

D/L- 36
28/07/2025
Ct. No.-6
Aritra

C.O. 2691 of 2025

Ajit Kumar Dey
Vs.
Sushanta Patra

Mr. Ayan Banerjee
Ms. Debjani Sengupta
Mr. Ajeyo Chowdhury

...for the petitioner

Mr. Ayanava Bhattacharyya

....for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against a judgment and order dated July 16, 2025 passed by the learned Additional District Judge, 2nd Court at Serampore in Miscellaneous Appeal No.55 of 2023.

By the judgment and order impugned, the order dated November 17, 2023 passed by the learned Civil Judge (Jr. Div.), 1st Court at Serampore, District-Hooghly in Title Suit No.44 of 2023 was reversed and the learned judge of the Appellate Court passed an order restraining the petitioner herein from disturbing the peaceful possession of the opposite party in respect of his shop room and from dispossessing him without due process of law.

Mr. Banerjee, learned advocate appearing for the petitioner submits that the opposite party is not in possession of the suit property as would be evident from

the Commissioner's report filed in the title suit. He further submits that the opposite party herein has admitted that they have been dispossessed from the suit property on January 13, 2023 by the petitioner herein. Mr. Banerjee further submits that no prayer for recovery of possession of the suit property has been made by the plaintiff/opposite party herein in the suit.

The learned advocate appearing for the opposite party seriously disputed the submission made by Mr. Banerjee. He submits that the opposite party was all along in possession of the suit premises and the learned trial judge without considering the rent receipts and other documents which were produced by the petitioner in support of tenancy right rejected the application for temporary injunction. He further submits that the opposite party produced the copies of the trade licences in support of his contention that the petitioner was carrying on the business in the suit property. He further submits that taking advantage of rejection of the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, the petitioner has evicted the opposite party from the suit property without due process of law. The learned advocate for the opposite party submits that the inspection was held after the demolition of the suit property and, therefore, the picture of the property after the demolition was reflected in the report of the Commissioner.

Heard the learned advocates for the respective parties and perused the materials placed.

The opposite party herein filed a suit for declaration of tenancy right and for permanent injunction restraining the petitioner and his men and agents from disturbing the peaceful possession of the opposite party in respect of the tenanted shop room and from dispossessing or evicting the opposite party from the suit property and/or from demolishing the tenanted shop room.

In paragraph 6 of the plaint it has been stated that since September, 2013, the petitioner herein used to take rent from the opposite party month by month and prepared a Khata by taking the rent from the plaintiff with signature of the opposite party and that Khata is in the possession of the petitioner and the opposite party lastly paid rent on December 6, 2022 to the petitioner herein for the month of November, 2022.

In paragraph 7 of the plaint it has been stated that on January 7, 2023 the opposite party herein visited the residence of the defendant/petitioner herein to pay the rent of Rs.19/- for the month of December, 2022 and the petitioner refused to accept the rent from the opposite party and on that date a hot altercation took place at the shop room of the opposite party.

In paragraph 8 of the plaint it has been stated that on January 13, 2023 the petitioner along with his men

and agents and his appointed labours and masons started to demolish the tenanted shop room, wall, main door and also damaged the wooden almirah, show case and also committed theft of all electrical equipments of the opposite party and other goods of the shop room and committed theft of cash. It has been further stated in the said paragraph that on January 13, 2023 at about 9.00 a.m. the petitioner along with his men and agents tried to demolish everything regarding the suit shop room to be a vacant land so that the petitioner is able to construct a multi-storied building over the suit property.

In paragraph 11 of the plaint it was stated that the act of illegal demolition carried on since January 13, 2023 to January 18, 2023.

Record reveals that the instant suit has been filed on January 19, 2023 i.e. after the work of demolition as alleged in the plaint had already started on and from January 13, 2023.

Thus, it appears that the opposite party herein has admitted that the work of demolition was going on from January 13, 2023 to January 18, 2023. Thus, from the averments made in the plaint, this Court is of the *prima facie* view that the plaintiff was not in possession of the suit shop room on the date of filing of the instant suit i.e on January 19, 2013. However, the suit was filed without any prayer for recovery of possession.

From the materials available on record, this Court finds that the opposite party herein produced some documents relating to payment of rent for the period from the June 1974 to October 1974 and from January 1994 to June 1994. The trade licence which was filed by the opposite party herein issued by the Uttarpara Kotrung Municipality was issued on September 23, 1975 and December 9, 1999.

Whether there is any existence of landlord-tenant relationship between the parties is a matter of trial.

From the materials on record, this Court is of the *prima facie* view that the opposite party could not establish that they were in possession of the suit property as on the date of filing of the suit.

The learned judge of the Appellate Court without considering the admission made by the opposite party that the work of demolition of the suit property started on and from January 13, 2023 passed an order of injunction.

This Court is inclined to interfere with the order impugned.

For such reason the order impugned stands set aside. The civil revision application being CO 2691 of 2025 stands allowed.

The learned Civil Judge (Jr. Div.), 1st Court at Serampore is requested to make an endeavour to dispose of Title Suit No.44 of 2023 as expeditiously as possible

without granting any unnecessary adjournments to either of the parties.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)