

28.07.2025
Item No. 21
Ct. No. 30
AN

CO 2259 of 2025

Biswajit Burman
vs.
Minoti Das & ors.

Mr. Abhijit Ray
Mr. Santu Nandy

... for the petitioner

Mr. Sounak Bhattacharya
Mr. Anirban Saha Roy

... for the opposite parties

The present civil revisional application has been preferred challenging the order No. 44 dated 12.02.2025 and order No. 46 dated 09.04.2025 passed by the learned 4th Bench Presidency Small Causes Court at Calcutta in Misc. Case No. 49 of 2024.

Vide the said order under revision, it appears that the learned trial judge directed payment of occupational charge of Rs. 8,000/- p.m. on certain conditions.

It is submitted by the defendant/tenant/petitioner herein that the plaintiff/land owner has not specified the area of the premises in the suit/case and without such specification, the said assessment of occupational charge by the learned trial judge is erroneous and against the principle of natural justice.

The prayer of the petitioner herein for an inspection of the premises was rejected by the learned trial judge vide

its order dated 09.04.2025 which of course is not under challenge in the present civil revisional application.

It appears from the order under challenge that admittedly the plaintiff has not mentioned the area of the premises in question in the suit and this fact is fairly admitted by the learned counsel for the plaintiff/opposite party herein.

It appears that an ex parte decree has already been passed in the suit and an application under Order IX Rule 13 Civil Procedure Code is pending hearing on 08.08.2025. The next date of hearing has been admitted by the learned counsels for both the parties.

From the order under challenge, it appears that the learned trial judge without any reasons as to how the said amount of occupational charge was arrived at, directed such payment. The said order does not provide any reasons or specification or assessment as to how the amount of occupational charge was assessed by the learned trial judge. The Court neither considered the amenities in the premises, the location and nor tried to find out the area (specification) of the premises while trying to decide the occupational charge.

All these factors including the amenities available in the premises are required to be considered and kept in mind by a Court while the quantum of occupational charge is assessed.

As there is no such consideration by the Court in the order under challenge, the order being not in accordance with law, is set aside with the direction to the learned trial court to dispose of the application under Order IX Rule 13 Civil Procedure Code within a period of 30 days on and from 08.08.2025, when the application is fixed for hearing.

If required, the Court while disposing of the application shall also consider the prayer for occupational charge by keeping in mind the observations of this Court as to the criteria which is to be taken into consideration while deciding or assessing the occupational charge and shall pass a fresh well reasoned order assessing the occupational charge.

It is made clear that this Court has not gone into the merits of the case and the learned trial court is at liberty to come to its independent findings.

With the above observations, this civil revisional application is **disposed of**.

Interim order, if any, stands vacated.

There will be no order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Shampa Dutt (Paul), J.)

