

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 2694 of 2025

Ramesh Kumar Rathi & Anr.
-Versus-
Shri Jagannath Saha

For the petitioners : Mr. Souradipta Banerjee
Ms. Fatima Hassan
Ms. Shamrin
Mr. Ranojoy Mullick

For the Opposite party : Mr. Dyutiman Banerjee
Mr. Deb Kumar Deyashi
Mr. Ronit Deyashi

Heard On: : 29.07.2025

Judgment On: : 29.07.2025.

Hiranmay Bhattacharyya, J.

1. This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order being no. 45 dated 27th June, 2025 passed by the learned Judge, 6th Bench, City Civil court at Calcutta in Title Suit No. 885 of 2020.

2. By the order impugned, the application under Section 151 of the Code of Civil Procedure filed by the opposite party herein praying for analogous hearing of Title Suit No. 885 of 2020 with Title Suit No. 580 of 2020 stood allowed.

3. Mr. Souradipta Banerjee, learned advocate appearing for the petitioners submits that the opposite party herein filed a suit for declaration of tenancy right and for permanent injunction being Title Suit No. 580 of 2020. The petitioners herein filed a suit for recovery of possession upon expiry of lease by efflux of time being Title Suit No. 885 of 2020. He further submits that the Title Suit No. 885 of 2020 reached the stage of argument. He further submits that the Title Suit No. 580 of 2020 was dismissed for default and subsequently restored and the same is at the peremptory hearing stage and the evidence in the said suit is yet to commence.

4. Mr. Dyutiman Banerjee, learned advocate for the opposite party submits that there are some common issues in both the suits. He submits that in order to avoid conflict of judicial decisions both the suits are to be heard analogously and in support of such contention he places reliance upon a decision of the Co-ordinate Bench in the case **of M/s. Saha Distributors Vs. M/s. B.M. Pal Chowdhury & Co. Pvt. Ltd. & Ors.** reported at **(2011) 2 CHN 107.**

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

6. Petitioners filed Title Suit No. 885 of 2020 praying for a decree for recovery of possession, for permanent injunction restraining the opposite party, his men and agents and/or servant from transferring, alienating and/or parting with possession of the suit premises or any part thereof and for a decree for mesne profits. The petitioners claim to be the owners of the suit property and that the opposite party was inducted as a lessee by the petitioner for a period of 21 years in respect of a shop room by virtue of a

Registered deed of lease dated 21st May 1999. The said lease stood expired by efflux of time on April 30, 2020. Since the opposite party did not vacate the suit premises upon expiry of lease, petitioner issued a notice asking the opposite party to deliver peaceful and vacant possession of the suit property and thereafter filed the instant suit.

7. Prior to the filing of the aforesaid suit, the opposite party filed T.S. No. 580 of 2020 praying for a declaration that the opposite party is a monthly premises tenant in respect of the shop room and for permanent injunction restraining the defendants therein, their men and agents from interfering with the peaceful possession of the opposite party in the suit shop room. The opposite party claims to have been inducted in the shop room in the year 1964. The opposite party has stated in the plaint that on 02.07.2020 the defendant refused to accept the rent from the plaintiff for the months of February to June 2020 and on 27.02.2020, defendant accompanied by huge member of anti-socials tried to evict the opposite party from the suit premises, which compelled him to file the suit.

8. It is not in dispute that in Title Suit No. 885 of 2020 the evidence of the parties have been closed and the same has been fixed for argument.

9. Mr. Souradipta Banerjee, learned advocate appearing for the petitioners submits that the petitioners herein have already advanced their oral argument and written arguments have also been filed and it is only for the opposite parties to advance their oral arguments. He further submits that direction for analogous hearing of both the suits at this stage would seriously prejudice the eviction suit filed by the petitioners herein.

10. After going through the pleadings of the two suits, this Court finds that though some of the issues in both the suits may be common but all the issues are not same and identical. There may be some common evidence in both the suits but the parties in both the suits are not same.

11. The co-ordinate bench in **M/s. Saha Distributors** (supra) after noting that the eviction suit was at the peremptory hearing stage and the declaratory suit did not mature for hearing observed that if both the suits are tried simultaneously one after another, it will not only enure to the benefit of the parties so far as leading of common evidence is concerned on common issues it will also be convenient for disposal of common issues in both the suits by the Court and for avoiding conflict of decisions on such common issues.

12. The said decision is distinguishable on facts as in the case on hand the declaratory suit has not reached the stage of evidence and the evidence in the suit for eviction has already been concluded and the same is at the stage of argument.

13. The defence of the opposite party in the eviction suit is the plaint case in the declaratory suit. A direction for analogous hearing or simultaneous hearing is an impractical solution in the instant case as the eviction suit which is at the final stage of argument will be unnecessarily delayed.

14. In view of the aforesaid discussion, this Court is of the considered view that analogous hearing of both the suits would ultimately prejudice the plaintiffs in the suit for eviction.

15. For such reasons, this Court is inclined to interfere with the order impugned. The order impugned accordingly stands set aside.

16. The learned trial judge is directed to proceed with the hearing of the eviction suit in Title Suit No. 885 of 2020 independently keeping in mind the order passed by this Court on 1st May, 2024 in C.O. 4415 of 2023 directing expeditious hearing of the eviction suit.

17. Accordingly, C.O. 2694 of 2025 stands allowed.

18. There shall be, however, no order as to costs.

19. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)