Dalhousie Properties Ltd.

**Court:** Calcutta High Court

**Date of Decision:** Sept. 9, 1963

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 20 Rule 12

Court Fees Act, 1870 â€” Section 7(i), 7(xi)(ccc)

Suits Valuation Act, 1887 â€” Section 8

West Bengal Premises Tenancy Act, 1956 â€” Section 20

**Citation:** 70 CWN 55

**Hon'ble Judges:** R.S. Bachawat, J; A.K. Mukherjea, J

**Bench:** Division Bench

**Advocate:** A.K. Hazra and S.C. Ghose, for the Appellant; R.C. Deb and Ginwalla, for the Respondent

**Final Decision:** Dismissed

### Judgement

R.S. Bachawat, J.

Mr. Hazra contends that the value of the suit is less than Rs. 10,000/- and in view of Section 20 of the West Bengal

Premises Tenancy Act, 1956 read with the schedule of the Act, the City Civil Court is competent to try the suit and accordingly the High Court has

no jurisdiction to try it. The suit was instituted on September 19, 1959. The plaintiff is the landlord and the defendant is a tenant. The plaintiff claims

a decree for (1) recovery of possession of the disputed premises, (2) rent for 5 months from August 1957 to December 1957 (3) mesne profits for

8 months from January 1953 to August 1958 prior to the institution of the suit, (4) interest before suit and (5) mesne profits subsequent to the

institution of the suit. The monthly rent of the premises was Rs. 550/-. Had the suit been instituted in the City Civil Court, for purposes of court

fees, the claim for recovery of possession of the premises would be valued u/s 7 (xi) (ccc) of the Court Fees Act, 1870 at Rs. 6600/- this being

the amount of the rent payable for the preceding year, and the claim for recovery of the rent for 5 months from. August, 1957 to December 1957

would be valued at Rs. 2750/- u/s 7(i) of the Court Fees Act. Mr. Hazra contends that the claim for mesne profits for 8 months from January

1958 to August 1958 cannot be taken into account for the purpose of valuing the suit. We cannot accept this contention. For purpose of court-

fees the claim for mesne profits prior to the institution of the suit must be valued u/s 7 (i) of the Court Fees Act. On this footing it is conceded that

the total value of the claim for (1) recovery of possession of the disputed premises (2) rent and (3) mesne profits before the institution of the suit

exceeds Rs. 10,000/-. In view of section 8 of the Suits Valuation Act, 1887, the value for purposes of jurisdiction would also exceed Rs. 10,000/-

. It follows that the City Civil Court is not competent to try the suit, and the High Court has jurisdiction to try it. We may add that the claim for

mesne profits subsequent to the institution of the suit cannot be taken into consideration for the purpose of valuing the suit. It is well settled that

Section 7(i) of the Court Fees Act does not apply to mesne profits for the period subsequent to the institution of the suit. The cause of action for

the subsequent mesne profits does not accrue on the date of the institution of the suit. Nevertheless the court is specially empowered by the

provisions of Order 20, Rule 12, C.P.C. to pass a decree directing an enquiry as to mesne profits from the institution of the suit. The amount of the

claim for the subsequent mesne profits cannot be stated even approximately in the plaint. On the date of the presentation of the plaint, it is not

possible to estimate the amount of the subsequent mesne profits to which the plaintiff would become entitled. The value for the purposes of court

fees and jurisdiction is the value on the date of the institution of the suit, and not what will become its value on a subsequent date. We have

therefore not taken into account the claim for subsequent mesne profits in valuing the suit.

2. No other point was argued by Mr. Hazra. In view of the dismissal of the application for reception of additional evidence. Mr. Hazra stated that

he could not, on the materials on the record, argue any point other than the point of jurisdiction.

There is no merit in this appeal. The appeal is dismissed with costs. Certified for two counsel.

Arun K. Mukherjea, J.

I agree.