

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

C.O. No. 1460 of 2020

Green Band Apartments Private Limited & Ors.
vs.
The Mint Matrix & Ors.

For the petitioners : Mr. Sabyasachi Chaudhary,
Mr. Ajay Gaggar,
Mr. Subhajit Ghosh,
Mr. VedikaSureka.

For the opposite parties : Mr. Soumabho Ghosh,
Ms. Piyali Pan,
Mr. Suman Roy.

Hearing concluded on : 14.12.2020
Judgment on : 22.02.2021

Shampa Sarkar, J.:-

In this revisional application, the petitioners have challenged the order dated July 22, 2019 passed by the learned Civil Judge (Junior Division), 2nd Court at Alipore in Title Suit No. 57 of 2016. The petitioners as plaintiffs filed Title Suit No. 57 of 2016 against the opposite parties/defendants Nos. 1 to 4 for a decree of recovery of vacant possession of the suit property, for a decree of a sum of Rs. 4,50,000/- as mesne profits, tentatively calculated upto the date of filing of the suit, further mesne profits @ Rs. 50,000/- per day from September 9, 2016 till the delivery of vacant possession, damages, compensation and permanent injunction.

2. The petitioners are the joint owners of premises No. 29, Broad Street, Kolkata 700019 being a G+5 building. The petitioners were interested to start a business of running a guest house and converted the 3rd, 4th and 5th floor into a guest house consisting of 36 rooms in 12 self contained flats. The petitioner No.1 entered into an agreement with the opposite party No.1, represented by the opposite party nos. 2 to 4 on November 19, 2014 to lease out the said floors for the purpose of running a guest house with effect from December 15, 2014. The opposite parties entered into an agreement with the proforma opposite parties for the purpose of taking on hire, furniture, fixtures, fittings and other amenities along with the electrical appliances and fittings for carrying out the said business. According to the lease agreement, it was the obligation of the opposite parties/defendants to obtain necessary licences and registration for running and operating the said business. During the course of running and operating the business, the petitioners came to know that the requisite licences, permissions and approvals including the necessary permission from the West Bengal Fire Services Authority as required for running and operating the said business had not been obtained by the opposite parties. Even after repeated reminders, the opposite parties failed to comply with the terms of the said agreement and continued with their illegal activities. Thus, the petitioners terminated the agreement dated November 19, 2014 by a notice dated June 1, 2016 and directed the opposite party to hand over complete and vacant possession of the said premises on or before September 1, 2016. That the opposite parties failed to do so and continued to be in occupation of the suit property. Hence,

Title Suit No. 57 of 2016 was filed on September 9, 2016 for recovery of possession, mesne profits, damages and permanent injunction.

3. The opposite party Nos. 2 to 4 contested the proceeding by filing their written statement and contended that the termination notice was illegal, arbitrary and the opposite parties were not obliged to quit and vacate the suit property.

4. Subsequently the petitioners filed an application under Section 151 of the Code of Civil Procedure 1908, *inter alia*, seeking direction upon the opposite parties to deposit the usage charges amounting to Rs. 48 lakh in respect of the said building along with interest @ 15% per annum on such amount before the learned Court, or in the alternative to deposit the said amount with the petitioner till the disposal of the suit. A written objection was filed to the said application by the parties. The learned Court by the order impugned dated July 22, 2017 rejected the said application on the ground that the plaintiffs having terminated the lease agreement, treating the same to be cancelled, did not have any right to claim any amount from the defendants on account of contracted rent. The learned Court further held that when the landlord was disturbing the peaceful possession of the tenant, the landlord could not claim any occupational charges or from the tenant. Relying on the decision of this court in the matter of **K.K. Saha & Co. Pvt. Ltd v. Ashok Agarwal** reported in **2018 (1) CHN (CAL) 497**, the learned Judge held that an order for payment of occupational charges could be passed only when a tenant having suffered a decree of eviction had preferred an appeal along with a prayer for a stay of the execution of the

decree before the appellate court and the appellate court in exercise of power under Order 41 rule 5 of the Code of Civil Procedure, could for sufficient cause, order stay of the execution of the decree subject to furnishing security. The learned Court held that a tenant under such circumstances would become a statutory tenant and to protect his tenancy the appellate court could direct payment of occupation charges. According to the learned Court, in the instant case, as the termination of the lessees was the subject matter of the suit, until and unless the Court would come to a final decision on the termination of the tenancy of the defendants by the plaintiffs, occupational charges could not be directed to be paid. It was further observed that upon the suit being decreed, mesne profits as prayed for in the plaint would be granted along with the other reliefs.

5. In the application under Section 151 of the Code of Civil Procedure, 1908, it was contended by the petitioners that as the opposite parties were in possession and were using the premises during the pendency of the suit, the opposite parties were liable to pay the agreed rent or usage charges in terms of the lease deed. That the payment of rent was discontinued from the month of September, 2016. Total dues amounted to Rs.48 lakh upto the date of the filing of the application. It was further stated that the opposite parties were liable to pay interest @ 15% per annum on such amount till the deposit of such amount before the learned Court or paid directly to the petitioners. It was stated that the opposite parties had continued their business from the said premises and were also enjoying the said property for their benefit. The petitioners prayed for a direction upon the opposite parties

to deposit the agreed amount in terms of the agreement dated November 19, 2014 before the learned Court below or in the alternative, directions be given to the opposite parties to make the payments to the petitioners as per the terms of the said agreement.

6. Mr. Chaudhary, learned Advocate for the petitioners referred to the decisions of the Delhi High Court in the matter of **S.S. Puri v. R. Chander Shekar**, reported in **1994 (1) RCR (Rent) 375**, in support of his contention that the opposite parties having admitted their liability to pay rent in the written statement, were morally and legally liable to pay the said amount as long as they enjoyed the property. The opposite parties could not enjoy the property for free and the court in exercise of its inherent power under Section 151 of the Code of Civil Procedure had the jurisdiction to pass such orders for payment of the agreed rate of rent.

7. Mr. Chaudhary referred to the pleadings of the opposite parties, particularly paragraph 8 of the written statement, wherein it had been categorically stated that the termination notice was not validly issued and the plaintiffs did not have any right to terminate the contract entered into between the parties by issuing such a notice. It had been further stated in the said paragraph that the opposite parties were in possession of the suit property as lessees and they had every right to remain in the suit property subject to payment of rent. Another suit had been filed by the opposite parties being Title Suit No. 9 of 2016 before the learned Civil Judge (Senior Division,) 2nd Court at Alipore for rectification of certain defects in the lease agreement, as all the terms of the lease agreement were not accepted by the

defendant/opposite parties. In the said suit as well, the opposite parties stated that by virtue of being bona fide tenants, they had every right to possess the property. Reference was made to the lease agreement particularly clause 7 thereof which provided that the opposite parties would pay Rs. 5 lakh inclusive of electricity charges and service tax per month to the petitioner on and from December 15, 2014 for the 1st year and Rs. 6 lakhs from the 2nd year upto the end of the 4th year. Such payment would be irrespective of the occupancy of the guest house and apart from any other charges payable in terms of any other clauses of the agreement.

8. Mr. Chaudhary next referred to the decision of **Karam Kapahi &ors. vs. Lal Chand Public Charitable Trust &ors.**, reported in **(2010) 4 SCC 753**, and submitted that the opposite parties could not approbate and reprobate. On the one hand, they urged that they were entitled to stay in the said premises on the basis of the deed of lease and the termination of the deed was illegal, void and arbitrary, and on the other hand they denied the right of the lessor landlord to receive the agreed rent during the period of then stay, till the vacation of the suit property. The lessees were in possession and were using the premises for their business after termination of the deed of lease. According to him, Order 39 Rule 10 of the Code of Civil Procedure categorically provided that when the subject matter of a suit was money or some other thing capable of delivery and any party thereto admitted that the money or other thing was held as a trustee for another party, or that it belonged to or was due to another party, the Court may order the same to be deposited in Court or be delivered to such last-named

party, with or without security, subject to the further direction of the Court. In this case, according to Mr. Chaudhary, the opposite parties admitted that they were tenants in respect of the property in question and were possessing the same and asserted that they could continue to possess the same upon payment of rent. Thus, the learned Court ought to have passed necessary orders on the principles of Order 39 Rule 10 of the Code of Civil Procedure.

9. He further submitted that the Delhi High Court in the matter of **Sanjay Gupta v. Cottage Industries Exposition Ltd.**, reported in **2008 (102) DRJ 234**, held that irrespective of whether the status of the opposite parties during the period in question was that of a tenant or of a trespasser, after the determination of the lease, the last paid rent would be the minimum charges that would be payable either on account of rent or on account of damages and if it was ultimately found that the tenancy of the suit premises subsisted through out till the vacation of the property, the amount would be adjusted towards rent, and if it was found that the lease was validly terminated, it would be adjusted towards partial damages. It was held by the Hon'ble Delhi High Court that the Civil Court in exercise of power under Order 39 rule 10 of the Code of Civil Procedure could pass orders for payment of the last paid rent, till the suit was finally decided.

10. Mr Ghosh, learned Advocate appearing on behalf of the opposite parties submitted that once the lessors terminated the lease, the lessees would become trespassers and, as such, the lessors could not claim any occupational charges or rent from trespassers. It was also submitted that once the suit was decreed and a decree for mesne profits was allowed in

terms of the prayers in the suit, the lessors would be sufficiently compensated for the loss of money caused to the lessors during the period. His next contention was that in the decision of **K.K. Saha & Co. Pvt. Ltd. v. Ashok Agarwal** reported in **2018(1) CHN (CAL)**, a Division Bench of this Court held that in a suit for eviction and recovery of khas possession upon termination of the tenancy by service of notice by the landlord under Section 106 of the Transfer of Property Act, an interim direction could not be passed by a Trial Court for payment of occupational charges during the pendency of such suit. Mr. Ghosh next contended that in the matter of **Poonam Kejriwal v. Bhagwandas Auto Finance Ltd. and ors.**, reported in **2009 (2) CLJ (CAL) 301**, a Division Bench of this Court held that there could not be a direction upon the defendants by way of a mandatory injunction to deposit any amount of money as occupational-charges as a condition for staying in the suit premises during the pendency of the suit because there could not be any mandatory injunction for payment of money by way of a temporary measure even before passing of the decree for mesne profit. Mr. Ghosh next submitted that the decision of this Court in **Kanak Projects Limited v. Oil and Natural Gas Corporation Ltd.**, reported in **2014 (2) CHN (CAL) 405**, had been overruled in the decision of **K.K. Saha (supra)** when the Division Bench on a reference came to the conclusion that during the pendency of eviction proceedings, the Civil court could not direct the tenant to pay the occupational charges, damages, mesne profits etc. at the prevailing market rate in excess of the contractual rent. The next contention of Mr. Ghosh was that the question of paying occupational charges would arise only if the petitioner was successful in the suit and had got a decree for eviction and

recovery of khas possession as laid down in **K.K. Saha (supra)**, and not in a pending eviction suit. No direction for deposit of monthly rent as a condition for staying in the property before trial had commenced was permissible under the law, and there was no scope under the Civil Procedure Code for the Court to direct such payment.

11. I have considered the rival contention of the parties. In the decision of the Delhi High Court in the matter of **S.S. Puri (supra)** it was held as follows:-

"13. The combined effect of Order 12 Rule 1 and Order 39 Rule 10 of the Code of Civil Procedure is that a Court can, in a case of this kind, in fair exercise of its judicial discretion order for deposit of money pending decision of a suit. Surely, the provisions of Section 151 of the Code of Civil procedure can be invited in aid to cover all such cases as are analogous to these principles. This being the position, invocation of Section 151 in the present case would neither be in conflict with what has been expressly provided in the Code nor against the intention of the legislature."

12. In the decision of **Karam Kapahi (supra)** the Hon'ble Apex Court directed payment of rent during the pendency of the suit and laid down as follows:-

"58. In so far as non-payment of lease rent is concerned, the Club has admitted it in its written statement in paragraphs (8) and (10). The Club has also admitted it in its reply to the Trust's petition under Order 12 Rule 6 referred to hereinabove. The Club has also admitted non-payment of rent in its petition under Section 114 of the Transfer of Property Act where it sought the equitable remedy of forfeiture and which has been denied to it by the High Court for valid reasons.

59. From the pleadings between the parties in this case the following things are admitted:

- (a) the Club has admitted in its written statement that the Trust is its Lessor;*
- (b) the Club has also admitted that it has not paid the lease rent;*
- (c) the Club has also admitted that the lease rent is more than Rs.3500/- per month in its reply to the Trust's petition under Order 12 Rule 6;*

(d) the Club has also admitted the receipt of notice of termination of lease issued by the Trust on the ground of non-payment of lease rent."

13. In the decision of **Sanjay Gupta (supra)** Delhi High Court held that as there was no dispute with the admitted position that when there existed a landlord-tenant relationship between the plaintiff and the defendant, the liability to pay such rent could not be avoided and the minimum charges could be directed to be paid at the last paid rent either on account of rent or on account of damages or on account of occupation charges till the vacation of the property and the said amount could be adjusted towards mesne profit and damages. The relevant paragraphs are quoted below:-

"39. In a landlord tenant dispute where their relationship is admitted, the obligation of the tenant to pay rent for the tenanted premises during the period that the tenant is in occupation of the premises cannot be disputed. Inherent in this admission is embedded an obligation to pay the rent/occupation charges, because the admission of the said relationship excludes a claim based on any other title to the property. The relationship between a landlord and a tenant is one where the tenant agrees to pay the rent/occupation charges in consideration for the right granted to him by the landlord to use and occupy the premises. Therefore, he cannot, while being in use or occupancy of the premises, not pay the rent/occupation charges therefore. However, the tenant may set up defenses to justify suspension of his obligation to make payment of rent, of the kind raised in the present case. Once those defenses have been considered and rejected by the court, it necessarily follows that the obligation of the tenant to pay the rent is established and the tenant holds the money due on account of rent on behalf of landlord. In Sangeeta Prints v. Hemal Prints and Ors. the Bombay High Court relied upon its earlier Division Bench Judgment in the case of ChandrakantShankarraoDeshmukh v. HaribhauTukaramjiKathane 1983 Mah. LJ 88 to hold that in case of a landlord and a tenant, the tenant cannot dispute his liability to pay rent to the landlord although the quantum of such rent may be in dispute. The tenant, in fact, is deemed to admit some money is due to the plaintiff. In such situation the court can direct the tenant to deposit such amount as the court may deem fit under Order XXXIX Rule 10 CPC.

40. Also, in Surjit Singh v. H.N. Pahilaj this Court while considering the object of Order 12 Rule 6 CPC, held that relief under the said provision was also available where liability to pay is not denied but being avoided on untenable pleas. The power in such cases could also be exercised under Order XXXIX Rule 10 CPC. The court held that under Section 151 every court is constituted for

the purpose of doing justice according to law and must be deemed to possess, as a necessary corollary and as inherent in its very constitution, all such powers as may be necessary to do the right and to undo a wrong in the course of the administration of justice. In appropriate cases the Court can exercise powers under Section 151 CPC where Order 12 Rule 6 or Order 39 Rule 10 CPC may not be applicable for the purpose of doing justice or to prevent abuse of the process of the court.

41. *There is no dispute and the admitted position is that there existed a landlord-tenant relationship between the Plaintiff and the Defendant. Admittedly, rent/damages/occupation charge has not been paid by the Defendant after May 2002 till the premises were vacated by the Defendant after March 2003. This liability cannot be avoided, since it is to be met by the defendant irrespective of whether the status of the defendant during the period in question was that of a tenant or of a trespasser holding over after the determination of the lease. The last paid rent would be the minimum charges that would be payable either on account of rent or on account of damages. If it is ultimately found that the tenancy of the suit premises subsisted throughout till the vacation of the property, it would be adjusted towards rent, and if it is found that the lease was validly terminated, it would be adjusted towards partial damages. The defendant is wrong in contending that the plaintiff by way of the applications under considerations is claiming 'rent' while the claim in the suit is for damages. The claim even in the applications is for damages, though, to avoid a controversy at this stage the plaintiff has limited the prayer for grant of partial damages computed at the rate at which admittedly the rent was last paid. After a trial, it may be found that the lease of the defendant stood validly terminated and in that eventuality the damages could be still higher, but to the extent of the last paid rent it is the minimum.*

Therefore, so far as the amount of last paid rent is concerned @ Rs. 3.50 lakhs per month, the defendant is liable to pay the same to the plaintiff for the period June 2002 to March 2003. The defendant is hereby directed to pay the same to the plaintiff within two months of the passing of this order for the period 1.6.2002 till 31.3.2003 i.e. for a period of ten months, which translates to Rs. 35 lakhs. The plaintiff had taken a security deposit of Rs. 15 lakhs from the defendant under the lease deed. After adjustment of the same, the defendant would be liable to pay to the plaintiff at this stage, a sum of Rs. 20 lakhs. Since the amount now being directed to be paid to the plaintiff is not in excess of the amount for which the suit is valued, no further court fee is payable at this stage. Consequently, no issue of payment of court fee would arise for the time being. The question of payment of interest, if any, on the said amount would be considered at the final stage. So far as the maintenance charge are concerned, in view of the law discussed hereinabove, since the said liability is conditional upon the rendering of the agreed services by the landlord and it cannot be treated as payment for use and occupation of the tenanted premises and there is a dispute about the said services having been rendered or not, at this stage, I am not inclined to pass any order to direct the defendant to either pay the same to the plaintiff or even to deposit the same in the court. The payments directed by me by this order are without prejudice to the rights and contentions of the plaintiff in relation to its claim for damages and so far as the claim for arrears of maintenance charges are concerned. The said claims, and the claim for interest shall be considered only after the parties have led their evidence in respect thereof."

14. In the decision of **Kanak Projects (supra)** a learned Single Judge of this Court held that for occupation of a premises as a trespasser, the defendant had to pay occupational charges for using the property till the date the property was vacated at the market rate on the ground that if payment of occupation charges was deferred till a decree for eviction was passed which could be after several decades, the possession would become very beneficial for the occupant in the sense that the occupant would enjoy possession upon payment of no occupation charges at all. This Court held that the principles laid in **Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.** and **Purushottam Das Bangur and ors. v. B. Majumdar Samajpati & sons Hotel Private Limited** would apply.

15. Another learned Single Judge of this Court differed with the said decision in the matter of **K.K. Saha & Co. Pvt Ltd v. Ashok Agarwal**, and held as follows:-

"22. What can be logically deduced therefrom that the imposition of conditions at the time of passing an order for stay of the eviction decree or the execution proceeding can be imposed by the Appellate Court but such directions cannot be passed if the eviction proceeding is dismissed by the Trial Court and the appeal is filed by the dissatisfied landlord. On the same analogy if the suit for eviction is still pending and no decree is passed, it is not open to the Court to direct the tenant to pay the occupational charges till the Court passes a decree for eviction. It would be opposed to the definition of a tenant engrafted under Section 2(h) of the West Bengal Premises Tenancy Act, 1997 which clearly provides that the tenant even after the determination of tenancy shall enjoy all the protections and the rights as that of a contractual tenant until a decree for eviction is passed.

23. In view of the above, I am unable to agree with the ratio laid down in Kanak Projects Ltd (Supra)."

16. The question referred to the Hon'ble Chief Justice for Constitution of a Larger Bench was held as follows:-

"Whether the Civil Court can direct the tenant to pay the occupational charges, damages mesne profits during the pendency of the eviction proceeding at the prevalent market rate in excess of the contractual rent."

17. The question was answered by the Hon'ble Division Bench in **K. K. Saha (supra)** that the Trial Court could not pass any direction upon the defendant/tenant for payment of occupation charges at the prevalent market rate during the pendency of the suit on a prima facie basis unless, there was an admission on the part of the defendant about the existence of the relationship of landlord and tenant between the parties and the service of notice was admitted. This decision did not deal with a situation as in the instant case, where the landlord is asking for payment of contractual rent/occupation charges.

18. In this case, it is an admitted position that the opposite parties are tenants in respect of the property in question and they have contended that they are entitled to reside in the said property upon payment of rent. The tenancy was terminated by a notice by invoking the sooner termination clause. As has been held in the decision of the Delhi High Court, the Court under exercise of inherent power can direct payment of admitted rent. The decision in **K.K. Saha (supra)** was on a question whether the court could issue a direction upon the defendant/tenant to pay occupation charges at the market rate in excess of contractual rent by way of damages until the termination notice was upheld. The Division Bench held that without

knowing what defence was likely to be advanced by the defendant in the written statement and without there being an admission on the part of the defendant about the existence of the relationship of landlord and tenant between the parties, the question of payment of occupation charges at the market rate during the pendency of a suit could not arise. The ratio in **Poonam Kejriwal (supra)** does not apply in the facts of this case as in the said decision it was held that a mandatory order of injunction directing deposit of money as an occupation charge by way of security could not be passed, as a temporary measure.

19. The relevant paragraphs in the written statement filed by the opposite parties are stated below:-

*“8. Allegations made in paragraphs 15 to 17 of plaint are partly true and partly untrue statement. It is denied categorically that as per desire the plaintiffs can terminate the contract entered in between the parties by issuing notice upon their advisory. **Defendants state that legality and validity of the notice dated 8th October, 2015 is hereby Challenged and/or denied. These defendants are in possession of the suit property as lessee and they have every right to retain the suit property subject to payment of rent. The defendants have no intention to carry out any illegal acts on the suit property or portions thereof.** The plaintiffs made attempt to twist the writing dated 22nd December 2015. It is denied categorically that the defendants have assured the plaintiffs to hand over vacant possession of the suit property as wrongly spelt out. Plaintiffs have not received any letter alleged to have been written on 22nd December 2015. Allegations contrary to that and/or inconsistent therewith are hereby denied.*

9. ***

10. ***

11. ***

12. ***

*13. Allegations made in paragraphs 23 and 24 of the plaint are partly true and mostly untrue statements. These defendants are not in wrongful occupation and possession of the suit property. **These defendants are bona fide tenant and they have every right to possession the property. Save as aforesaid and save what are matters of record all allegations contrary thereto and/or inconsistent therewith are hereby denied.***"

20. In this case, the petitioners are not claiming rent at the market rate but are claiming the contractual/agreed rent as per the lease deed. The rate of monthly rent was never denied by the opposite parties. The agreed rent for use and occupation of the property in question as per the lease agreement was at the rate of Rs. 5 lakhs per month for the first year and Rs. 6 lakhs per month from the 2nd year to the end of fourth year. The rent was payable month by month every month within the 10th of every succeeding month. In the decision of **Sarup Singh Gupta v. S. Jagdish Singh** reported in **(2006) 4 SCC 205**, the Apex Court has also noted and observed that, in the event of termination of lease, the Courts have followed the practice of permitting the landlord to receive rent every month by way of compensation for the use and occupation of the premises at an amount equal to the monthly rent payable by the tenant.

21. The petitioners have prayed for mesne profits as hereunder:-

"(b) Decree for a sum of Rs.4,50,000/- tentatively calculated up to the date of filing of the instant suit, by way of mensne profits as mentioned in paragraph 29 above;

(c) Decree for further mesne profit of Rs.50,000/- per diem from 09.09.2016 till actual delivery of peaceful and vacant possession of the suit property to the Plaintiffs;"

22. Here the mesne profits have been tentatively calculated at Rs.4,50,000/- till the date of filing of the suit and further mesne profits have been prayed for at the rate of Rs.50,000-/ per day from September 9, 2016 upto the date of vacation. Such claims will be subject to the final decision of the suit but the defendants cannot avoid payment of the contracted rent and enjoy the premises for free during the pendency of the suit. The relationship of landlord and tenant is admitted.

23. The income of the landlord by renting out a valuable property should not be put on hold till the final decision in the suit. The said amount of rent paid during the pendency of the suit can always be adjusted with the mesne profits and damages, in the event the suit succeeds and if the suit fails, the same shall be adjusted against rent upto the date of vacation of the suit property.

24. In my opinion, the opposite parties/defendants Nos.1 to 4 are liable to pay the agreed monthly rent at the last paid rate with all arrears payable from the month of September 2016, (the month following the month for which rent was last paid), upto February 2021. The payment of arrears will carry interest at the rate of 6 % per annum payable proportionately with the instalments. The arrears are to be paid in 15 equal monthly instalments to the plaintiffs along with the current monthly rent till the liquidation thereof. The current rent will be paid from the month of March, 2021 within April 10, 2021 and the same arrangement will continue for all succeeding months till the disposal of the suit. The mode of payment will be the same as was followed prior to filing of the suit. All payments and acceptance will be

without prejudice to the rights and contentions of the parties and shall be adjusted with the damages/mesne profits if awarded at the time of disposal the suit and against the rent if the suit fails.

25. This revisional application is disposed of. The order impugned is set aside.

Urgent photostat Certified Copy of this judgment, if applied for, be given to the parties, on priority basis.

(Shampa Sarkar, J.)