

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**C.O. 359 of 2025
With
CAN 1 of 2025
Khaitan Consultants Ltd.
VS.
Daimanti Devi & Anr.**

For the Petitioner	: Mr. Mainak Bose....Sr. Adv. Mr. Khushi Gupta	 advocates
For the Opposite Party	: Mr. Sandipan Das	 advocate
Heard on	: 25.06.2025 & 02.07.2025	
Judgment on	: 02.07.2025	

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order being No. 143 dated January 14, 2025 passed by the learned Civil Judge 5th Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit no. 121 of 2003 E.
2. By the order impugned the application under Section 151 of the Code of Civil Procedure filed by the petitioner seeking a direction upon the opposite parties to make payment of occupation charges stood rejected.
3. Petitioner herein filed a suit for eviction on the grounds referred to under various clauses of Subsection 1 of Section 6 of the West Bengal Premises Tenancy Act, 1997 (for short "1997 Act"). The petitioner filed an application under Section 151 of the Code of Civil Procedure seeking a direction upon the defendant no. 1(a) to pay arrear occupational charges on and from 1st December, 2003 till September 2024 and for a further direction upon the defendants to continue to make payment of occupational charges till the

delivery of possession. In the said application the petitioner has stated that the suit property is located at the central business district of the city of Kolkata and is located opposite the High Court at Calcutta. The present letting out value of the suit property, according to the petitioner, in a conservative estimate would be Rs. 1000/- per sq. ft. The learned Trial Judge rejected the application seeking direction upon the opposite party to pay occupation charges.

4. Being aggrieved, the plaintiff has approached this Court.
5. Mr. Bose, learned Senior Advocate appearing for the petitioner submitted that the opposite parties are enjoying the suit property and are exploiting the same for commercial purpose. He submitted that the contractual rate of rent is very low and since the opposite parties are in possession of the suit property and exploiting the same for commercial purpose, the opposite party should be directed to pay occupational charges at the current market rate. He further contended that the rate of occupation charges claimed by the petitioner in the said application is a reasonable one and the same cannot be said to an exorbitant amount taking into consideration the fact that the suit property is situated in the prime location of the city of Kolkata. Mr. Bose learned Senior advocate placed reliance upon the decision of the Hon'ble Supreme Court of India in the case of ***Bijay Kumar Manish Kumar HUF vs. Ashwin Bhanulal Desai*** reported at **(2024) 8 SCC 668** in support of his contention that even prior to the passing of a decree for eviction, a direction for payment of occupation charges can be passed. He also placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Mohammad Ahmad and Another vs. Atma Ram Chauhan and Others*** reported at **(2011) 7 SCC 755** in support of his contention that the landlords are entitled to reasonable rent akin to market rent.
6. Mr. Das learned advocate appearing for the opposite party seriously disputed the contentions of Mr. Bose. He submitted that there is no provision in the 1997 Act for payment of occupation charges at the current market rate for continuing in possession of the tenanted premises during the pendency of the eviction suit. He further contended that the PW1 was last cross examined on 1st October, 2018 and the petitioner has taken several adjournments before the learned Trial Judge. He submitted that the only object behind filing the application under Section 151 of the Code of Civil Procedure is to enhance the rent in the name of occupation charges. He concluded by submitting that the learned Trial Judge after considering the materials on record rejected the application by passing a speaking order and this Court should not interfere with such order.

7. Heard the learned advocates for the respective parties and perused the materials placed.
8. Petitioner claims to have sent a statutory notice under the provisions of the Section 6 of the 1997 Act to the defendants inter alia terminating tenancy alleging that in spite of the notice terminating the tenancy, the defendants have failed, neglected and/ or deliberately refused to make over possession of the suit shop rooms to the plaintiff. A suit for eviction inter alia on the ground of default in payment of rent, subletting etc. was filed before the learned Trial Judge.
9. The opposite parties are contesting the said suit by filing a written statement denying the material allegations contained therein.
10. Record reveals that the PW1 was last cross examined on 1st October, 2018.
11. The petitioner filed the instant application under Section 151 of the Code of Civil Procedure seeking a direction for payment of occupation charges.
12. Section 2(g) of the 1997 Act defines “tenant” to mean any person by whom or on whose account or behalf the rent of any premises is or but for a special contract, would be payable and includes any person continuing in possession after termination of his tenancy.
13. From the aforesaid definition of “tenant” it is evident that a tenant includes a person who continues in possession even after termination of his tenancy. Such a tenancy is creature of statute. A tenant continuing in possession after the termination of his tenancy is often referred to as a statutory tenant.
14. A person in order to claim to be a statutory tenant has to first establish that he was a tenant of the premises within the meaning of “tenant” under the 1997 Act and that he continued in possession after the termination of tenancy.
15. It is not the case of the plaintiff that the tenant vacated the suit property upon termination of his tenancy. On the other hand, the plaintiff claimed that inspite of service of notice under Section 6(4), the tenant failed and neglected to hand over possession. To the mind of this Court, from the averments made in the plaint, the tenant-defendant satisfies the test of a statutory tenant.
16. Five Hon’ble Judges of the Supreme Court of India in **Gian Devi vs. Jiban Kumar** reported at **AIR 1985(SC) 796** while interpreting the definition of tenant given in Delhi Rent Control Act, observed that the definition of “tenant” under the said Act includes a statutory tenant and that such a person would not be a tenant under the ordinary law, but he is recognised as statutory tenant under Rent Control legislation and by virtue of the

definition placed on the same footing as contractual tenant so far as the Rent Control legislation is concerned.

17. The Hon'ble Supreme Court in ***Biswabani (P) Ltd. vs. Santosh Kumar Dutta And Ors.*** reported at **(1980) 1 SCC 185** held that a statutory tenant under the West Bengal Premises Tenancy Act, 1956 would enjoy the protection of the statute until evicted under the enabling provisions of the statute and its tenancy would come to an end either on surrender or on passing of the eviction decree.
18. As observed hereinbefore, the definition of "tenant" under the West Bengal Premises Tenancy Act, 1997 also includes a statutory tenant.
19. In view of the aforesaid discussion, this Court holds that a statutory tenant under the 1997 Act enjoys all the benefits and protections conferred by the 1997 Act.
20. Section 111 of the Transfer of Property Act, 1882 prescribes the modes of determination of lease. A lease may be determined either by efflux of time limited thereby, forfeiture, surrender etc. A lease may also be determined on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.
21. A notice under Section 6(4) of the 1997 Act is a sine qua non for instituting a suit for eviction by a landlord against the tenant on any of the grounds specified under various clauses of subsection (1) of Section 6 except clause (e).
22. The Hon'ble Supreme Court in the case of ***V. Dhanapal Chattiari vs. Yesodai Ammal*** reported at **(1976) 2 SCC 103** held that in a suit or proceeding under any rent control statute of a State, no notice under Section 106 of the Transfer of Property Act is necessary before filing a suit for eviction.
23. In ***Mono Ranjan Dasgupta vs. Suchitra Ganguly*** reported at **AIR 1989 Cal 14**, the Hon'ble Calcutta High Court followed the decision of the Hon'ble Supreme Court in ***Dhanapal Chattiari*** (supra) and held that no notice under Section 106 of the Transfer of Property Act is necessary before filing a suit for eviction under the 1956 Act.
24. By applying the decision in the case of ***Mono Ranjan Dasgupta*** (supra), this Court holds that the notice under Section 6(4) of the 1997 Act is a notice of suit and not a notice to quit as contemplated under Section 106 of the Transfer of Property Act and notice under Section 106 of the Transfer of Property Act is not necessary for filing a suit for eviction under 1997 Act.

25. Section 6 of the 1997 Act starts with a non obstante clause. Under the 1997 Act, the landlord can evict a tenant only upon fulfilment of the grounds contained in various clauses of Subsection (1) of Section 6. A landlord cannot recover possession merely by issuing the notice under Section 6(4). However, in order to recover possession of the leasehold premises under the Transfer of property Act, determination of a lease is necessary.
26. In view of the aforesaid discussion, this Court holds that even upon service of notice under Section 6(4) of the 1997 Act, the landlord still remains a landlord and a tenant continues to remain a tenant in view of the expression “any person continuing in possession after termination of his tenancy”.
27. To the mind of this Court, the tenant even upon service of notice under Section 6(4) of the 1997 Act cannot be said to be a “tenant at sufferance”.
28. In **Bijay Kumar** (supra), a proceeding for eviction under the Transfer of Property Act was initiated on the ground of forfeiture of lease due to alleged non payment of rent. An application under Order 7 Rule 11 of the Code of Civil Procedure was allowed by the learned Trial Judge upon holding that the agreement inter se the parties was governed only by the Transfer of Property Act. On an appeal from the order of the Trial Court, the Hon’ble High Court upheld the jurisdictional issue in favour of the tenant, dismissed the suits holding that the suits are not maintainable. The Special Leave petition was filed by the landlord against the aforesaid judgment of the Hon’ble High Court. An interlocutory application seeking direction for payment of monthly occupation charges was filed in the pending Special Leave Petition.
29. The Hon’ble Supreme Court in **Bijay Kumar** (supra) took note of its own decision in the case of **Indian Oil Corpn. Ltd. vs. Sudera Realty (P) Ltd.** reported at **(2023) 16 SCC 704** wherein it was observed that a tenant continuing in possession after the expiry of the lease may be treated as a tenant at sufferance, which status is a shade higher than that of a mere trespasser. A tenant at sufferance, as held by the Hon’ble Supreme Court in **Bijay Kumar** (supra) is a person who enters upon a land by lawful title but continues in possession after the title has ended without statutory authority and without obtaining consent of the person then entitled. In **Sudera Realty** (supra), it was held that the person while continuing possession after the expiry of the lease becomes liable to pay mesne profits. By applying the proposition of law laid down in **Sudera Realty** (supra), the Hon’ble Supreme Court in **Bijay Kumar** (supra) held that a tenant who once entered the property in question lawfully, continues in possession after his right to do so stands extinguished, is liable to compensate the landlord for such time period after the right of occupancy expires.

30. In **Bijay Kumar** (supra), the Hon'ble Supreme Court after noting that an unchallenged market report forms part of the record, directed deposit of an amount with the Registry of the Hon'ble Supreme Court to ensure complete justice inter se the parties. It was further clarified in the said order that the direction for deposit made in the interlocutory application are subject to final outcome of the Special Leave Petition.
31. Therefore, no final decision was taken in **Bijay Kumar** (supra).
32. Be that as it may, the basic premise for passing a direction for deposit of money in Bijoy Kumar (supra) was that the respondent therein was treated to be a tenant at sufferance. The said reported decision is distinguishable on facts and, therefore, cannot be applied to the case on hand as the defendant herein cannot be said to be a tenant at sufferance as observed hereinbefore.
33. In **Mohammad Ahmad** (supra), the application filed under Section 21(1) (a) of the U.P. Act, 1972 was allowed directing that the property be released. The order of release passed by the prescribed authority was partially modified by the appellate authority. The order of the appellate authority was challenged in a writ petition and the Hon'ble High Court, while considering the stay application directed that the appellants will not be dispossessed from the shops provided occupation charges at the rate specified in the said order was paid. Thereafter, the rate of occupation charges was enhanced which was challenged before the Hon'ble Supreme Court in Special Leave Petition. The Hon'ble Supreme Court refused to interfere with the order enhancing the occupation charges upon holding that the parties agreed to the enhancement and the enhancement was not unreasonable and exorbitant.
34. Mr. Bose placed strong reliance on paragraph 21 of **Mohammad Ahmad** (supra) in support of his contention that it is the duty of the Court to direct payment of occupation charges at the market rate.
35. The Hon'ble Supreme Court in para 21 of **Mohammad Ahmad** (supra) expressed its view that majority of cases relating to landlord tenant disputes are filed because the landlords do not get reasonable rent akin to market rent and for such reason fixed some guidelines and norms so as to minimise the landlord- tenant litigation at all levels.
36. The said guidelines are only for the purpose of minimising landlord-tenant litigation and cannot be said to be an authority for the proposition that in an eviction suit filed under Section 6 of the 1997 Act, the landlord can claim occupation charges at the current market rate of rent during the pendency of the eviction suit.

37. On a suit for eviction being instituted by the landlord for eviction on any of the grounds referred to in Section 6 of the 1997 Act, the tenant has to comply with the requirements laid down under Section 7 of the said Act. The tenant is under an obligation to pay to the landlord or deposit with the Civil Judge all arrears of rent calculated at the rate at which it was last paid together with interest. In case there is any dispute as to the amount of rent payable by the tenant, the tenant shall have to deposit admitted arrears of rent together with an application for adjudication of dispute. Section 7(2) casts an obligation upon the Court to decide the dispute having regard to the rate at which rent was last paid and the period for which such default is made.
38. Subsection 3 of Section 7 provides for striking out the defence against delivery of possession in case of failure to comply with the requirements under Subsection (1) or (2) of Section 7.
39. Thus, a tenant against whom a suit under Section 6 of the 1997 Act is instituted has to pay rent current as well as arrears at the rate at which it was last paid to get protection from eviction.
40. Section 7(1) and 7(2) contemplates payment or deposit of rent at the rate at which it was last paid and not at any other rate.
41. 1997 Act does not provide for payment of occupation charges during the pendency of the suit nor does it provide for payment of rent at a rate higher than that at which it was last paid.
42. When the statute provides that the tenant shall get the benefit of protection against eviction upon compliance of Section 7(1) and 7(2), this Court is of the considered view that the tenant cannot be compelled to pay occupation charges at a rate higher than the rate at which rent was last paid, during the pendency of the eviction suit.
43. Section 17 of the 1997 Act states that the Controller shall on application made to him either by the landlord or by the tenant in the prescribed manner, fix the fair rent in respect of any premises in accordance with the provisions of the said Act.
44. It is well open for a landlord to approach the Controller for fixation of fair rent.
45. Section 18 of the 1997 Act states that the fair rent initially fixed shall be automatically increased by 5% every three years. Proviso thereto empowers the State Government to issue notification fixing such rate of increase every four years from the date of commencement of the 1997 Act.

46. Section 19 of the said Act states when the fair rent fixed by the Controller takes effect. The provisions of the 1997 Act takes care of the guidelines and norms fixed by the Hon'ble Supreme Court in Paragraph 21 of **Mohammad Ahmad** (supra). If the petitioner feels that the 1997 Act is not in consonance with the guidelines and norms fixed by the Hon'ble Supreme Court it is well open for the petitioner to take steps in accordance with law.
47. It is not the case of the petitioner herein that the petitioner has approached the Controller for fixation of fair rent under provisions of 1997 Act. On the contrary the petitioner has approached the Civil Judge praying for eviction on the grounds referred to under various subclauses of Subsection 1 of Section 6.
48. Having not taken recourse to the provisions of the 1997 Act for fixation of the fair rent and after filing a suit for eviction of the tenant, the petitioner cannot now turn around and seek a direction for payment of occupation charges at the current market rate of rent during the pendency of the eviction suit.
49. In view of the aforesaid discussion, this Court holds that the defendants cannot be said to be a tenant at sufferance. The defendants, therefore, are not liable to pay occupation charges.
50. The learned Trial Judge was right in observing that occupational charges are granted for unlawful occupation of the premises but in case of a tenant against whom a suit has been instituted upon issuance of notice under Section 6(4) such a tenant becomes a statutory tenant and his occupation cannot be said to have become unlawful unless a decree for eviction against him has been passed.
51. The learned Trial Judge assigned cogent reasons for rejecting the application under Section 151 of the Code of Civil Procedure. The said order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.
52. For all the reasons as aforesaid, CO 359 of 2025 stands dismissed. Accordingly the application stands disposed of. There shall be, however, no order as to costs.
53. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)