

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**C.O. 1441 of 2025
Ferro Metal Industries
VS.**

**Shree Ganesh Jute Mills Ltd. & Anr.
And**

**CO 1655 of 2025
Shreee Ganesh Jute Mills Pvt. Ltd.
Vs.**

Ferro Metal Industries & Anr.

WITH

**CO 1442 of 2025
PXL Enterprises
Vs.**

**Shree Ganesh Jute Mills Ltd. & Anr.
And**

**CO 1658 of 2025
Shree Ganesh Jute Mills Pvt. Ltd.
Vs.**

PXL Enterprises & Anr.

For the Petitioner in
CO 1441 of 2025
and the Opposite Parties
in CO 1655 of 2025

: Mr. Aniruddha Chatterjee
Mr. Kushal Chatterjee
Mr. Oishik Chatterjee

..... advocates

For the Opposite Parties
in CO 1441 of 2025 and
the petitioner

in CO 1655 of 2025 : Mr. Haradhan Banerjee
Mr. Amitabha Pain
Mr. Partha Pratim Mukhopadhyay
Mr. S.K. Sahoo advocates

For the Petitioner in
CO 1442 of 2025
and the Opposite Parties
in CO 1658 of 2025 : Mr. Aniruddha Chatterjee
Mr. Kushal Chatterjee
Mr. Oishik Chatterjee
..... advocates

For the Opposite Parties
in CO 1442 of 2025 and
the petitioner
in CO 1658 of 2025 : Mr. Haradhan Banerjee
Mr. Amitabha Pain
Mr. Partha Pratim Mukhopadhyay
Mr. S.K. Sahoo Advocates

Heard on : 14.05.2025 and 20.05.2025

Delivered on : 20.05.2025

Hiranmay Bhattacharyya, J.:-

1. These applications under Article 227 of the Constitution of India are heard analogously as all the applications arise out of Title Execution Case No. 5 of 2011. Identical issues of fact and law are involved in these Civil Revision Applications for which all these applications are decided by this common order.
2. CO 1441 of 2025 is at the instance of Ferro Metal Industries (for short “Ferro Metal”) and is directed against an order being no. 14 dated 10th April 2025 passed by the learned Additional District Judge, Fast Track Court-II, Howrah in Misc. Appeal No. 24 of 2024 arising out of Misc. Case No. 14 of 2023. CO 1655 is at the instance of Shree Ganesh Jute Mills Ltd. & Anr. i.e., the decree holder and is directed against the self-same order.

3. CO 1442 of 2025 is at the instance of PXL Enterprise (for short “PXL”) and is directed against an order being no. 14 dated 10th April 2025 passed by the learned Additional District Judge, Fast Track Court-II, Howrah in connection of Misc. Appeal No. 25 of 2024 arising out of Misc. Case No. 16 of 2023. CO 1658 of 2025 is at the instance of the decree holder and is directed against the self same order.
4. Shree Ganesh Jute Mills Private Limited filed a suit for recovery of possession and for accounts against B.R.Herman & Mohatta (India) Private Limited (for short “BRHM”) which stood transferred before the Hon’ble High Court at Calcutta under Clause 13 of Letters Patent and was registered as Extra Ordinary Suit No. 1 of 1993. The said suit was decreed by a judgement and decree dated June 20, 2003. The said decree was put into execution giving rise to Title Execution Case No. 5 of 2011 before the learned Civil Judge, Senior Division, First Court at Howrah.
5. Ferro Metal filed a Misc. Case under Order XXI Rule 97, 98, 99, 100 and 101 read with Section 151 of the Code of Civil Procedure being Misc. Case No. 14 of 2023 in the said Title Execution Case.
6. PXL filed a Misc. Case under Order XXI Rule 97, 98, 99, 100 and 101 read with Section 151 of Code of Civil Procedure being Misc. Case No. 16 of 2013 in the said Title Execution Case.
7. Shree Ganesh Jute Mills filed applications in the aforesaid Misc. Case challenging the maintainability of the same. The learned Civil Judge, Senior Division at Howrah by an order dated 13th February, 2024 dismissed the aforesaid Misc. Cases.
8. Ferro Metal preferred a Misc. Appeal No. 24 of 2024 challenging the order dated February 13, 2024 passed in Misc. Case No. 14 of 2023. PXL filed Misc. Appeal No. 5 of 2024 challenging the order dated February 13, 2024 passed in Misc. Case No. 16 of 2023. Being aggrieved by the Order dated February 22, 2024 passed in Misc. Appeal No. 24 of 2024, the decree holder filed Civil Order No. 2663 of 2024. The decree holder filed Civil Order no.

2845 of 2024 challenging the order dated February 22, 2024 passed in Misc. Appeal No. 25 of 2024. The aforesaid Civil Revision Applications being CO 2663 of 2024 and CO 2845 of 2024 were disposed of by orders dated March 10, 2025 thereby setting aside the orders dated February 22, 2024 passed in the aforesaid Misc. Appeals and directing the learned Judge of the First Appellate Court to dispose of the applications for stay within a stipulated time limit. Thereafter, the learned Judge of the First Appellate Court passed the orders dated 10th April, 2025 in Misc. Appeal No. 24 of 2024 and 25 of 2024, which have been challenged by the decree holder as well as the applicants in the Misc. Cases under Order XXI Rule 97, 98, 99, 100 and 101 of the Code.

9. Mr. Banerjee learned advocate appearing for the decree holder submits that the Misc. Appeals do not have any merit as the appellants cannot claim any independent right in view of the provisions laid down under the West Bengal Premises Tenancy Act, 1956. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Silverline Forum Pvt. Ltd. vs. Rajiv Trust And Another*** reported at ***AIR 1998 SC 1754***. He contends that the decree holder obtained a decree for recovery of possession in respect of a property measuring about 17 Bighas 7 Cottahs. He submits that the said decree was put into execution but on account of an order of stay of execution case being passed, the decree holder is unable to enjoy the fruits of the decree. He further submits that as per the report of the Special Officer appointed by this Hon'ble Court, it is evident that the area occupied by Ferro Metal is 10 Kothas 4 Chittaks 40 Square Feet which is equivalent to 7420 Square Feet and the area occupied by PXL is 12 Cottahs 14 Chittaks 40 Square Feet which is equivalent to 9310 Square Feet. He further contends that the decree holder has submitted the Valuation Report of a Civil Engineer and Valuer dated 26th July 2024 wherein the Valuer has assessed the fair rent of the property as on the date of filing of such report per square feet per month to be Rs. 90. He submits that the learned Judge of the First Appellate Court fixed the occupation charges at the rate of Rs. 65 per Sq. feet per month inspite of the fact that

no contrary evidence/ report was placed before the learned Judge by Ferro Metal and PXL. He further submits that in the absence of any contrary evidence, the learned Judge of the First Appellate Court ought to have accepted the assessment of fair rent of the property as on the date of the report and fix the rate of occupation charges at such rate. Mr. Banerjee further contends that Ferro Metal and PXL are occupying only a portion of the decretal property and, therefore, the decree holder should be allowed to proceed with the execution case in respect of the portion which is beyond the area occupied by Ferro Metal and PXL.

10. Mr. Chatterjee learned Senior Advocate appearing for Ferro Metal and PXL seriously disputed the contentions raised by Mr. Banerjee. He contends that the learned Judge of the First Appellate Court ought to have afforded an opportunity to the appellants in the said Misc. Appeal to deal with and/or controvert the expert evidence relied upon by the decree holder before fixing the date of hearing of the application for stay. He further submits that the report filed by the Valuer assessing the fair rent of the property in question could not have been taken into consideration as the Valuer did not prove his report by coming to the dock. He, therefore, submits that the appellants in the Misc. Appeals were deprived of the opportunity to cross examine the Valuer of such report. He further submits that the decree holder is not entitled to claim any occupation charges in view of the grounds taken by the Ferro Metal and PXL in their applications for amendment. He further contends that the prayer of the decree holder permitting it to proceed with the execution case cannot be the subject matter of consideration in these Civil Revision Applications as the application for release of the balance land is awaiting consideration before the learned Judge of the First Appellate Court. Mr. Chatterjee further submits that Ferro Metal and PXL are in possession of same materials and evidence to show that the fair rent of the property as assessed by the Valuer and that fixed by the learned Judge of the First Appellate Court is on a much higher side. He further submits that the current market rate of rent in the locality for identical units are much less than the rate of occupation charges fixed by the learned Judge of the

First Appellate Court. Mr. Chatterjee prays that an opportunity be granted to Ferro Metal and PXL to produce the materials to controvert the report of the Valuer.

11. Mr. Chatterjee submits that in exercise of powers under Order XLI Rule 5 of Code of Civil Procedure, the Appellate Court should keep in mind that the amount of occupation charges should not be an unreasonable one and also that the same does not reach a windfall to the landlord. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in ***Heera Traders vs. Kamla Jain*** reported at **(2022) 18 SCC 233**.
12. In reply Mr. Banerjee submits that in terms of Order XXVI Rule 10(2) read with Rule 10A (2) of the Code, the report of the Valuer shall automatically be an evidence and shall form part of the record. He further contends that it was for the appellants in the Misc. Appeal to pray for permission of the Court to examine the Valuer but Ferror Metal and PXL having not taken steps in that regard and it is too late in the day for them to now approach before this Hon'ble Court challenging the report of the Expert on such aspects. Mr. Banerjee further submits that the application filed by the decree holder praying for release of the balance portion of the land was impliedly rejected by the learned Judge of the First Appellate Court by the orders impugned herein and in support of such contention, he placed reliance upon Explanation V of Section 11 of the Code of Civil Procedure.
13. Heard the learned advocates for the parties and perused the materials placed.
14. Record reveals that by a judgment and decree dated June 20, 2003 Shree Ganesh Jute Mills Pvt. Limited got a decree for declaration of title in respect of the suit premises and was entitled to recover arrears of rent and mesne profits and also got a decree for vacant possession of the premises by evicting the defendant therefrom. The suit property as described in the decree of the said suit is all that the premises no. 27, Nityadhan Mukherjee Road, (formerly known as 27, Telkal Ghat Road), Howrah, measuring about

17 Bighas 7 Cottahs. The said decree was put into execution giving rise to Title Execution Case No. 5 of 2011. The Misc. Cases under Order XXI Rule 97, 98, 99, 100 and 101 filed by Ferro Metal and PXL stood dismissed and challenging such orders, Ferro Metal and PXL preferred two Misc. Appeals. In connection with the said Misc. Appeals, the appellants therein prayed for stay of all further proceedings of Title Execution Case. By the orders impugned, the Execution Case was stayed till the disposal of the Misc. Appeals on condition of payment of occupational charges within the time limit indicated in the said orders.

15. It is now well settled that while passing an order of stay under Rule 5 of Order XLI of Code of Civil Procedure, 1908 the Appellate Court has power to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree holder for the loss occasioned by delay in execution of decree by the ground of stay order, in the event of the appeal being dismissed. (***see M/s. Atma Ram Properties (P) Ltd. Vs. M/s. Federal Motors Pvt. Ltd. reported at (2005) 1 SCC 705 Paragraph 19***)
16. It is also equally well settled that while fixing the amount subject to payment of which the execution of the order/ decree is stayed, the Court would exercise restraint and would not fix any excessive fanciful or punitive amount. (***See State of Maharashtra vs. M/s. Super Max International Pvt. Ltd. (2009) 9 SCC 722.***)
17. There is also no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in ***Heera Traders*** (supra) that the power of the Appellate Court under Order XLI Rule 5 of the Code of Civil Procedure, may not enable it to order payment of an unreasonable amount and also that the same does not reach a windfall to the decree holder.
18. The Court while passing an order of stay in exercise of powers under Order XLI Rule 5 of the Code shall have to take into consideration several factors for fixing the rate of occupation charges.

19. In the case on hand a Learned Special Officer was appointed by a co-ordinate bench in CO 2845 of 2024 with CO 2663 of 2024 by an order passed on 21.08.2024 thereby directing the Special Officer to inspect the suit property in order to ascertain as to whether the sketch map which has been annexed at page 100 of CO No. 2845 of 2024 depicts the correct picture of the suit property and shall measure the suit property vis-à-vis the sketch map and shall also ascertain the extent of the area of occupation of the opposite parties in the said revision applications in the suit property.
20. The Special Officer appointed by this Court submitted his report dated 20.09.2024. It appears from the said report that measurement of plot no. 10 occupied by PXL is 12 Cottahs 14 Chittacks 40 Sq. feet and the measurement of plot no. 12 occupied by Ferro Metal is 10 Cottahs 4 Chittacks 40 Sq. feet. A site plan also appears to have been annexed along with the said report.
21. In course of hearing of the Civil Revision applications the learned advocates for the respective parties did not, however, dispute the correctness of the site plan annexed to the report of the Special Officer. Therefore, it is evident that PXL is in occupation of plot no. 10 measuring about 12 Cottahs 14 Chittacks 40 Sq. feet and Ferro Metal is in occupation of plot no. 12 measuring about 10 Cottahs 4 Chittacks 40 Sq. feet.
22. In the Misc. Case no. 14 of 2023, Ferro Metal claims that BRHM that is the judgment debtor inducted Ferro Metal as a tenant in respect of a portion of a decretal property being plot no. 12 with structure and a factory shed standing thereon by virtue of an agreement and letter dated 01.03.1973. Ferro Metal prayed for adjudication of the questions relating to its right, interest and possession in respect of the said plot.
23. PXL in the Misc. Case no. 16 of 2023 claimed that BRHM / judgment debtor inducted one Super Trading Corporation as tenant in respect of plot no. 10 on monthly rental basis by virtue of an agreement by a letter dated 01.02.1973 on various terms and conditions including the right to create

sublease in favour of any third person in respect of the said plot. It was further stated therein that Super Trading Corporation inducted PXL in respect of plot no. 10 as a tenant by virtue of a tenancy agreement dated 21.03.2005.

24. PXL claims to be carrying on its business of manufacturing and storing of plastic goods in the property in question. Ferro Metal claims to be carrying on its business of plastic goods and supply of electrical items in the property in question. Thus, it is evident that Ferro metal and PXL are both enjoying portions of the decretal property as identified in the site plan prepared by the Special Officer appointed by this Hon'ble Court and are exploiting the same for commercial purpose.
25. Since the appellants in the Misc. appeals have challenged the orders passed in the Misc. Cases before the Appellate Court and if in the meantime the execution case is allowed to proceed against Ferro Metal and PXL, the applicants of the Misc. Cases would suffer irreparable loss and injury. The right to prefer an appeal by Ferro Metal and PXL is a statutory one and the Appellate Court has the power to pass an order of stay under Order XLI Rule 5 of the Code of Civil Procedure. While passing an order of stay the Appellate Court has also to keep in mind that the effect of an order of stay would amount to depriving the decree holder from enjoying the fruits of the decree and the execution of the decree would be postponed by the order of stay. Therefore, the Appellate Court while passing an order of stay has to balance the rights of the respective parties.
26. In the case on hand Ferro Metal and PXL are enjoying a considerable area and are exploiting the same for commercial purpose. Thus, they are liable to pay occupation charges as a condition for stay of the execution case.
27. Now, the question arises as to whether the rate of occupation charges fixed by the learned Judge of the First Appellate Court calls for any interference.
28. The decree holder challenges the rate of occupation charges fixed by the impugned orders on the ground that the same is much less than the fair

rent of the property assessed by the Valuer. On the contrary, Ferro Metal and PXL claims that the fair rent assessed by the Valuer as well as that fixed by the impugned orders are an exorbitant one.

29. It is not in dispute that the Valuer was appointed by the decree holder for the purpose of assessment of the Fair rent of the property. Such an appointment cannot be said to be an appointment made under the provisions of Order XXVI Rule 9 and 10 read with Order XXVI Rule 10(A) of the Code. Order XXVI Rule 10(2) of the Code states that the report of the Commissioner and the evidence taken by him shall be evidence in the suit and shall form part of the record, but the Court or with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation. The provisions of Order XXVI Rule 10(2) has been made applicable to Order XXVI Rule 10A in view of Order XXVI Rule 10A(2) of the Code of Civil Procedure.
30. This Court has already observed that the valuer appointed by the decree holder was not an appointment made under Order XXVI Rule 9 and 10 read with Rule 10A of the Code of Civil Procedure. Thus, the report of the valuer appointed by the decree holder without the intervention of the Court cannot be equated with a report filed by the Commissioner appointed under the provision of Order XXVI Rule 9 or 10A of the Code and, therefore, cannot be treated to be an evidence in the suit and shall not form part of the record by applying the provisions of Order XXVI Rule 10(2) of the Code of Civil Procedure.
31. It is always open to a party to a proceeding to produce materials, evidence or report of an expert in support of their claim for occupation charges. The decree holder has filed the report of the Valuer before the learned Judge of the First Appellate Court in support of their claim for payment of occupation charges.

32. Mr. Chatterjee, learned Senior Advocate for Ferro Metal and PXL would contend that no opportunity was given to his clients to file any objection to the report of the Valuer. It is not in dispute that the report of the Valuer was served upon Mr. Chatterjee's client prior to the hearing of the application for stay. Nothing prevented Ferro Metal and PXL to file an objection to such report. However, the fact remains that no materials and /or contrary evidence and/or report as against the report of the said Valuer was produced by Ferro Metal and PXL before the learned Judge of the First Appellate Court.
33. Taking note of the fact that this Court by an order dated 10.03.2025 directed the learned Judge of the First Appellate Court to decide the application for stay within a stipulated time limit, the learned Judge of the First Appellate Court cannot be faulted for not fixing a date for filing of objection to the report of the Valuer.
34. In course of hearing of the Civil Revision Applications Mr. Chatterjee contended that Ferro Metal and PXL are in possession of some material and evidence in support of their contention that the occupation charges fixed by the impugned orders are much higher than the market rate of rent of identical units in the locality and since the decree holder is also aggrieved by the rate of occupation charges fixed by the impugned orders, this Court is of the considered view that an opportunity should be granted to Ferro Metal and PXL to produce materials, report of any expert or any evidence in support of the current market rate of rent of the property in question.
35. Keeping in mind the proposition of law laid down by the Hon'ble Supreme Court on the power of the Appellate Court to pass an order of stay upon payment of occupation charges which should be reasonable and not excessive, fanciful or punitive amount, this Court is of the considered view that an opportunity should be granted to Ferro Metal and PXL to produce materials, evidence and/or report of a expert before the learned Judge of the First Appellate Court subject to certain terms.

36. There is also sufficient force in argument of Mr. Banerjee that the decree holder should be permitted to recover possession of the decretal property excluding plot no. 10 and 12 which is under the occupation of Ferro Metal and PXL by executing the decree. Mr. Chatterjee, learned Senior Advocate would contend that permission to recover possession of the balance portion of the decretal property should not in any way affect the right of ingress and egress to plot nos. 10 and 12.
37. However, since an application in that regard has been filed by the decree holders before the learned Judge of the First Appellate Court and it does not appear from the impugned orders that such application was decided by the impugned orders, this Court refrains from making any comment on the submissions made by the respective parties with regard to release of the balance portion of the lands and the parties are left free to raise their points on such issue at the time of hearing of such application.
38. There is, however, no quarrel to the proposition of law laid down in **Silverline Forum** (supra) that a lease between the tenant and his subtenant would be governed by the terms agreed upon between them and the tenant cannot bind his landlord by any such terms. There is also no quarrel to the proposition that consent given by the landlord to his tenant for creation of subtenancy is valid only as between the landlord and his tenant and such consent cannot be used by a subtenant to create another subtenancy under him so as to bind the landlord. Since the miscellaneous appeal is still pending, this Court refrains from making any observation as to the applicability or otherwise of the said decision at this stage.
39. For all the reasons as aforesaid this Court is of the considered view that the orders impugned in these Civil Revision Applications call for interference.
40. The Civil Revision Applications stand disposed of with the following observations and directions.

(A) The impugned orders are set aside and the stay application filed by Ferro Metal and PXL are restored to the file of the learned Additional

District Judge, Fast Track Court-II, Howrah. The learned Additional District Judge, Fast Track Court-II, Howrah is requested to consider the stay applications afresh and dispose of the same as expeditiously as possible but preferably within a period of 8 weeks from the next date fixed in the Misc. Appeal.

(B) (i) Title Execution Case No. 5 of 2011 shall remain stayed subject to the condition that Ferro Metal shall pay a lumpsum amount of Rs. 4 lakhs by way of interim occupation charges to the bank account of the decree holder on or before 03.06.2025.

(ii) If the aforesaid amount is paid within the time limit as specified in paragraph B(i) above, the order of stay shall stand extended for a further period of four weeks or until further orders to be passed by the Appellate Court whichever is earlier and Ferro Metal shall be permitted to file materials, evidence and/or report of an expert in connection with the stay application.

(iii) Failure to comply with the condition stipulated in paragraph B (i) above, would result in automatic vacation of the order of stay of the Title Execution case and Ferro Metal shall not be permitted to file any materials, evidence and/or report of expert in connection with the stay application.

(iv) In the event, the stay application could not be disposed of within four weeks from the next date fixed in the Misc. Appeal, the Appellate Court will be at liberty to extend the order of stay for a limited period subject to payment of a further sum of Rs. 4 lakhs by way of interim occupation charges.

(C) (i) Title Execution Case No. 5 of 2011 shall remain stayed subject to the condition that PXL shall pay a lumpsum amount of Rs. 3 lakhs by way of an interim occupation charge to the bank account of the decree holder on or before 03.06.2025.

(ii) If the aforesaid amount is paid within the time limit as specified in paragraph C(i) above, the order of stay shall stand extended for a further period of four weeks or until further orders to be passed by the Appellate Court whichever is earlier and PXL shall be permitted to file materials, evidence and/or report of an expert in connection with the stay application.

(iii) Failure to comply with the condition stipulated in paragraph C(i) above would result in automatic vacation of the order of stay of the Title Execution case and PXL shall not be permitted to file any materials, evidence and/or report of expert in connection with the stay application.

(iv) In the event, the stay application could not be disposed of within four weeks from the next date fixed in the Misc. Appeal, the Appellate Court will be at liberty to extend the order of stay for a limited period subject to payment of a further sum of Rs. 3 lakhs by way of interim occupation charge.

(D) All payments made in terms of this order by way of interim occupation charges shall be adjusted against the occupation charges which Ferro Metal & PXL shall be directed to pay to the decree holder by the learned Appellate Court.

(E) Learned Appellate Court is requested to take up the hearing of the application for release of the balance land and dispose of the same in accordance with law as expeditiously as possible.

(F) It is, however, made clear that the learned Appellate Court shall be free to decide on the rate of occupation charges without being influenced by the amount directed to be paid by this Court by way of interim occupation charges.

(G) The Learned Advocate on record of the decree holder is directed to furnish the particulars of the Bank Account of the decree holder to the

Learned Advocate on record of Ferro Metal Industries and PXL Enterprise appearing before this Court by May 21, 2025 and Ferro Metal Ltd. And PXL Enterprise shall deposit the amount of occupation charges to the said bank account.

41. There shall be, however, no order as to costs.
42. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.-Sanchita)