

17.01.2025  
Sl No.4 & 5  
Court No.37  
(gc)

**FAT 3469 of 2001**  
**CAN 1 of 2001 (Old No. CAN 9899 of 2001)**  
**CAN 2 of 2024**  
**CAN 3 of 2024**

**Trust Estate of Rustamjee Cawasjee**  
**Charitable Trust of Agiary Fire Temple**  
**By C.M. Rustamjee**  
**Vs.**  
**Suresh Bothra**

**With**

**FMA 2462 of 2013**  
**CAN 1 of 2024**

**Rustamjee Cawasjee**  
**Agiary Fire Temple Charitable**  
**By C.M. Rustamjee**  
**Vs.**  
**Mukesh Anand Electric Company & Anr.**

Mr. Rabindra Narayan Dutta,  
Mr. Sibasis Ghosh,  
Mr. Dwarika Nath Mukherjee,  
Mr. Shovik Chakraborty,  
Mr. Arkoday Mukherjee  
...for the Petitioner/  
Intervener.

Mr. Sayak Konar  
....for the Administrator General &  
Official Trustee of W.B.

Mr. Biswabrata Basu Mallick, Ld. A.G.P.  
Mr. Biman Halder  
...for the State.

Md. Farhaduddin  
...for the Proposed Intervener.

**Dictated by Soumen Sen, J.:-**

1. Before we advert to the compliance of our order dated 20<sup>th</sup> December, 2024 by which Mr. Suresh Kumar Daga, one of the directors

of Monotona Marketing Private Limited was directed to file an affidavit disclosing the lease rentals paid to the trust prior to the compromise decree, we may briefly narrate the facts in support of the conclusion.

2. One Cursetjee Maneckjee Rustomjee as shebait of Agiari Fire Temple Religious Endowment of Rustomjee Cowasjee Trust Estate filed a title suit being T.S. No.826 of 1996 before the Third Judge, City Civil Court praying, inter alia, for declaration and injunction against one Suresh Bothra who was carrying out a proprietorship business under the name and style of Mukhesh Anand Electric Company. In the plaint, it was alleged that the said defendant wrongly entered into the premises and occupied a shop of French Pin Man Company after it had left the premises and started making unauthorized construction. It was alleged that the said defendant has constructed underground roller gate and closed the passage in 21, Parsee Church Street and made unauthorized and massive construction by demolishing the roof and also encroaching the historic library on the first floor of the suit property. In the said suit, an interim order

was passed on 27<sup>th</sup> March, 1997 in favour of the plaintiff. However, it was alleged by the plaintiff that the interim order passed on 27<sup>th</sup> March, 1997 has been violated and, accordingly, the plaintiff filed an application under Order 39 Rule 2A of the Code of Civil Procedure. The learned Judge dismissed the said application being Misc. Case No.31 of 1998 by an order dated 1<sup>st</sup> September, 2001 on the ground that the record of the Court and, more particularly, Order No.35 dated 18.08.2000 would reveal that there is no valid service of the injunction application whereas the misc. case was filed on 6<sup>th</sup> March, 1998. On the ground of such unsatisfactory service, the application was rejected. In the appeal, the plaintiff alleged that the fault lies with the Court as the plaintiff had deposited all the requisites for effecting service inasmuch as the learned Trial Judge failed to take into consideration the report of the bailiff wherefrom it appears that the said defendant had intentionally avoided service and, in fact, refused service of the summons and other notices. The said appeal is pending. Thereafter, the plaintiff filed another appeal arising out of an order dated 16<sup>th</sup> February,

2004 arising out of the same suit in which he had challenged an order passed by the 12<sup>th</sup> Bench of the City Civil Court by which the parties were directed to maintain status quo till the disposal of the suit. The grievance of the appellant/plaintiff appears to be that there are numerous trespassers in the building who are making unauthorized construction and that the learned Trial Court has failed to take into consideration various unauthorized constructions and activities of Mukesh Anand Electric Company. The said appeal is also pending in this Court.

3. During the course of hearing of the appeal, it transpires that the plaintiff expired on 10<sup>th</sup> April, 2018 and in spite of best efforts the presence of any shebais or trustees of the said temple could not be secured and pursuant to our notice, one Mr. Adil Rustamjee, nephew of the original plaintiff appeared as recorded in our order dated 26<sup>th</sup> July, 2024, however, he has declined to continue the proceeding on behalf of the Parsee community because of his preoccupations and that he has settled abroad.

4. On 10<sup>th</sup> February, 2024, one Mr. Suresh Kumar Daga appeared and claimed himself to be the Director of Monotona Marketing Private Limited (the interventionist). Mr. Arun Kr. Sharma, learned Counsel appears on behalf of the said Company and submitted that the said company is a lessee of the trust estate and the said company wants to intervene in the said proceeding in view of the devolution of interest.
5. Pursuant to the leave, the interventionist filed an application affirmed on 12<sup>th</sup> March, 2024 praying, *inter alia*, for addition of party in the appeal on the ground that by way of devolution of interest under the lease deeds in respect of the premises nos.27 and 31 Ezra Street and 19, Parsee Church Street, Kolkata-700 001, the name of the plaintiff be substituted in place and stead of the original plaintiff as by reason of the deed of lease executed and registered by an Advocate Commissioner appointed by an order dated 4<sup>th</sup> October, 2002 and the learned 7<sup>th</sup> Bench, City Civil Court at Calcutta in T.S. 1487 of 2002 on behalf of the aforesaid owner/lessor on 14<sup>th</sup> February, 2003. It was stated that the lessor, namely, the original plaintiff has

granted lease in respect of the three premises of the said charitable trust on 9<sup>th</sup> December, 1994 for a period of 99 years with renewal clause.

6. One Md. Islam Haque also filed an application to grant the said applicant leave to intervene in the appeal and be added in the appeal on the ground that he is the whistle blower so far as the present dispute is concerned and his presence may be necessary to show the undesirable and contumacious conduct of Monotona Marketing Private Limited in relation to the suit property. However, we do not allow such addition as we feel for the proper adjudication of the dispute, the said applicant is neither a necessary nor a proper party. Although, we have not formally passed an order to that effect this order however shall be treated as rejection of CAN 3 of 2024.
7. The intervention application of Monotona is, in fact, a revelation of enormous manipulations in the judicial proceeding as this application prompted us to look into the record to find out in what proceeding such devolution of interest as claimed has been established, recognized and sanctioned. After numerous attempts being made, ultimately

the entire record of both the suits had reached this Court and it consumed a considerable time. In the meantime, the parties were filing their affidavits and reports and for the purpose of preserving the trust properties, we appointed the official trustee to take charge over the trust property since we are not satisfied with the explanation offered on behalf of the Monotona Marketing Private Limited with regard to its title to the property. One of the reasons which prompted us to appoint the Official Trustee was an order dated 20.09.2012 passed in C.O. 2429 of 2012 by one of us (Soumen Sen, J.) which, however, was not disclosed in the said petitioner, but ultimately found place in the record produced before us as would be evident from the order dated 28.06.2024. The said order has a relevance which is mentioned in our order dated 28.06.2024. For convenience, the entire order is reproduced below:-

*“The dated 20.9.2012 passed in CO 2429 of 2012 shall be immediately forwarded to the Chief Judge, Presidency Small Causes Court, Kolkata.*

*The original file of CO 2429 of 2012 shall be produced on the adjourned date.*

*A report is called for in relation to SCC Suit no. 440 of 2004 and Suit no. 441 of 2004 from the Chief Judge, Presidency Small Causes Court, Kolkata within three weeks from the date of communication of this order. The status report of both the Suits shall be mentioned in the said report. The report must also indicate what steps have been taken pursuant to our earlier order, as we directed forensic expert's opinion for examination of the documents in view of some unusual features are noticed. A complete report with regard to the all documents shall be filed by the adjourned date.*

*Mr. Dhiraj Trivedi, learned counsel appearing on behalf of the Monotona Marketing Private Limited submits that the said company has filed an application being CAN 2 of 2024. The said application is affirmed by Suresh Kumar Daga against whom serious allegation was made by Mr. Rustomji, as recorded in our order dated 20.9.2012 passed in CO 2429 of 2012. This is essential to know the outcome of the application filed by Rustomji under Order 9 Rule 13 of the Code of Civil Procedure. The said prayer was allowed by one of us*

(Soumen Sen, J.) sitting singly in disposing of CO 2449 of 2012. Curiously the said application is silent about the said order. We take it as a clear suppression of facts. The applicant should know that by reason of the order dated 20.9.2012 the decree has not attained its finality and under what circumstances the alleged deed was executed.

We direct Mr. Suresh Kumar Daga to file an affidavit explaining that serious allegation and if we do not find any satisfactory answer, we may initiate contempt proceeding against him for making misleading statement. The said affidavit shall be filed within three weeks from date.

Let an appropriate notice be served upon Mr. Adil Rustomji, Mobile No. 9820192545, nephew of Rustomji, as one of the legal descendents of Rustomji family. In any event, he belongs to Parsi community.

The property of the Trust is required to be preserved.

We direct the Official Trustee to take over the management of the Trust for the time being and shall file a detailed report after causing an inspection of the property on the adjourned date.

All the occupants are directed to file documents, as may be asked for

*by the Official Trustee, regarding their possession and occupation within three weeks from date.*

*The Official Trustee shall be personally present on the adjourned date with the report.*

*A copy of the order passed in CO 2429 of 2012 shall also be sent to Official Trustee for information and doing the needful.*

*The Registrar Administration (L & OM) shall communicate this order to the Chief Judge, Presidency Small Causes Court, Kolkata as well as the Official Trustee.*

*The report filed by the State is taken on record.*

*A Photostat copy of the order dated 20.9.2012 passed in CO 2429 of 2012 produced in court is kept with the record.*

*Let this matter appear after four weeks.” (emphasis supplied)*

8. For the sake of convenience, the order passed in C.O. 2429 of 2012 on 20<sup>th</sup> September, 2012 is reproduced below:-

*“This revisional application is directed against a notice issued by the Office of the Presidency Small Causes Court, Calcutta in execution of an order passed by the learned Registrar in connection with SCC Suit No.440 of 2004 directing the defendant/petitioner to deliver*

*possession of a suit premises as per schedule. It is submitted on behalf of the petitioner that an application is pending for recalling of the said decree was passed in the said proceeding on the ground that such decree was obtained by fraud. The petitioner categorically submitted that the Ram Abhilash Pandey, who signed the compromise petition, was not authorised to represent the petitioner inasmuch as the signature of the petitioner appearing in the alleged Power of Attorney is forged and the POA is fabricated.*

*The petitioner appearing in person also disputes the legality, validity and the factum of the agreement of the lease alleged to have been executed on 9<sup>th</sup> December, 1994 between the Temple Trust and M/s. Monotona Marketing Pvt. Ltd. The petitioner submits that he has no knowledge or notice of the said Suit and Suresh Kumar Daga in collusion with Ram Abhilash Pandey procured and obtained a decree from the Trial Court by practising fraud. The petitioner being aware of such collusive and fraudulent decree, immediately approached the Trial Court for recalling of the said decree and the trial Court without deciding the said application issued the said notice in execution of the said decree*

keeping the application for recalling of the decree pending.

This Court while admitting the revisional application called for a report from the Registrar, Presidency Small Causes Court, Calcutta. The Registrar has filed a report on 21 August, 2012. From the report it transpires that the suit was instituted against one Cursetjee Manaekjee Rustomjee for the eviction of the defendant whom the plaintiff claimed to be a mere licensee of the suit property. The relevant portion of the said report, filed in compliance of the order passed by this Court are reproduced hereinbelow:

"The summons was issued against the defendant through the court bailiff on 28.09.04. itself, fixing 23.11.04. as the date for appearance of the defendant. It may be mentioned in this respect that although the plaintiff filed requisites for the issuance of summons through registered post also, but he did not put any postal stamp for service by registered post and that summons, alongwith the true copy of the plaint, envelope and A/D card are still lying in the record. On 08.10.04. one Ram Abhilash Pandey appeared and

*filed "Vakalatnama" on behalf of the defendant by virtue of a Power of Attorney purported to be executed by the defendant on 06.08.92. and on that very day he filed a joint compromise petition alongwith the plaintiff u/o- 23r-4 of C.P.C. On 11.10.04. a consent decree was granted based on the joint compromise petition of the plaintiff and the Constituted Attorney of the defendant and that consent decree is now under execution. However, there was no order for the recalling of the summons which was issued to the defendant through the summons bailiff. Subsequently, on 17.10.04. one S. Roy, the then summons bailiff of this court, submitted a report that he could not trace the defendant at 27, Ezra Street, Kolkata 01, on 17.10.04. nor could he collect any information about the said defendant from any of the local people and so, he returned the summons unserved. It may be further mentioned in this respect that the original Power of Attorney filed on behalf of the defendant, was subsequently taken back by the Learned*

*Advocate for the defendant after the disposal of the suit with an undertaking to re-file the same as and when required, on 07.02.05. leaving a photocopy of the same in the record."*

*In spite of notice none appeared on behalf of the opposite party on the last occasion and today also none appeared on behalf of the opposite party when this matter is called on for hearing.*

*The petitioner appearing in person, categorically stated that the impugned documents are forged and fabricated. The signatures appear in the said documents are not the signatures of the petitioner and the petitioner is also willing to face a trial on evidence on these issues. The petitioner has even insisted this Court to send the said documents to a forensic expert for examination.*

*The trial Judge may decide the said application under Order 9 Rule 13 of the Code of Civil Procedure after holding a trial on evidence and if the court feels it necessary, may sent the said documents along with the original lease deed and original Power of Attorney for forensic examination. The trial Judge must summon Ram Abhilash Pandey to appear in person and produce the original Power of*

Attorney and Ram Abhilash Pandey would be given reasonable opportunity to defend himself in the said proceeding.

The petitioner has produced before me a copy of an application, filed before the Small Causes Court under Order 9 Rule 13 of the Code of Civil Procedure for recalling of the decree. Since there is certain unusual features in the matter and having regard to the report filed by the Registrar, Presidency Small Causes Court, Calcutta, this Court is of the view that the execution proceeding shall remain stayed until disposal of the application filed by the petitioner under Order 9 Rule 13 of the Code of Civil Procedure. In view thereof, this revisional application succeeds. The impugned notice dated 29th June, 2012 shall remain stayed until disposal of the application filed under Order 9 Rule 13 of the Code of Civil Procedure.

The office of the Presidency Small Causes Court, Calcutta shall not issue any notice same and/or similar to the notice dated 29th June, 2012 until the application filed by the petitioner under Order 9 Rule 13 of the Code of Civil Procedure is decided on merits. The trial Judge is requested to dispose of the said application filed by the Petitioner under Order 9 Rule

*13 of the Code of Civil Procedure as expeditiously as possible, without granting any unnecessary adjournment to either of the parties.*

*It is made clear that the Court has not gone into the merits of the application filed under Order 9 Rule 13 of the Code of Civil Procedure and trial Judge shall decide the matter on merits after giving reasonable opportunity of hearing to the parties.*

*The revisional application succeeds and applications no. 7623 of 2012 and 8715 of 2012 stand disposed of.*

*There shall be no order as to costs.*

*Office is directed to send down the Lower Court Record to the Court below immediately.” (emphasis supplied)*

9. This order was conveniently suppressed in the intervention application.
10. It appears that the said application was dismissed for default on 31.07.2018 as the plaintiff died on 10.04.2018. In the aforesaid background, no devolution of interest in favour of the plaintiff in law was possible on the basis of the order dated 4<sup>th</sup> October, 2002. The record would show that the application under Order 9 Rule 13 of the Code of Civil

Procedure was not fully heard for reasons not attributable to Rustamjee when he was alive and he was found to be in a helpless situation completely under the control of the said company. It remind us of Alice in Wonderland of Lewis Carroll's Classic as we became "curiouser" and "curiouser" when we enter through the diaphragm of both the proceedings to understand the anatomy of the dispute. We find that a gate keeper of the trust who had left the trust in 1984-85 and was untraceable had a magical appearance claiming himself the power of attorney holder before the trial court and alleged to have put his signature in the terms of the settlement. The terms are *prima facie*, unconscionable and could not have been accepted by Rustamjee, the original plaintiff having regard to his long standing dispute with trespassers including Suresh Bothra and thereafter against the present interventionist. Rustamjee was virtually running from pillar to post to save the trust property. It has completely shocked the conscience of the Court as would appear from our order dated 6<sup>th</sup> December, 2024. For the sake of

convenience, the entire order is reproduced below:-

*“The report of the Officer-in-Charge, Hare Street Police Station dated 6<sup>th</sup> December, 2024 filed in Court today, is taken on record.*

*It appears from the report that on enquiry the Offer-in-Charge could gather that Ram Avilash Pandey was a gatekeeper of the Fire Church and his salary was paid by the Church authorities. Around 1984/1985 he left his job and went to his native place at Uttar Pradesh. He would be nonagenarian citizen if he was alive today.*

*After much persuasion, the record of Title Suit 1487 of 2002 has been received. Although this record was received on 7<sup>th</sup> November, 2024, it was not brought to the notice of this Court by the department concerned on 29<sup>th</sup> November, 2024. We directed the learned Registrar Administration (L&OM) to cause an inquiry for not placing the record on the date we passed the order. However, the said file is placed with an explanation of the Assistant Registrar-II, First Appeal Section which appears to be unsatisfactory.*

*The original record reveals that a compromise decree was passed on the basis of a joint compromise petition affirmed by one Suresh Kumar Daga claiming to be the Director of the plaintiff*

and Sri Ram Avilash Pandey, the constituted Attorney of the defendant. A person who was a gatekeeper of the Church and claimed to have been left in the year 1994-95, could not have executed a document on 3rd October, 2002 and that too by which a valuable right has been conferred on the plaintiff over a very valuable property belonging to the Trust Estate of Rustamjee Cawasjee.

The Trial Court was clearly misled. The prayers in the plaint are also unique as the plaintiff claims for a declaration that the defendant agreed to execute the deed lease for a period of 99 years in respect of the premises in question although the said agreement was never brought on record or exhibited at the trial, instead, the plaintiff tried to find out an easy path of obtaining a decree with the assistance of a gatekeeper who claimed to be the Constituted Attorney of defendant, Curestjee Maneckjee Rustamjee. The defendant had never accepted that he had executed any power of attorney and the record does not show that the said power of attorney was brought on record. The learned Court was made to believe and as it happens often relying upon the good faith that the Court ordinarily exercise on the counsel and the parties, accepted that Ram Avilash Pandey was a Constituted Attorney of the defendant

and allowed the prayer. The subsequent action taken by the defendant clearly disprove that any such Constituted Attorney was at all appointed or he had given any authority to said Pandey to execute such compromise. The Official Trustee has taken charge over the Estate in terms of our order.

We direct the department to supply certified copies of the entire records to the Official Trustee who is personally present in Court in order to enable him to take further action in this matter.

The matter shall be listed after fortnight for further orders.

The Official Trustee is directed to file a report.”

11. In our endeavour to find out the truth we repeatedly asked the interventionist to disclose the amount the interventionist paid to the trust even if it is assumed that a lease was renewed in its favour. Initially, an unsatisfactory affidavit was filed for which on the prayer of Mr. Dhiraj Trivedi, learned Senior Counsel representing the interventionist on 20<sup>th</sup> December, 2024, we passed the following direction:-

*“We do not find any satisfactory explanation with regard to the payment of lease rentals by Monotona Marketing*

*Private Limited to the charitable trust. The said Company represented by Mr. Suresh Kumar Daga could not offer any satisfactory explanation through his Counsel, Mr. Dhiraj Trivedi, learned Senior Advocate to whom the lease rentals have been paid at least since 2002. The said Company is presently claiming to be a lessee for 99 years on the basis of a compromise decree which, prima facie, appears to be obtained by practising fraud on Court and presently is in enjoyment of a very prime property in Kolkata comprising of 9 cottahs approximately.*

*Mr. Suresh Kumar Daga shall file an affidavit disclosing the lease rentals paid to the trust prior to the compromise decree and subsequent thereto till this date. He must also disclose the persons from whom he is collecting rents and all details with regard to the rents being received by him from tenants/occupiers. The time period and the amount with all detailed particulars shall be disclosed in an affidavit to be filed in this proceeding by the adjourned date upon prior service to Mr. Sayak Konar, learned Counsel representing the Administrator General and Official Trustee of West Bengal.*

*The Official Trustee for the time being shall represent the Trust Estate of Rustamjee Cawasjee Charitable Trust of Agiary Fire Temple and file an appropriate application for restoration of*

*the application filed under Order 9 Rule 13 of the Code of Civil Procedure in the pending suit and for restoration of the suit filed by Rustamjee Cawasjee challenging the decree before the Small Causes Court.”*

12. Mr. Rustamjee also has otherwise challenged the decree as nullity being obtained by fraud.
13. Today, Mr. Rabindra Narayan Dutta, learned Counsel appears and submits that he has been recently engaged by the interventionist to represent the interventionist in this proceeding and has filed a supplementary affidavit disclosing certain payments made to the Kolkata Municipal Corporation. However, it is silent with regard to any lease rent being paid to the trust. This itself is a ground for forfeiture of the lease. The appellant was enjoying a prime property consisting of 9 cottahs without any single penny at least since 2002 as claimed by the said company and has not been able to show that rent was paid even for the earlier period.
14. The learned Counsel has argued before us that he is required to be served with all papers and documents in the appeal so as to enable him to make appropriate submission. The series of orders commencing from 10<sup>th</sup>

February, 2024 would show that the interventionist has actively participated in the proceeding and was heard in extenso and the said interventionist has also filed an affidavit and the said interventionist has also filed an affidavit.

15. Mr. Rabindra Narayan Dutta, learned Counsel has referred to an order of the Hon'ble Supreme Court in ***Manoj Anslem Rebeiro Vs. Candace Elizebath Reveiro*** reported at ***2016 (4) ICC 12 (S.C.)*** to argue on the scope of the first appeal and it is submitted that in deciding the said appeal, the Court cannot enlarge its scope or taking into consideration the facts which are not germane to the appeal. We are fully aware of the said proposition of law. In fact, the application of the interventionist has opened a Pandora's Box as it *prima facie* revealed a fraud committed on the Court. It is well-settled that fraud unravels everything and once the Court finds that a fraud has been committed on Court, it is the duty of the Court to pass appropriate direction. It is a settled principle of law that fraud avoids all judicial acts and no judgment of a court would be allowed to stand if it has been obtained by fraud. Fraud unravels

everything. [See ***Lazarus Estates Limited vs. Beasley* 1956 (1) QB 702; (1956) 2 WLR 502 (CA)**], ***Bilkis Yakub Rasool vs. Union of India*; (2024) 5 SCC 481: 2024 SCC OnLine SC 25** (paragraph 139)]

16. On going through the record of both the cases and also related proceedings it is apposite for us to refer to the relevant observations of the Hon'ble Supreme Court in *Krishna Yadav vs. State of Haryana*, (1994) 4 SCC 165 in paragraph 16 which is reproduced below:-

*“16. Having regard to all the above, the irresistible conclusion is “fraud has reached its crescendo”. Deeds as foul as these are inconceivable much less could be perpetrated. We are reminded of the words of Shakespeare:*

*“Thus much of this, will make Black, white; foul, fair; wrong, right; Base, noble; Ha, you gods! Why this?  
(Timon of Athens, Act, SC,3)”*

17. The proceeding before the trial court was completely vitiated by an unfair conduct and a machination devised by Monotona taking advantage of the helplessness of Rustamjee. Ram Avatar was presumably set up to achieve the clandestine desire of Monotona. Even before this court Monotona has knowingly suppressed the order passed in CO No.2429 of 2012 on 20<sup>th</sup> September, 2012 where the

trial court was directed to decide the application under Order 9 Rule 13 of the Code of Civil Procedure after holding a trial on evidence and with a further direction that if the court feels it necessary to send the documents along with the original receipt and original power of attorney for forensic examination and also to issue summons to Ram Avilash Panday to appear in person and produce the original power of attorney. Monotona took advantage of the fact that the Rustamjee died in the mean time and has conveniently suppressed the said document in order to mislead this court. Fraud is practiced with an intention to secure undue advantage and it is for this reason that act of fraud on courts must be viewed seriously. Mr. Rustamjee has in the appeal and also in the proceeding before the trial court clearly prayed for setting aside of the said compromise decree and it was a duty of the trial court to decide the said application. However, having regard to the chain of circumstances and that we are convinced that the manner in which the decree was obtained raises enough doubt of practicing fraud on court to obtain the decree, the suit for specific

performance is required to be heard afresh and decided on merits.

18. It is precisely the reason for us now to pass necessary orders and directions.
19. In view of the aforesaid, Suit No.440 of 2004 and T.S. No.1487 of 2002 are revived in which the Official Trustee shall make representation and substitute itself on behalf of the trust as directed earlier. Both, the suits shall be heard afresh. The compromise decree is set aside for the reasons indicated above.
20. In view of the fact that the interventionist has enjoyed the property for almost 20 years on the basis of a decree, which is null and void, we direct the interventionist to deposit a sum of Rs.30 lacs with the Official Trustee as a condition precedent for the appellant to pursue to the suit for specific performance till the reasonable occupational charge for being in possession of the property is decided in the pending proceedings. The official trustee shall file an appropriate application for determination of the occupational charges in the suit for specific performance and the trial court shall decide the said application before deciding the suit in view of the aforesaid facts and circumstances. This exercise however,

shall not dilute the prayer for specific performance as in the event the suit succeeds the amounts to be paid in the meantime can be suitably adjusted against lease rentals or occupational charges payable since the filing of the suit for specific performance. Official Trustee may also file a suit for eviction if so advised as a counter claim in the suit for specific performance.

21. In the event the said amount is not deposited within a period of four weeks from date, it would be open for the Official Trustee to initiate eviction proceeding against the appellant as trespasser in accordance with law.
22. The appeals and the connected applications are, accordingly, disposed of.
23. However, there shall be no order as to costs.
24. We also record that in terms of the order dated 20<sup>th</sup> December, 2024, the original records of all the suits have been sent down to the appropriate Courts after retaining photocopies of the pleadings on 9<sup>th</sup> January, 2025.
25. The Registrar Administration (L&OM) is directed to immediately communicate this order to the learned Chief Judge, Presidency

Small Causes Court and the learned Chief Judge, City Civil Court for information and doing the needful.

26. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

**(Soumen Sen, J.)**

**(Biswaroop Chowdhury, J.)**