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HOW TO DETERMINE/COMPUTE MESNE PROFIT: STRATEGY TO MINIMIZE TO LIABILITY

The term Mesne Profit is designated to be a remedy in nature of damages awarded in cases of legal right infringement caused by illegal possession of a property.

The compensation, to which the lawful owner is entitled to, includes the rent/any other profits the unlawful owner may have gained during the period of unauthorized occupation either by creating a tenancy on such property or by being in possession of such property or even by merely occupying the said property

I Code of Civil Procedure on Mesne Profits

Section 2(12) of the CPC, 1908 defining mesne profits reads “*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*”.

A claim for mesne profits would ordinarily be made in a suit for recovery of immovable property or suit for eviction from an immovable property.

The provision under Order VII Rule 2, gives that a suit claiming an amount must mention the precise amount.

However, in cases where in the suit claiming for mesne profits or other amount is to be filed, and a precise estimation of claim is not available, the plaintiff may mention an approximate amount or call upon the court to measure the amount after taking all unsettled accounts between the parties into consideration.

Alternatively, under Order XX Rule 12, the Court may also direct an inquiry for ascertainment of the amount of mesne profits payable.

The burden of proof in such cases lies upon the claimant, i.e., the claimant is to show that the other party is in illegal possession of the property of which the claimant is the rightful owner.

II How to determine/compute mesne profits

The calculation of mesne profits has come to be a debatable issue in suits when the advantage gained by the unlawful owner during the period of unauthorized occupation is not monetary or quantifiable in figures. The silence of the CPC and other applicable laws, on the issue adds to the confusion. The following catena of judgments thus need to be considered.

In *Laljee Shahay Singh vs. F.C. Walker*ⁱ, the benefit during the period of illegal occupation accrued both to the original owner as well as the trespasser. The Court hence held that mesne profits should be calculated on the basis of fair rent and not on the basis of value of production made on the land.

However a divergent view appeared in *Rai Kiran Chandra Roy Bahadur v. Erfan Karikar*ⁱⁱ when the Court directed that the mesne profits be calculated on the basis of definition under section 2(12) of the CPC. The Subordinate Judge had directed the mesne profits to be paid on the basis of fair rent. Disagreeing with this view, it was held that mesne profits are to be ascertained on the basis of the profits actually received or might have been received in ordinary diligence according to the value of property in that area together with the interest on such profits. In this case, the Court observed that the profits would be the actual amount received after deduction of cost of cultivation on the land, rent paid and the cost of maintenance.

Through *Rattan Lal v. Girdhari Lal*ⁱⁱⁱ the Court clarified that the principle of mesne profits is not to compensate the lawful owner in case he has suffered the loss but to see whether the party in possession made profits or could have made profits with reasonable diligence during the period of occupation of the property. The Court held that the rent paid for such property could be the first basis of calculation of mesne profits, then the profits made by the trespasser if they are higher than the rent paid. [Also, *Phiraya Lal alias Piara Lal vs. Jia Rani*^{iv}]



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The Apex Court then, also included losses incurred as a result of delay in court proceeding, in the calculation of mesne profits. [*Marshall Sons & Co. (I) Ltd. vs. Sahi Oretans (P) Ltd.*^v]. The calculation on the basis of rent payable taking into account the rate of rent that was applicable on such property or other property located in the same area was also approved in *New India Assurance Co. Ltd. vs. M/s. M. Gulab Singh & Sons P. Ltd.*^{vi}

In *State of W.B. vs. Bireswar Dutta Estate (P) Ltd.*^{viii} the Court undertook the exercise of calculating the mesne profits itself.

In *Anar Devi vs. Vasudev Mangal*^{ix} the mesne profits on the residential property were calculated by reducing the value of a commercial property to 50%. The Court held that the same could not be done and thereafter went on to increase the mesne profits payable to the lawful owner.

Mesne profits are thus calculated on a case to case basis and is no singular method of calculation. Given that mesne profit is the amount paid to the lawful owner of the property in damages by the wrongful possessor, and can often have a penal element attached to it, the Court has to determine the amount by a comparative assessment of the nature of the suit property, its location, age and condition as well as an analysis of the valuation of the leases in the concerned area, the rental price of the property as determined by the Court-appointed valuer, the rental price claimed in the plaint among several other factors.

As there is no standard method of calculation, therefore, disputes regarding fixation of amount are subject to appeal.

III Strategy to minimize liability

The courts have not focused on the interest component in the calculation of mesne profits and thus liability of interest on mesne profits may be minimized under this argument. It may also be argued that the unlawful owner could not have earned profits with ordinary diligence during the period of possession keeping in mind the nature of the property in question.

These arguments may be brought on fore with the backing of the decisions of the courts, since no statutory provision provides for an exception that could minimize the liability as against mesne profits.

In *M.C. Agarwal (HUF) vs. Sahara India*^x, the Court only directed payment of mesne profits at the rate of 15% over and above the contractual rate of rent. Further, mesne profits can only be granted by an order or decree of a court. [*Ramakka vs. V. Negasam*^{xi}]

However, the general precedential observations of the courts in matters of grating mesne profits have always tilted in favour of the lawful owner implying that the liability of mesne profits cannot be ignored by a trespasser in general circumstances. [*Hindustan Motors Ltd. vs. Seven Seas Leasing Ltd.*^{xii}]

However, the general principles guiding such calculations hold that mesne profits are to be evaluated on the basis of any profits actually garnered by the wrongful owner or any profit that could have been received with ordinary diligence, not including the charges incurred by the trespasser in making improvements to the property, or costs incurred for cultivating and harvesting crops and public charges paid for preservation of the property.

Additionally, interest at the rate determined by the Court has to be paid in damages to the rightful owner. Awards given in such suits serve a twofold purpose of restoring the original status of the property prior to dispossession and compensating the rightful owner in damages. The actual amount payable is subject to the relief prayed for by the plaintiff/s and judicial discretion and hence can in no case be pre-determined.

In this regard, it may be concluded that arguments of interest and actual profits may be accepted by courts in minimizing liability but may not be ignored altogether.

i 1902 SCC OnLine Cal 109

ii 1933 SCC OnLine Cal 310

iii 1971 SCC OnLine Del 74

iv AIR 1973 Del 186

v (1999) 2 SCC 325

vi 2018 SCC OnLine Del 6787

vii 2019 SCC OnLine Del 9419

viii (2020) 20 SCC 558

ix (2022) 7 SCC 504

x 183 (2011) DLT 105

xi AIR 1925 Mad 145

xii 2018 SCC OnLine Del 11391