

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 830 of 2025

Sambhu Shaw @ Shambhbu Shaw

VERSUS

Chandan Shaw & Ors.

For the Respondent:

Mr. Debasis Sur, Adv.

For the opposite party:

Mr. Kaushal Kumar, Adv.

Last Heard on: September 17, 2025

Judgment on: September 22, 2025

Biswaroop Chowdhury, J:

The petitioner before this Court is a defendant in a suit for eviction and recovery of Khas possession filed by the plaintiff under Section 6 of West Bengal Premises Tenancy Act 1997, and is aggrieved by the Order dated 18.01.2025 passed by Learned Civil Judge (Junior Division) first Court Chinsurah Hooghly in title suit 10103 of 2014.

The case of the petitioner is that the petitioner pursuant to entering appearance in the suit filed an application for an Order of repairing of the suit property which according to the petitioner is in a dilapidated condition. The petitioner along with petition of repair also filed an application under Order 39 Rule 7 of the Code of Civil Procedure with a prayer for an Order of appointment of Advocate Commissioner to inspect the suit property and to file a report. Pursuant to the application being filed the said application was considered and allowed by the Learned Trial Court and an Advocate Commissioner was appointed to inspect the suit property and file report before the Learned Court. The Learned Trial Court by the considering the report of the Learned Advocate Commissioner was pleased to allow the said application in part, in favour of the petitioner but rejected the other prayer of the application.

The observations made by the Learned Judge are as follows:-

The local inspection report as submitted by the Learned Advocate commissioner states that during inspection he could not find any sanitary privy for the use of the defendant/petitioner. It is not shown to him whether any privy under the plaintiff was used by the defendant and his family members an alleged.

In view of the above facts, it is believed to the Court that the defendant/petitioner's tenancy does not include the privy. There is no prima facie proof that the defendant/petitioner used to use any other privy of the

plaintiff save and except the privy, which the defendant and his family members are using at present.

Thus, the claim of the defendant/petitioner regarding, a direction to the plaintiff for making a privy for the use of the defendant and his family members or for a direction to the defendant for making a privy at his cost and the said cost would be adjusted with the rent is not entertainable to the Court.

The defendant/petitioner has prayed for repairing of the tenanted rooms by replacing fresh tiles in place of the broken tiles and by replacing fresh bamboos in place of the broken bamboos. The commissioner's report states the said facts of the existence of the broken tiles and bamboos in the suit property which had been identified by both the parties to the suit.

It is found that the instant petition has been filed on 11.09.2017.

This Court feels that the said tenanted rooms are required for replacement of broken tiles and broken bamboos by the fresh ones, if not done since the date of filing of the petition.

The defendant/petitioner did not state in his petition regarding electricity disconnection in the suit property though he has alleged the said fact in his evidence.

This Court cannot take in account the facts as stated in evidence by the defendant to that effect as he did not state the said fact with any relief in the instant petition.

In view of the above observations, the petition of the defendant/petitioner is partly allowable.'

The petitioner being aggrieved by and dissatisfied with the Order dated 18.12.2025 passed by the Learned Trial Court has come up with this application under Article 227 of the Constitution of India.

It is contended by the petitioner that the Learned Trial Judge in exercise of his jurisdiction acted illegally and with material irregularity by passing the impugned Order mechanically without proper application of mind. It is further contended that the Learned Trial Judge in exercise of his jurisdiction acted illegally and with material irregularity by only allowing the petitioner to repair the suit property only to the extent of removing broken tiles and bamboos with new ones without changing the nature and character of the suit property. It is also contended that the Learned Trial Judge in exercise of its jurisdiction acted illegally and with material irregularity by not appreciating that the plaintiff opposite party herein had demolished the bath cum privy which was existing in the suit property and which was used by the petitioner before the said was demolished by the opposite parties herein.

Heard Learned Advocate for the parties, perused the petition filed and the material on record. Learned Advocate for the petitioner draws attention to the application made by the petitioner for repair and application for appointment of Commissioner as well as the report filed by the Commissioner and submit that the Learned Judge did not appreciate the problem faced by the

petitioner of not having bath cum privy although its absence appears in the report of the Learned Advocate Commissioner. Learned Advocate further submitted that the refusal will cause extreme hardship of the petitioner. It is also contended that the Order of the Learned Trial Judge cannot be sustained and the same should be set aside. Learned Advocate for the opposite party disputes the submission of the Learned Advocate for the petitioner and submits that the prayer for bath cum privy was not within the prayer made by the petitioner before the Learned Court.

Upon perusing the written statement submitted by the petitioner/defendant it will appear that the petitioner in his written statement has alleged that Common latrine and privy has been demolished for which the Defendant and the members of the family has to use high drains for easing themselves.

In the application under Section 35 and 36 of the West Bengal Premises Tenancy Act read with Section 151 of the Code of Civil Procedure also the defendant/petitioner alleged that the sanitary Privy which was being used by the Defendant and the members of his family to excrete since long was put under lock and key by the Landlord when he filed the suit for eviction forcing the Defendant and the members of his family to use Municipal drain and the privy of the local inhabitants. In the schedule of repairing the petitioner in point no-5 has stated as follows:

‘5. Setting up the privy which has since been destroyed by the plaintiff himself in its formal position or at any other place in close proximity of the Tenanted rooms on the plaintiff’s land.’

The application under Order 39 Rule 7 of the Code of Civil Procedure for appointment of Commission also contains the prayer for undertaking repairing work of the tenanted premises and for setting up of a privy for use by the Defendant and the members of his family.

Thus it cannot be said that petitioner’s prayer did not include construction of privy.

As the Learned Court observed that the schedule of the plaint does not disclose the existence of any privy within his tenancy nor did he state in his evidence the existence of any privy within his tenancy, it is necessary to consider Section 35, and 36 of the West Bengal Premises Tenancy Act 1997.

Section 35 of the West Bengal Premises Tenancy act 1997 provides as follows:

S.35. Making of repair and taking of measures for maintenance of essential service-1) If the Landlord neglects or fails to make tentable repair of the Premises or to take measures for due maintenance of essential supply or service comprised in the tenancy the Controller shall on application made to him by the tenant in possession of the property cause a notice to be served in the prescribed manner on the landlord requiring him to make such repair or

take such measures for due maintenance therein of the essential supply or service.

2) If after the service of notice under Sub-Section (1) the landlord fails to show proper cause or neglects to make such repair or to take within reasonable time such measures as the case may be, the tenant may submit to the Controller an estimate of the cost of such repair or measures with application for permission to make such repair or take such measures himself and thereupon the controller may after giving the landlord an opportunity of being heard and after considering such estimate and making such inquiries as may be considered necessary by order in writing, permit the tenant to make such repair or take such 'measures at such cost as may be specified in the order'

Explanation-'Essential supply or service' shall have the same meaning as in Explanation I to sub-section (5) of section 27.

Explanation I to sub-section 5 of section 27 of the Act provides as follows:

Explanation I-Essential supply or service shall include supply of water, electricity light in passage, staircase, and conservancy and sanitary service.

With regard to the observation of the Learned Trial Judge that privy is not part of the schedule of the plaint it is to be remembered that the application made by the Petitioner/defendant had nothing to do with the suit property as it was not made for disposal of suit but to seek relief under Section

35 of the West Bengal Premises Act 1997 by causing necessary repair and for a direction upon the plaintiff to set up a new privy or to allow the defendant to erect a new privy in the tenanted premise.

Although application under Section 35 of the West Bengal Premises Tenancy Act 1997 is to be made before the controller but it has been held in different judicial pronouncements that when suit is pending between landlord and tenant application under Section 35 of the West Bengal Premises Tenancy Act 1997 is required to be made before the Court where suit is pending.

Now the question which comes for consideration is whether providing the tenant privy in the tenanted premises, or in common area and in common use for the Landlord and tenant or with other tenant falls under essential service under Explanation I of sub-section 5 of Section 27 of West Bengal Premises Tenancy Act 1997.

It is quite natural that when a person takes tenancy there may be bath cum privy in the tenanted portion or common bath privy to be shared with landlord or other tenant if any but there must be existence of bath-cum privy. When there is no privy at the tenanted portion, and the common privy is put under lock and key or demolished and the tenant is compelled to go out to use public latrine or privy or high drains causing hardship harassment or embarrassment is nothing but depriving basic right of a person to live decently which is guaranteed under Article 21 of the Constitution of India.

Explanation I of Section 27 of West Bengal Premises Tenancy Act 1997 although does not specifically provide arrangement of bath and privy as essential service but it provides conservancy and sanitary service.

As sanitary service includes maintaining infrastructure and sanitary bath cum privy it includes maintenance of bath cum privy by Landlords for use by tenants. When Landlord refuses to maintain a privy for use by tenant or prevents him from using it, the same amounts to withholding of essential services.

Upon perusing the observation of the Learned Judge that privy was not part of tenanted Premises it will appear that the Learned Judge erred in not distinguishing between suit for eviction filed by landlord against tenant and application by tenant under Section 35 of West Bengal Premises Tenancy Act 1997 for essential repair and service. Thus with due respect this Court cannot agree with the said findings of the Learned Judge and the same should be set aside.

Hence this application under Article 227 of the Constitution of India stands allowed in part and the order dated 18/01/2025 passed by Learned Civil Judge Junior Division 1st Court Chinsurah Hooghly in Title Suit No-10103 of 2014 rejecting prayer for direction upon plaintiff to construct privy for use of defendant and his family members or to permit defendant to construct his own privy is set aside.

The matter is remitted to the Learned Trial Court for re-consideration of the issue upon considering report of Special Officer.

Thus Mr. Kostav Ratan Chatterjee Learned Advocate Ph. 9748974167 is appointed as Special Officer. Learned Special Officer shall cause inspection of the suit premises/tenanted premises and ascertain as to whether it is feasible to construct a bath cum privy in the said tenanted premises. In the event there is difficulty in constructing bath cum privy in the tenanted portion the Learned Special Officer shall cause inspection of the common area and ascertain whether it can be constructed there;

Learned Special Officer shall also cause inspection of the spot where the privy existed earlier and ascertain whether privy can be restored. Upon causing necessary inspection, Learned Special Officer shall submit report before Learned Trial Court for necessary orders. The Defendant/Petitioner shall bear the cost of construction of privy which is subject to such recovery as provided under law.

Learned Special Officer upon notice to the petitioner/Defendant and plaintiff/opposite party and their Learned Advocates cause the inspection within 4 weeks from the date of communication of the order. On completion of inspection the report shall be submitted before Learned Court within 2 weeks from the date of reopening of Learned Trial Court after vacation.

Learned Trial Court upon considering the report of Learned Special Officer and upon hearing the parties decide the issue very expeditiously and preferably within 3 weeks from the date of submission of report.

Learned Special Officer shall be entitled to an initial remuneration of 700 G.M. to be paid by the petitioner/defendant. Incidental Costs of inspection shall also be borne by the petitioner. On submission of report if Learned Trial Court is of the view that further inspection is necessary Learned Court may direct further inspection and fix further remuneration which Learned Court thinks fit and thereafter discharge the Special Officer on submission of such report. Special Officer on being discharged will be entitled to a final remuneration of 300 G.M. to be paid by the petitioners.

(Biswaroop Chowdhury,J)