2026:AHC:159338

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 8728 of 2026

Arif Khan

.....Petitioner(s)

Versus

Smt Roshan Jahan

.....Respondent(s)

Counsel for Petitioner(s)	:	Sr. Advocate, Tejas Singh
Counsel for Respondent(s)	:	Raj Raghuvanshi

AFR
Court No. – 35

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Heard Sri Ajay Kumar Singh, learned Senior Counsel assisted by Sri Tejas Singh, for the petitioner and Sri Ashish Kumar Srivastava, learned counsel appearing for the respondent. Since the controversy involves the interpretation of the provisions of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 and the Court Fees Act, 1870, Sri Kartikeya Saran, learned Additional Advocate General, along with Sri Manoj Kumar Singh, learned Chief Standing Counsel, appearing for the State of Uttar Pradesh has also been heard to assist the Court on issues of statutory interpretation arising in the present petition.

Facts Giving Rise to the Petition

2. The present petition under Article 227 of the Constitution of India is directed against the order dated 22.05.2026 passed by the Rent Tribunal, Varanasi in Misc. Case No.322 of 2026, whereby the Tribunal has directed the petitioner-appellant to deposit additional court fee on the entire decretal amount, including the amount awarded towards *mesne* profits, as a condition for continuation of the appeal preferred under

Section 35 of the U.P. Regulation of Urban Premises Tenancy Act, 2021 (hereinafter referred to as "the Act, 2021").

3. The controversy in the present petition centres upon the true construction of Section 39 of the Act, 2021 and its interplay with the provisions of the Court Fees Act, 1870. The principal question requiring consideration is whether a memorandum of appeal preferred under Section 35 of the Act against a composite decree passed by the Rent Authority is liable to be valued on the entire decretal liability forming the subject matter of the appeal, including the amount awarded towards *mesne* profits, or whether the court fee payable on such appeal remains confined to the court fee paid on the original application instituted before the Rent Authority.

4. The respondent-landlady instituted Rent Case No. 4309 of 2024, Smt. Roshan Jahan v. Arif Khan, before the Rent Authority under Section 21 of the Act, 2021 seeking eviction of the petitioner from three adjoining shops situated at premises No. CK-47/23, Sarai Harha, Ward Chowk, Varanasi, together with recovery of arrears of rent and *mesne* profits. The proceedings were initiated by presentation of an application in the prescribed Form-7.

5. The petitioner contested the proceedings by filing objections supported by affidavit, to which the respondent filed a rejoinder. Upon consideration of the pleadings and the material brought on record, the Rent Authority, by its order dated 19.02.2026, allowed the application, directed the petitioner to vacate the premises within one month and further held him liable to pay arrears of rent together with *mesne* profits at the rate of Rs.2,000/- per day besides consequential monetary liabilities.

6. Aggrieved thereby, the petitioner preferred Misc. Case No. 322 of 2026 before the Rent Tribunal under Section 35 of the Act, 2021. Along with the memorandum of appeal, the petitioner deposited a sum of Rs.7,00,000/-, asserting that the deposit satisfied the requirement of pre-deposit contained in the proviso to Section 35 of the Act, 2021. It is also the petitioner's case that court fee equivalent to that paid before the Rent

Authority was affixed on the memorandum of appeal in compliance with Section 39 of the Act, 2021.

7. During the pendency of the appeal, the respondent-landlady filed objection/application (Paper No. 13-Ga) raising a preliminary objection that the memorandum of appeal suffered from deficiency in court fee, inasmuch as court fee had not been paid on the entire decretal amount including the amount awarded towards *mesne* profits. The petitioner filed objections controverting the said plea.

8. By the impugned order dated 22.05.2026, the Rent Tribunal upheld the objection to the extent of holding that the memorandum of appeal suffered from deficiency in court fee and consequently directed the petitioner to deposit additional court fee on the entire decretal amount, including the amount awarded towards *mesne* profits, on or before 30.05.2026. Aggrieved thereby, the petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution.

Submissions on behalf of the Petitioner

9. Assailing the impugned order, learned counsel for the petitioner submits that the Rent Tribunal has committed a patent error of jurisdiction in directing payment of additional court fee on the amount awarded towards *mesne* profits as a condition for continuation of the appeal. According to him, the direction proceeds on an erroneous construction of Section 39 of the Act, 2021 and is contrary to the statutory scheme governing the levy and computation of court fee under the Act.

10. It is submitted that the petitioner has fully complied with every statutory requirement prescribed for maintaining the appeal. Besides depositing more than fifty per cent of the decretal amount in compliance with the proviso to Section 35 of the Act, 2021, the petitioner also affixed court fee amounting to Rs.26,324/-, being the same court fee as had been paid by the respondent-landlady while instituting the application before the Rent Authority under Section 21 of the Act.

11. Elaborating the submission, learned counsel contends that Section 39 constitutes a complete code governing the levy and computation of court fee in proceedings under the Act, 2021. Inviting attention to sub-sections (1) and (2) thereof, he submits that although the provisions of the Court Fees Act, 1870 have been made applicable to proceedings under the Act, the legislature has simultaneously created a statutory fiction by providing that, for the purposes of computation of court fee, both an application before the Rent Authority and a memorandum of appeal before the Rent Tribunal shall be deemed to be suits between the landlord and the tenant. It is argued that once the statute places both proceedings on the same footing, the court fee payable on the memorandum of appeal cannot exceed the court fee payable on the original application. According to the petitioner, therefore, payment of court fee identical to that paid before the Rent Authority constitutes complete compliance with Section 39.

12. Learned counsel further submits that the expression "court-fees" occurring in Section 39 of the Act, 2021 is to be construed in the light of the provisions of the Court Fees Act, 1870. According to him, the claim relating to *mesne* profits does not constitute a claim for a fixed or ascertained sum so as to attract *ad valorem* court fee payable on an ordinary money claim. It is contended that *mesne* profits, by their very nature, remain uncertain and incapable of precise valuation until finally determined in accordance with law and, therefore, do not require separate court fee on the memorandum of appeal.

13. Learned counsel further submits that the Tribunal has failed to appreciate the nature of the decree passed by the Rent Authority. According to learned counsel, while passing the decree, the Rent Authority directed that court fee in respect of the *mesne* profits awarded would be realised from the respondent-landlady at the stage of execution. It is, therefore, submitted that the petitioner could not have been required to pay court fee in appeal on a component in respect whereof the respondent herself had not paid court fee at the institution of the proceedings.

14. Learned counsel further contends that the authorities relied upon by the respondent, particularly those arising out of suits for rendition of accounts, are distinguishable on facts and in law. It is submitted that proceedings before the Rent Authority under the Act, 2021 are summary in nature and cannot be equated with ordinary civil suits for rendition of accounts, where the liability is determined upon an entirely different statutory footing.

15. It is next submitted that a consistent line of judicial authority recognises that future or unascertained *mesne* profits do not ordinarily attract separate court fee at the stage of filing of an appeal unless the correctness or quantum thereof is specifically and independently put in issue. Placing reliance upon the decisions in **State of Maharashtra v. Mishrilal Tarachand Lodha**[1], **Shivaji v. Deoji**[2] and **Ratnamma v. Karthiyani Pillai**[3]**,** learned counsel contends that the direction requiring payment of additional court fee on the *mesne* profits component is contrary to the legal position emerging from the aforesaid authorities.

16. Learned counsel also submits that Section 2(4) of the Court Fees Act, 1870, which defines the expression "suit" to include a first and second appeal from a decree in a suit, supports the contention that the valuation adopted at the stage of institution cannot be altered merely because the matter has reached the appellate stage.

17. It is further submitted that the Tribunal has unnecessarily invoked Section 42 of the Act, 2021 despite there being no inconsistency requiring resort to the overriding provision. According to learned counsel, the issue is squarely governed by Section 39 itself, leaving no occasion for invoking Section 42. It is also argued that reliance placed upon the decision in **Alok Kumar Jain v. Indra Bhushan Sawhney**[4] is misplaced, as the said decision did not arise from proceedings involving eviction, arrears of rent and *mesne* profits under Section 21 of the Act,

1 AIR 1964 SC 457
2 AIR 1974 MP 123
3 AIR 1974 Ker 140
4 2025 SCC OnLine All 7188

2021 and, therefore, has no application to the controversy involved in the present case.

18. On the aforesaid premises, learned counsel submits that the impugned order suffers from manifest illegality and jurisdictional error warranting interference under Article 227 of the Constitution of India. It is, accordingly, prayed that the impugned order dated 22.05.2026 be set aside and the Rent Tribunal be directed to proceed with the appeal without insisting upon payment of any additional court fee.

Submissions on behalf of the Respondent

19. Learned counsel appearing for the respondent-landlady supports the impugned order and submits that the Rent Tribunal has committed no illegality in directing the petitioner to make good the deficiency in court fee before proceeding with the appeal. According to him, the impugned order is in complete accord with the scheme of the Act, 2021 and the provisions of the Court Fees Act, 1870.

20. It is submitted that the order dated 19.02.2026 passed by the Rent Authority is a composite decree directing eviction of the petitioner from the tenanted premises besides payment of arrears of rent and *mesne* profits. Since the petitioner has challenged the decree in its entirety, including the monetary liability created thereunder, the memorandum of appeal is necessarily required to be valued on the entire decretal amount constituting the subject matter in dispute. Consequently, court fee is payable on the whole of the liability sought to be displaced and not merely on the amount on which court fee had been paid at the stage of institution of the original proceedings.

21. Learned counsel further submits that compliance with the proviso to Section 35 of the Act, 2021 by depositing fifty per cent of the decretal amount operates in a field altogether different from the obligation to pay proper court fee under Section 39. Satisfaction of the condition relating to statutory pre-deposit does not dispense with, or dilute, the independent requirement of affixing appropriate court fee on the memorandum of appeal.

22. Elaborating his submissions on Section 39, learned counsel contends that sub-section (1) expressly attracts the provisions of the Court Fees Act, 1870, while sub-section (2) creates a statutory fiction by treating a memorandum of appeal as a suit between the landlord and the tenant for the purposes of computation of court fee. It is, therefore, submitted that once the Court Fees Act stands attracted, court fee has necessarily to be computed on the valuation of the subject matter in dispute in appeal. According to him, the petitioner has incorrectly proceeded on the assumption that the court fee payable in appeal must invariably be identical to that paid on the original application before the Rent Authority, an interpretation which finds no support from the statutory scheme.

23. It is further contended that the liability of a plaintiff to pay court fee at the institution of the proceedings and that of a defendant preferring an appeal operate in distinct spheres. While the former is determined with reference to the reliefs claimed in the original proceedings, the latter is governed by the extent of the decree sought to be displaced in appeal. Merely because Section 2 of the Court Fees Act defines the expression "suit" to include a first and second appeal from a decree, it does not follow that the valuation adopted at the institution stage remains immutable throughout the appellate process. On the contrary, the Court Fees Act contemplates valuation with reference to the nature and extent of the relief claimed in appeal.

24. Learned counsel next submits that the petitioner's reliance upon the line of authorities dealing with future or unascertained *mesne* profits is wholly misplaced. According to him, those decisions were rendered in an entirely different factual and legal context. In the present case, the Rent Authority has not merely directed an enquiry into future mesne profits but has already recorded a finding that the petitioner's occupation had become unauthorised and has awarded *mesne* profits as part of the decree. Consequently, the liability no longer remains contingent or indeterminate but stands incorporated into the decretal liability itself. It is submitted that the decision in **Mishrilal Tarachand Lodha** does not

lay down that decreed *mesne* profits can never constitute the subject matter of an appeal or that the valuation of an appeal must invariably remain identical to that of the original proceedings. Likewise, the decisions in **Shivaji v. Deoji** and **Ratnamma v. Karthiyani Pillai** are stated to have been rendered in the context of future *mesne* profits and cannot be mechanically extended to a case where the monetary liability already stands quantified under the decree.

25. Proceeding further, learned counsel submits that once *mesne* profits stand quantified and form part of the decree, they cease to remain a fluctuating or unascertained claim and become an integral component of the monetary relief challenged in appeal. Reliance is placed upon **In re Kudappa Subbamma**[5] to contend that once the rate, period and amount of *mesne* profits are determined by the court, the liability crystallises into an ascertained monetary obligation attracting *ad valorem* court fee in appeal. Reliance is also placed upon the Full Bench decision of this Court in **Ragho Prasad v. B. Pratap Narain Agrawal**[6] to submit that an appeal against a decree imposing an ascertained monetary liability must be valued according to the amount sought to be displaced and not by reference to the valuation adopted in the original proceedings. Learned counsel also relies upon the decision of this Court in **Alok Kumar Jain** to contend that Sections 39 and 42 of the Act, 2021 constitute a self-contained scheme governing court fee under the special enactment.

26. Lastly, it is submitted that the petitioner's contention regarding the alleged absence of power under the Act, 2021 to award arrears of rent or *mesne* profits is wholly extraneous to the controversy involved in the present proceedings. The issue before this Court is confined to the court fee payable on the memorandum of appeal against the decree passed by the Rent Authority. So long as the decree contains a quantified monetary award and the petitioner seeks to assail that liability in appeal, the memorandum of appeal must bear court fee in accordance with law. It is, therefore, submitted that the Rent Tribunal rightly directed the petitioner

5 AIR 1957 Andhra Pradesh 6
6 AIR 1976 All 470 (FB)

to make good the deficiency in court fee and, instead of rejecting the appeal, adopted a liberal approach by granting an opportunity to remove the defect. The impugned order, therefore, neither suffers from any jurisdictional error nor occasions any failure of justice warranting interference under Article 227 of the Constitution of India.

Submissions on behalf of the State

27. Learned Additional Advocate General appearing for the State supports the impugned order and submits that the controversy in the present case turns upon the proper interpretation of Section 39 of the Act, 2021 read with the provisions of the Court Fees Act, 1870. It is submitted that Section 39 incorporates the general principles governing levy of court fee under the Court Fees Act while simultaneously introducing a special statutory mechanism for proceedings before the Rent Authority or the Rent Tribunal. According to him, the provision must be construed in a manner which gives effect both to the statutory fiction created under sub-section (2) and to the settled principles regulating valuation of appeals.

28. Learned Additional Advocate General submits that the levy of court fee is not merely a fiscal measure intended to augment public revenue. It also serves the legislative purpose of securing partial recovery of the cost of administration of civil justice, discouraging frivolous litigation and maintaining procedural discipline in the institution and prosecution of legal proceedings. The liability to pay court fee on an appeal is, therefore, an independent statutory obligation and cannot be treated as irrevocably linked to, or controlled by, the court fee payable at the stage of institution of the original proceedings.

29. Elaborating his submissions, learned Additional Advocate General contends that the incidence of court fee has to be determined with reference to the statutory provisions governing the appeal itself and not with reference to whether the successful party before the Rent Authority had or had not paid court fee on every component of the relief granted. According to him, the question whether the respondent-landlady was

required to pay additional court fee at any subsequent stage is wholly distinct from the obligation of the petitioner, as an appellant, to value his memorandum of appeal in accordance with law.

30. It is further submitted that *mesne* profits, as defined under Section 2(12) of the Code of Civil Procedure, 1908, constitute compensation payable for wrongful possession of immovable property. Although a claim for *mesne* profits may initially remain uncertain or incapable of precise valuation at the stage of institution of proceedings, the legal position materially changes once the adjudicating authority determines the rate or quantifies the liability. To the extent such liability has accrued or become capable of precise arithmetical ascertainment by the date of presentation of the appeal, it ceases to remain contingent and becomes part of the decretal liability sought to be displaced.

31. In support of the aforesaid submissions, reliance has been placed upon **Mishrilal Tarachand Lodha** to contend that the valuation of an appeal depends upon the extent of the liability actually brought into dispute by the appellant and that future interest, *pendente lite* interest or costs ordinarily do not attract separate court fee unless independently challenged. Reliance has also been placed upon **Ratnamma v. Karthiyani Pillai** to submit that where the decree for *mesne* profits is specifically assailed, the accrued or ascertainable *mesne* profits forming part of the decretal liability constitute part of the subject matter in dispute in appeal, whereas no separate court fee is payable in respect of *mesne* profits which have neither crystallised nor been brought into challenge.

32. Learned Additional Advocate General further submits that none of the authorities relied upon by the petitioner lays down an absolute proposition that *mesne* profits can never attract court fee in appeal. According to him, those decisions merely recognise that future or unascertained *mesne* profits, which remain incapable of valuation at the relevant stage, do not ordinarily require immediate payment of court fee. They do not govern a case where the decree itself has already created an

accrued or ascertainable monetary liability which forms an integral part of the subject matter challenged in appeal.

33. Developing the aforesaid submission, it is contended that the expression "subject matter in dispute in appeal", as understood under the Court Fees Act, has consistently been interpreted to mean the extent of the detriment or liability from which the appellant seeks relief and not the valuation adopted at the stage of institution of the original proceedings. Consequently, where the appellant seeks to avoid the entire decretal liability created by the impugned decree, the valuation of the appeal must necessarily extend to the whole of that liability, including the component representing accrued or ascertainable *mesne* profits.

34. According to the learned learned Additional Advocate General acceptance of the petitioner's interpretation would lead to anomalous consequences. According to him, an appellant would then be entitled to assail a decree imposing substantial monetary liability while paying court fee only on the valuation adopted at the institution of the proceedings, notwithstanding that the decree has materially altered the legal and financial obligations of the parties. Such a construction, it is submitted, would be inconsistent with both the scheme of the Court Fees Act, 1870 and the legislative intent underlying Section 39 of the Act, 2021.

35. It is, accordingly, submitted that the petitioner having challenged the composite decree in its entirety, including the liability towards mesne profits, the Rent Tribunal rightly directed payment of court fee on the entire decretal amount to the extent it constituted the subject matter of challenge. The impugned order, therefore, warrants no interference in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

Question Arising for Consideration

36. In the backdrop of the rival submissions and the statutory framework noticed hereinafter, the question arising for consideration is that whether, upon a true construction of Section 39 of the U.P.

Regulation of Urban Premises Tenancy Act, 2021 read with the relevant provisions of the Court Fees Act, 1870, a memorandum of appeal preferred under Section 35 of the Act is required to be valued with reference to the subject matter in dispute in appeal, including the amount awarded towards accrued or ascertainable *mesne* profits, or whether the court fee payable on such memorandum of appeal is confined to the court fee paid on the original application instituted before the Rent Authority.

Relevant Statutory Framework

37. Since the controversy centres upon the construction Sections 35 and 39 of the U.P. Regulation of Urban Premises Tenancy Act, 2021, read in conjunction with the relevant provisions of the Court Fees Act, 1870, it is apposite to notice the relevant provisions before examining the rival submissions and the question arising for consideration.

38. Section 35 of the Act, 2021, which provides for an appeal to the Rent Tribunal, reads as follows:

> "**35. Appeal to Rent Tribunal**.— (1) Any person aggrieved by an order passed by the Rent Authority may prefer an appeal along with a certified copy of such order to the Rent Tribunal within the local limits of which the premises is situated, within a period of thirty days from the date of that order:
>
> Provided that no appeal shall lie unless the appellant pre-deposits fifty percent of the entire payable amount under the impugned order of the Rent Authority.
>
> … … …"

Section 39 of the Act, 2021, which constitutes the principal provision governing court fees under the Act and lies at the centre of the present controversy, provides:

> "**39. Court-fees.**—(1) The provisions of the Court Fees Act, 1870 (Act No. 7 of 1870) shall apply in respect of applications or appeals to be presented before the Rent Authority or Rent Tribunal, as the case may be.
>
> (2) For the purposes of computation of court fees, the application for recovery of possession made to the Rent Authority and the memorandum of appeal presented before the Rent Tribunal shall be deemed to be a suit between the landlord and the tenant.
>
> (3) The court fees for the application filed before the Rent Authority shall be same as that of an interlocutory application presented in a Civil Court."

Section 42 of the Act, 2021, which confers overriding effect upon the provisions of the Act, reads as follows:

> "**42. Act to override other laws**.— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law of the State of Uttar Pradesh for the time being in force."

39. Section 7 of the Court Fees Act, 1870, read with Article 1 of Schedule I thereof, provides for levy of *ad valorem* court fee on a memorandum of appeal according to the value of the subject matter in dispute in appeal. Since the controversy also concerns the treatment of *mesne* profits for the purposes of court fee, it is also apposite to notice Section 11 of the Court Fees Act, 1870, which contemplates payment of additional court fee where *mesne* profits ultimately decreed exceed the amount on which court fee has previously been paid, thereby recognising the distinction between liability capable of valuation at the institution stage and liability which crystallises only upon adjudication.

40. Learned counsel for the petitioner has also placed reliance upon Section 2(4) of the Court Fees Act, 1870, which defines the expression *"suit"* to include a first and second appeal from a decree in a suit. The true scope of the inclusive definition and its bearing upon the deeming fiction enacted under Section 39(2) of the Act, 2021 shall be considered in the course of the discussion.

41. Since one of the principal questions arising in the present case concerns the liability to pay court fee on the amount awarded towards *mesne* profits, reference may also be made to the statutory definition contained in Section 2(12) of the Code of Civil Procedure, 1908, which reads as follows:

> "2(12) 'm*esne* profits' of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession."

42. Order XX Rule 12 of the Code of Civil Procedure, 1908, which empowers the Court to pass a decree for past *mesne profits* and to direct an enquiry into future *mesne* profits until delivery of possession, also

bears upon the distinction between accrued and future *mesne* profits which arises for consideration in the present case.

Discussion and Analysis

43. The controversy turns upon the true construction of Section 39 of the U.P. Regulation of Urban Premises Tenancy Act, 2021 and, in particular, the scope of the statutory fiction engrafted in sub-section (2) thereof. The rival submissions reveal that the dispute does not merely concern the incidence of court fee in the present case but raises a broader question touching the principles governing valuation of a memorandum of appeal preferred under Section 35 of the Act. The issue, therefore, falls to be examined in the light of the scheme of the Act, 2021, the provisions of the Court Fees Act, 1870 and the settled principles governing appellate valuation.

44. Section 39 is the principal provision governing the levy and computation of court fee under the Act, 2021. Sub-section (1) makes the provisions of the Court Fees Act, 1870 applicable to applications or appeals presented before the Rent Authority or the Rent Tribunal. The application of the Court Fees Act, however, is not left at large. Sub-sections (2) and (3) prescribe distinct modes of computation for different classes of proceedings, thereby demonstrating that while the legislature intended to adopt the general framework of the Court Fees Act, it simultaneously modified its operation to suit the special statutory scheme governing landlord-tenant disputes under the Act, 2021.

45. Section 39(2) provides that, for the purposes of computation of court fee, an application for recovery of possession before the Rent Authority and a memorandum of appeal before the Rent Tribunal shall be deemed to be suits between the landlord and the tenant. The statutory fiction is of limited but significant import. It is created solely for identifying the legal regime governing the computation of court fee. It neither obliterates the distinction between original and appellate proceedings nor enacts that the court fee payable on a memorandum of appeal must invariably remain identical to that paid on the original

application. Once the fiction attracts the provisions of the Court Fees Act, 1870, the computation of court fee necessarily falls to be determined in accordance with the principles governing valuation under that enactment.

46. It is equally well settled that a statutory fiction must be carried to its logical conclusion, but only within the field for which it has been created. The fiction embodied in Section 39(2) cannot be enlarged so as to assimilate an appeal with the original proceedings for every purpose connected with court fee. Its function is exhausted once the memorandum of appeal is brought within the fold of the Court Fees Act. Thereafter, the valuation of the appeal must necessarily be governed by the provisions and principles of that Act applicable to appellate proceedings.

47. At this stage, it is necessary to distinguish between the incidence of court fee and the measure of its computation. The incidence of court fee answers the anterior question whether a particular proceeding attracts liability to court fee at all. The measure of court fee concerns the manner in which that liability is quantified. Section 39(1) determines the former by making the provisions of the Court Fees Act applicable to applications and appeals under the Act, 2021. Section 39(2) merely prescribes the juridical basis upon which such computation is to proceed by treating specified proceedings as suits between landlord and tenant. Once the liability to pay court fee is attracted, its quantification must necessarily follow the valuation principles embodied in the Court Fees Act.

48. Section 39, therefore, cannot be construed as a self-contained code prescribing an independent method of valuation of appeals divorced from the Court Fees Act. The provision incorporates the Court Fees Act while engrafting a limited statutory fiction to facilitate its application to proceedings before the Rent Authority or the Rent Tribunal. Any construction which treats the court fee payable on every memorandum of appeal as being irrevocably tied to the court fee paid on the original

application would not only travel beyond the express language of Section 39 but would also render otiose the settled principles governing appellate valuation under the Court Fees Act.

49. Once the applicability of the Court Fees Act is accepted, the enquiry necessarily shifts to the principles governing valuation of appeals under that enactment. It is a settled principle that the valuation of a memorandum of appeal is determined not by the valuation adopted at the institution of the original proceedings but by the value of the subject-matter in dispute in appeal. The focus of the appellate court is no longer the original claim as framed by the plaintiff but the decree passed by the adjudicating authority and the extent to which the appellant seeks to have that decree reversed, varied or set aside.

50. The distinction between the liability of a plaintiff to pay court fee and that of a defendant preferring an appeal is fundamental. A plaintiff values the proceedings with reference to the relief claimed at the institution stage. A defendant, however, approaches the appellate court only after the rights and liabilities of the parties have crystallised under the decree. His liability to pay court fee is, therefore, determined by the extent of the decree from which he seeks relief and not by the court fee paid by the plaintiff at the institution stage. Consequently, the court fee paid on the original application before the Rent Authority cannot, by itself, furnish the measure of the court fee payable on the memorandum of appeal.

51. The position becomes more apparent when the decree under challenge is composite in nature. Where a decree grants several distinct reliefs, the valuation of the appeal depends upon the extent to which those reliefs are brought under challenge. If the appellant assails the decree in its entirety, the subject-matter in dispute ordinarily extends to the whole of the decretal liability. Conversely, where the challenge is confined to a severable part of the decree, the valuation correspondingly stands restricted to that part alone.

52. The same principle applies to monetary decrees. An unascertained or contingent claim stands upon a different footing from a liability which has crystallised into a definite decretal obligation. So long as the liability remains uncertain and incapable of present ascertainment, different considerations may arise regarding its valuation. Once, however, the adjudicating authority determines the liability or renders it capable of precise arithmetical ascertainment, the appellant who seeks to avoid that liability necessarily brings that monetary obligation within the subject-matter of the appeal.

53. The principle emerging from the aforesaid discussion is that Section 39(2) merely attracts the settled principles governing appellate valuation under the Court Fees Act; it does not displace them. The question, therefore, is what is comprehended within the expression "subject-matter in dispute in appeal" occurring in the Court Fees Act and whether the amount awarded towards mesne profits forms part of that subject-matter in the facts of the present case. The answer to that question assumes decisive significance in the present case, for the controversy ultimately turns not upon the nature of the original application before the Rent Authority but the extent of the decretal liability which the petitioner seeks to displace before the Rent Tribunal.

54. The expression "subject-matter in dispute in appeal" has received authoritative exposition from the Supreme Court in **State of Maharashtra v. Mishrilal Tarachand Lodha**. The controversy before the Supreme Court arose in the context of the liability to pay court fee on the amount awarded towards *pendente lite* interest. While resolving that issue, the Court explained that the valuation of an appeal is determined by the matters which are actually brought in challenge before the appellate court and require adjudication. Since the appellant had not assailed the award of *pendente lite* interest, the Supreme Court held that such interest did not form part of the subject-matter in dispute in appeal.

55. The decision thus emphasises that the expression "subject-matter in dispute in appeal" refers to the right, liability or relief which the appellant seeks to have adjudicated upon by the appellate court. The

enquiry is directed to the real controversy arising from the memorandum of appeal and not to every component of the decree irrespective of whether it has been questioned. The ratio of the decision, therefore, is that the valuation of an appeal depends upon the extent of the decree or liability actually brought under challenge and requiring determination by the appellate court.

56. The decision in **Mishrilal Tarachand Lodha**, however, cannot be understood divorced from the controversy which arose for determination therein. The Supreme Court was concerned with a discretionary award of pendente lite interest under Section 34 of the Code of Civil Procedure which had not been independently challenged before the appellate court. The judgment, therefore, does not lay down any general proposition that every monetary component incorporated in a decree necessarily falls outside the subject-matter in dispute in appeal. Equally, it does not support the broader submission advanced by the petitioner that the valuation adopted at the institution of the proceedings must invariably govern the valuation of the appeal irrespective of the decree actually brought under challenge.

57. Properly understood, the principle emerging from **Mishrilal Tarachand Lodha** is that the valuation of an appeal depends upon the extent of the decree or liability which the appellant seeks to have adjudicated upon before the appellate court. A monetary component of the decree which is not brought in challenge does not ordinarily form part of the subject-matter in dispute. Conversely, where the appellant seeks to avoid a quantified monetary liability embodied in the decree, that liability ordinarily constitutes part of the subject-matter in dispute in appeal unless excluded by some recognised principle of law.

58. It is in the application of these principles that the controversy regarding *mesne* profits arises. The real question is not whether every award of *mesne* profits automatically attracts court fee in appeal, nor whether the valuation adopted in the original proceedings necessarily governs the memorandum of appeal. The true enquiry is whether the liability towards *mesne* profits embodied in the decree under challenge

had, as on the date of presentation of the appeal, remained contingent and incapable of valuation or had crystallised into an existing monetary liability forming part of the decretal burden from which the appellant seeks relief. It is to that distinction that the Court must now turn.

59. The law has consistently recognised a distinction between future *mesne* profits, which remain contingent and incapable of present ascertainment, and *mesne* profits which have already accrued or become capable of precise computation. Future *mesne* profits represent compensation for continued wrongful occupation after institution of the proceedings and necessarily depend upon the uncertain period during which such occupation continues. Their duration, and consequently the amount payable, cannot ordinarily be determined at the institution of the proceedings. Accrued *mesne* profits, however, stand upon a different footing. Once the adjudicating authority determines the liability or fixes the rate payable so that the amount becomes capable of precise arithmetical ascertainment, the uncertainty disappears to that extent and the liability assumes the character of an existing monetary obligation embodied in the decree.

60. It is in that context that the decision of the Supreme Court in **Gopalakrishna Pillai** must be understood. The Supreme Court was concerned with the nature of a claim for future *mesne* profits at the stage of institution of the suit and explained why such a claim is incapable of present valuation, there being no existing cause of action in respect thereof. The decision also recognised the power of the Court under Order XX Rule 12 of the Code of Civil Procedure to award future *mesne* profits. The judgment does not consider the valuation of an appeal where the decree itself has already created a monetary liability towards *mesne* profits. It is, therefore, distinguishable on the question which arises in the present proceedings.

61. The decision of the Madhya Pradesh High Court in **Shivaji v. Deoji** likewise proceeded in the context of future *mesne* profits accruing during the pendency of the proceedings. It was observed that where the

decree for possession is displaced, the consequential relief relating to future *mesne* profits would ordinarily fail with it and, therefore, separate court fee was not exigible upon such contingent liability. The principle enunciated therein was directed to liabilities which had not yet crystallised and not to a quantified or otherwise ascertainable monetary obligation incorporated in the decree under challenge.

62. The Full Bench decision of the Kerala High Court in **Ratnamma** substantially proceeds upon the same distinction between contingent future *mesne* profits and liabilities which have already become enforceable. None of those authorities lays down an absolute proposition that every award relating to *mesne* profits necessarily remains outside the valuation of an appeal irrespective of the nature of the decree or the relief claimed therein.

63. The authorities relied upon by the respondent address the position obtaining after the liability has crystallised into a definite monetary obligation. In **re Kudappa Subbamma,** it was recognised that although a claim for future *mesne* profits may initially remain incapable of valuation, the position materially changes once the Court determines the rate, specifies the period or otherwise renders the liability capable of precise computation. At that stage, the claim ceases to remain wholly uncertain and crystallises into a definite monetary liability forming part of the decree. An appellant seeking to avoid such liability must value the appeal accordingly.

64. The same principle is reflected in the Full Bench decision of this Court in **Ragho Prasad**. As noticed hereinbefore, the Full Bench authoritatively held that the valuation of an appeal must correspond to the actual relief claimed against the decree and not necessarily to the valuation adopted at the institution of the proceedings. The Court emphatically rejected the contention that because an appeal is a continuation of the suit, the valuation adopted in the original proceedings must invariably govern the memorandum of appeal. The Full Bench observed that if the appellant seeks to be relieved against the whole of a

money decree, "the valuation of the relief cannot be arbitrary. It must be related to the relief sought."

65. The decision of this Court in **Alok Kumar Jain** also lends support to the statutory construction adopted herein. While considering the scheme of Sections 39 and 42 of the Act, 2021, the Court recognised that the computation of court fee in proceedings under the Act continues to be governed by the Court Fees Act, 1870, subject only to the statutory modifications expressly enacted by the Legislature. Nothing in that decision suggests that Section 39 creates a self-contained code dispensing with the settled principles governing valuation of appeals.

66. The real divergence between the parties thus lies not in the authorities upon which reliance has been placed, many of which are common to both sides, but in the interpretation sought to be placed upon them and their application to the facts of the present case. The distinction is not one of conflicting legal principle but of the stage at which the liability falls for consideration and the nature of the relief sought before the appellate court.

Application of the Principles to the Present Case

67. The controversy in the present case must, therefore, be resolved not by applying any single decision in isolation but by examining the true character of the liability created under the decree passed by the Rent Authority. The decisive question is whether the amount awarded towards *mesne* profits, to the extent it had accrued or become capable of precise arithmetical ascertainment on the date of presentation of the appeal, formed part of the decretal liability which the petitioner sought to have displaced. The answer to that question necessarily depends upon the nature of the decree impugned before the Rent Tribunal.

68. The order dated 19.02.2026 passed by the Rent Authority is a composite decree directing eviction of the petitioner from the tenanted premises, recovery of arrears of rent and payment of *mesne* profits at the prescribed rate from the date specified therein until delivery of possession. The petitioner has challenged that decree in its entirety

before the Rent Tribunal. The memorandum of appeal is not confined to the direction of eviction alone, nor does it exclude the monetary liabilities created under the decree. On the contrary, the appeal seeks to have the decree displaced in its entirety.

69. The inevitable consequence is that the subject-matter in dispute in the appeal is co-extensive with the decretal liability sought to be avoided by the petitioner. The valuation of the memorandum of appeal cannot, therefore, be determined merely by reference to the court fee paid by the respondent-landlady at the institution of the proceedings before the Rent Authority. Once the decree has fastened liabilities upon the petitioner and those liabilities are brought under challenge before the appellate forum, the valuation necessarily falls to be determined with reference to the relief claimed in appeal and not with reference to the fiscal incidents attending the institution of the original proceedings.

70. Equally untenable is the submission that because the respondent-landlady was not required to pay court fee upon the *mesne* profits component at the stage of institution, the petitioner likewise incurs no liability to pay court fee while challenging that component of the decree. The incidence of court fee upon a plaintiff at the institution stage and the liability of a defendant preferring an appeal arise in distinct statutory settings and are governed by different principles. The former depends upon the nature of the relief claimed in the original proceedings, whereas the latter depends upon the extent of the decree from which the appellant seeks relief. The liability of the plaintiff cannot, therefore, furnish the measure of the liability of the defendant in appeal.

71. The submission founded upon the direction of the Rent Authority regarding payment of court fee at the stage of execution is equally devoid of merit. Such direction merely regulated the stage at which the respondent-landlady would be required to make good the court fee payable on the *mesne* profits ultimately found recoverable. It neither determines nor controls the independent statutory liability of an appellant to value the memorandum of appeal in accordance with

Section 39 of the Act, 2021 read with the Court Fees Act, 1870. The procedural direction contained in the decree cannot override the statutory principles governing appellate valuation.

72. Nor does the petitioner's reliance upon Section 2(4) of the Court Fees Act advance the matter any further. The inclusive definition of the expression "suit", whereby a first and second appeal are brought within its ambit, merely extends the operation of the Court Fees Act to appellate proceedings. It does not enact that the valuation adopted at the institution of the proceedings must necessarily remain frozen for every subsequent appeal. Such an interpretation would run contrary to the scheme of the Court Fees Act itself and to the principles authoritatively stated by the Full Bench of this Court in **Ragho Prasad.**

73. The petitioner's construction of Section 39, if accepted, would lead to consequences difficult to reconcile with the statutory scheme. An appellant could challenge a decree imposing substantial quantified monetary liability while paying court fee only upon the valuation adopted before adjudication, notwithstanding that the decree has materially altered the rights and obligations of the parties. Such a construction would not only disregard the concept of the "subject-matter in dispute in appeal" embodied in the Court Fees Act but would also enlarge the limited statutory fiction enacted by Section 39(2) beyond its legitimate field of operation.

74. On the other hand, the interpretation adopted by the Rent Tribunal gives harmonious effect both to Section 39 of the Act, 2021 and to the provisions of the Court Fees Act, 1870. It preserves the statutory fiction enacted by Section 39(2), while at the same time respecting the settled principles governing appellate valuation. Such a construction avoids rendering either enactment otiose and gives full effect to the legislative intent underlying both statutes.

75. In the facts of the present case, the decree under challenge fastens upon the petitioner an existing liability towards arrears of rent and also a liability towards *mesne* profits, which, to the extent accrued or capable

of precise arithmetical ascertainment on the date of presentation of the appeal, formed part of the monetary burden sought to be displaced. That liability consequently constituted part of the subject-matter in dispute before the Rent Tribunal and was liable to be taken into account for purposes of valuation of the memorandum of appeal.

76. The Rent Tribunal, therefore, committed no jurisdictional error in directing the petitioner to make good the deficiency in court fee. Significantly, the Tribunal did not reject the memorandum of appeal on the ground of deficient court fee but merely afforded the petitioner an opportunity to remove the defect within the stipulated period. The course adopted is consistent with the settled procedural approach governing deficient court fee and cannot be characterised as arbitrary or illegal.

77. The supervisory jurisdiction of this Court under Article 227 of the Constitution is intended to ensure that courts and tribunals act within the limits of their jurisdiction and in accordance with law. It is neither an appellate jurisdiction nor one intended to substitute one possible interpretation of a statute with another merely because an alternative view may also be plausible. Unless the order under challenge discloses patent lack of jurisdiction, manifest perversity or an error apparent going to the root of the decision-making process, interference is not warranted.

78. Tested on the aforesaid parameters, the impugned order suffers from no jurisdictional error, manifest illegality or perversity warranting interference under Article 227 of the Constitution. The interpretation placed by the Rent Tribunal upon Section 39 of the Act, 2021 is consistent with the scheme of the enactment, the provisions of the Court Fees Act, 1870 and the settled principles governing valuation of appeals.

Conclusion

79. This Court, accordingly, holds that where an appellant challenges a composite decree passed by the Rent Authority directing eviction together with recovery of arrears of rent and payment of *mesne* profits, the memorandum of appeal under Section 35 of the Act, 2021 is liable to be valued with reference to the subject-matter in dispute in appeal. To

the extent the decree embodies an existing liability towards *mesne* profits which has accrued or become capable of precise arithmetical ascertainment on the date of presentation of the appeal, such liability forms part of the decretal burden sought to be displaced and is liable to be taken into account in computing the court fee payable on the memorandum of appeal.

80. The Rent Tribunal was, therefore, fully justified in directing the petitioner to make good the deficiency in court fee before proceeding with the appeal. No ground for interference under Article 227 of the Constitution is made out.

81. The petition, being devoid of merit, is accordingly **dismissed**. There shall be no order as to costs.

(Dr. Yogendra Kumar Srivastava, J.)

July 28, 2026
RKK/-