

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

APPELLATE SIDE

(COMMERCIAL DIVISION)

AO-COM 27 of 2025

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IA NO: CAN/1/2025

Sri Subhas Kumar & Ors.

Vs.

Mani Square Limited

BEFORE: The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE OM NARAYAN RAI

For Appellants

**: Mr. Jayanta Mitra, Sr. Adv.,
Mr. Ahin Chowdhury, Sr. Adv.,
Mr. Ratnanko Banerji, Sr. Adv.,
Mr. Aniruddha Chatterjee, Sr. Adv.,
Mr. Pushan Kar,
Mr. Souvik Majumdar,
Ms. Anyapurba Banerjee,
Ms. Sristi Barman Roy,
Mr. Aurin Chakraborty**

For Respondent : **Mr. S. N. Mookherji, Sr. Adv.,**
Mr. Joydip Kar, Sr. Adv.,
Mr. Pranit Bag,
Ms. Rituparna Chatterjee,
Ms. Khushboo Chaudhary,
Mr. Yash Singhi,
Ms. Megha Yadav,
Ms. Sadia Sultana

Judgment on : **11.09.2025**

Arijit Banerjee, J.: -

1. This appeal is directed against an order dated July 22, 2025, passed by the learned Judge, Commercial Court at Alipore in Title Suit 04 of 2023, renumbered as TS (COM) 48 of 2023. The suit has been filed by the respondent herein for eviction of the appellants from the suit property, recovery of possession of the suit property and for mesne profits. The order under challenge was passed on an interlocutory application filed by the plaintiff in the suit under order XXXIX Rules 1 and 2 of the Code of Civil Procedure 1908, (in short “the CPC”) read with Section 151 thereof, directing the defendants in the suit being the present appellants, to pay occupational charge in respect of the suit property at the rate of Rs. 18,30,224/- per month. The operative portion of the order under challenge reads as follows:-

“46. Accordingly, this Court appoints Mr. Souvik Ghosh, Ld. Advocate (Mob. No. 9073584107) and Mr. Jayanta Mukherjee (Mob. No. 7980406038) as Joint Receivers in the instant case with the following directions, which are as follows:

i. The respondents are hereby directed to deposit a sum of Rs. 18,30,224/- (Eighteen lakhs thirty thousand two hundred twenty-four) before the Ld. Receivers within 10th day of per month, through any accepted mode of service, till adjudication of the instant suit. Out of such deposited amount, the petitioner will be entitled to withdraw a sum of Rs.15,00,000/- (Fifteen lakhs) by way of occupancy charges from the Ld. Receivers. The balance amount i.e. 3,30,224/- (Three lakhs thirty thousand two hundred twenty-four) be kept by the Ld. Receivers in a interest bearing account with a nationalized bank and shall be renewed periodically, which will be disbursed subject to the outcome of the *per se* suit. The aforesaid settlement will be rolled on from the next following month i.e., August, 2025.

ii. Ld. Receivers are hereby directed to open a current bank account so as to initially receive the amount of Rs. 18,30,224/- from the respondents and then to maintain the directive as given in the very preceding paragraph of this Order and file details of such current bank account periodically before this Court till the adjudication of the instant suit. Ld. Receivers are also asked to maintain each and every aspect so as to make the limpid delivery of justice by this Court upon adjudicating the instant suit.

iii. Petitioner is directed to pay a sum of Rs. 25,000/- (Twenty-five thousand) to each of the Ld. Receivers as their initial fees and file a money to that effect on the next date as fixed hereunder. Writ will be issued thereafter.

iv. Ld. Receivers shall have liberty to raise their respective bills periodically as regards their monthly remuneration including all

charges and the petitioner herein shall have to pay the same without any undue delay. Both the parties are directed to help the Ld. Receivers to fructify the Order of this Court.

v. If required, Ld. Receivers may have liberty to approach before this Court regarding any further clarification of the instant order.

vi. Petitioner is directed to intimate the Ld. Receivers as regards their appointment. Ld. Receivers are asked to file their written consent before this Court regarding their willingness to be the Receiver in the instant case on or before **28.07.2025.**”

Facts of the case

2. The relevant and undisputed facts of the case are that one Jitendra Nath Ghosh, who was the original owner of the suit premises, leased out the same to one Badri Narayan Kumar and Nimai Chandra Kumar (referred to as the ‘Kumars’) for commercial purpose, by executing a registered indenture dated December 15, 1973. The lease was for a period of 20 years. The lease expired by efflux of time on November 30, 1993.

3. On March 1, 2003, the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001, was promulgated. On April 9, 2003, the Kumars filed Form A under the 2001 Thika Act with the Thika Controller, claiming to be Thika tenants in respect of the suit property.

4. By a registered deed of conveyance dated September 10, 2007, the legal heirs of Jitendra Nath Ghosh, the original owner of the suit property, sold and conveyed the property to the present respondent (in short ‘Mani Square’) and six other companies, which subsequently stood amalgamated with Mani Square.

5. On January 27, 2010, an order was passed by the Thika controller holding the Kumars to be Thika tenants in respect of the suit premises, under the 2001 Act. Mani Square challenged such order by filing a revisional application before the

State Government under Section 13 of the 2001 Act. The State Government, by an order dated August 26, 2010, remanded the matter back to the Thika Controller for fresh consideration. Upon remand, by an order dated August 1, 2012, the Thika Controller again held the Kumars to be Thika tenants in respect of the suit premises.

6. Mani Square challenged the order of the Thika Controller before the West Bengal Land Reforms and Tenancy Tribunal. By an order dated November 18, 2013, the Tribunal rejected the appeal of Mani Square.

7. Mani Square challenged the order of the Tribunal before this Court by filing a writ petition. A Division Bench of this Court, by a judgment and order dated March 10, 2014, set aside the Tribunal's order and held that the Kumars were not Thika tenants in respect of the suit property.

8. The Kumars assailed the order of the Division Bench by filing a Special Leave Petition before the Hon'ble Supreme Court. By interim orders passed on April 15, 2014 and July 22, 2014, the Hon'ble Supreme Court directed the Kumars to deposit occupancy charges in respect of the suit premises, initially @ Rs. 1,00,000/-, per month from the month of April, 2014 and thereafter @ Rs. 1,50,000/- per month from July, 2014.

9. By a judgment and order dated February 24, 2015, the Hon'ble Supreme Court allowed the appeal filed by the Kumars and overturned the decision of the Division Bench of this Court.

10. Mani Square filed a petition for review of the Hon'ble Supreme Court's judgment and order dated February 24, 2015. On August 27, 2021, an interim order was passed by the Hon'ble Supreme Court directing the Kumars to deposit a further sum of Rs. 20 lakh in the registry of the Court, permitting Mani Square to withdraw the sum of Rs. 16,50,000/- by way of occupancy charge.

11. By a judgment and order dated July 27, 2022, the Hon'ble Supreme Court allowed Mani Square's review petition, dismissed the appeal of the Kumars, restored the judgment of the Division Bench of this Court and held that the Kumars were not Thika tenants in respect of the suit property and the property was not a Thika property and did not vest in the State.

12. A petition for review of the said order filed by the Kumars was dismissed by the Hon'ble Supreme Court on November 17, 2022.

13. In December 2022, Mani Square filed an application in the Hon'ble Supreme Court for a direction on the Kumars to hand over vacant and peaceful possession of the suit property to Mani Square and to pay occupational charges. The said application was rejected by the Hon'ble Supreme Court by an order dated December 12, 2022, by observing that "the applicant is otherwise free to take recourse to appropriate remedies in accordance with law".

14. The Kumars filed a curative petition in respect of the order dismissing their review petition. The curative petition was dismissed by the Hon'ble Supreme Court on March 28, 2023.

15. On March 30, 2023, Mani Square filed TS no. 4 of 2023 which was later renumbered as TS (COM) 48 of 2023, before the learned Commercial Court at Alipore, claiming khas, vacant and peaceful possession of the suit property and mesne profits. On April 1, 2023, the learned Commercial Court granted leave under Section 12A of the Commercial Courts Act, 2015, (in short "the CC Act") in view of the urgent reliefs claimed. An order of injunction was passed restraining the Kumars from dealing with and/or encumbering and / or creating third party interest in respect of the suit property.

16. On April 5, 2023, TS no. 469 of 2023 was filed by the Kumars before the 4th Civil Judge (Senior Division) Alipore, claiming a declaration that the Kumars have acquired title in respect of the suit property by way of adverse possession and

praying for cancellation of the deed of conveyance dated September 10, 2007, whereby Mani Square had purchased the suit property from the legal heirs of the original owner.

17. On May 4, 2023, the Kumars filed an application under Order 7 Rule 11 of the CPC, in TS (COM) 48 of 2023, for rejection of the plaint of the suit filed by Mani Square.

18. On August 19, 2023, Mani Square filed an application under Order 39 Rules 1 and 2 of the CPC read with Section 151 thereof in its suit for payment of occupancy charge by the Kumars. The application was registered as IA no. 13 of 2023.

19. By an order dated March 6, 2024, the application for rejection of the plaint of TS (COM) 48 of 2023, was dismissed by the learned Trial Court. The said order was challenged by the Kumars by way of a civil revisional application being CO No. 954 of 2024 before a learned Judge of this Court. The revisional application was dismissed by the learned Judge by an order dated May 21, 2024.

20. A Special Leave Petition being (SLP (C) No. 15984 of 2024), filed by the Kumars assailing the order of the learned Single Judge of this Court dismissing their civil revisional application, was dismissed by the Hon'ble Supreme Court by an order dated September 10, 2024, with the observation that there was no merit in the Special Leave Petition and the Supreme Court had not made any observation on the merits of the suit.

21. On September 27, 2024, the Kumars filed an application under Order 7 Rule 10 of the CPC being IA no. 26 of 2023, in Mani Square's suit, contending that the plaint should be returned by the Commercial Court since Mani Square's suit is not a commercial suit.

22. On an application made by Mani Square under Clause 13 of the Letters Patent, 1865, read with Sections 24 and 151 of the CPC, being ALP no. 2 of 2025,

by an order dated March 27, 2025, a learned Judge of this Court directed transfer of TS no. 469 of 2023 filed by the Kumars to the learned Commercial Court at Alipore with a direction to dispose of the two suits i.e. the suit filed by Mani Square and the suit filed by the Kumars, analogously, within 6 months. The Kumars filed an application for review of the order dated March 27, 2025, which was dismissed by an order dated May 15, 2025.

23. By an order dated May 19, 2025, the learned Trial Court dismissed the application filed by the Kumars under Order 7 Rule 10 of the CPC for return of the plaint of the suit filed by Mani Square.

24. On May 23, 2025, the Kumars filed an application before the learned Trial Court for revocation of the leave that had been granted under Section 12A of the CC Act and for consequent dismissal of Mani Square's suit.

25. On June 20, 2025, the Kumars filed a civil revisional application being CO No. 2240 of 2025 challenging the order dated May 19, 2025, whereby the learned Trial Court rejected their application under Order 7 Rule 10 of the CPC praying for return of the plaint of Mani Square's suit. That application is pending.

26. By an order dated July 4, 2025, the Supreme Court dismissed a special leave petition filed by the Kumars against the order dated March 27, 2025, passed by a learned Judge of this Court for transfer of the suit filed by the Kumars from the Court of the 4th Civil Judge (Senior Division), Alipore, to the Commercial Court at Alipore, for being heard analogously with Mani Square's suit.

27. In the aforesaid factual background, the impugned order was passed by the learned Trial Court, the operative portion whereof has been extracted above.

Submission made on behalf of the appellants (Kumars)

28. Appearing for the appellants Mr. Jayanta Kumar Mitra, learned Senior Counsel submitted firstly, that no order could be passed by the learned Trial Court for payment of occupational charge under Order 39 Rules 1 and 2 of the CPC. The

Court has no such power under the said provisions of the Code. In this connection learned Senior Counsel relied on a decision of a Division Bench of this Court in the case of ***Poonam Kejriwal v. Bhagwandas Auto Finance Ltd. & Ors., reported at AIR 2009 Cal 221.***

29. Secondly, it was submitted that the appellants are claiming to be owners of the suit property by way of adverse possession. Such claim is under consideration before a competent Court of law. They have been in occupation since 1993 without paying a farthing to the erstwhile or present owners. There is every possibility of the appellants succeeding in their suit for declaration that they have acquired title in respect of the suit property by prescription. Until and unless an eviction decree is passed against the appellants by a competent forum, they should not be directed to pay occupational charge. In other words, without first declaring that the appellants are in illegal occupation of the suit property, learned Trial Court should not have passed the impugned order for payment of occupational charge. In this connection, learned Senior Counsel referred to the decisions of the Hon'ble Supreme Court in the cases of ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. reported at (2005) 1 SCC 705 paragraphs 11, 16, 18 and Asma Lateef & Anr. v. Shabbir Ahmad & Ors., reported at (2024) 4 SCC 696.***

30. Reference was also made to the decision of the Hon'ble Supreme Court in the case of ***Achal Misra v. Rama Shanker Singh & Ors., reported at (2005) 5 SCC 531***, paragraph 23 and to the decision of a Division Bench of this Court in the case of ***K. K. Saha & Co. Pvt. Ltd. v. Ashok Agarwal (Assigned), reported at (2018) 1 CHN 497.***

31. Mr. Mitra then submitted that although the principle of adverse possession is not looked at favourably by the Courts, the law recognises that a person may acquire title to immovable property by holding on to possession of the property which is adverse to the proprietary interest of the original owner. In this connection

he referred to Section 27 of the Limitation Act and Article 65 of the Schedule to that Act. He submitted that the concept of adverse possession has its origin in Roman law. In this connection reference was made to the decision of the Hon'ble Supreme Court in the case ***Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors., reported at (2019) 8 SCC 729***. In particular, reliance was placed on paragraphs 1, 2, 3 and 34 of the reported judgment which read as follows:-

“1. The question of law involved in the present matters is quite significant. Whether a person claiming the title by virtue of adverse possession can maintain a suit under Article 65 of the Limitation Act, 1963 (for short “the Act”) for declaration of title and for a permanent injunction seeking the protection of his possession thereby restraining the defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a defendant whose title has been extinguished by virtue of the plaintiff remaining in the adverse possession or in case of dispossession by some other person? In other words, whether Article 65 of the Act only enables a person to set up a plea of adverse possession as a shield as a defendant and such a plea cannot be used as a sword by a plaintiff to protect the possession of immovable property or to recover it in case of dispossession. Whether he is remediless in such a case? In case a person has perfected his title based on adverse possession and property is sold by the owner after the extinguishment of his title, what is the remedy of a person to avoid sale and interference in possession or for its restoration in case of dispossession?

2. Historically, adverse possession is a pretty old concept of law. It is useful but often criticised concept on the ground that it protects and confers rights upon wrongdoers. The concept of adverse possession

appeared in the Code of Hammurabi approximately 2000 years before Christ era. Law 30 contained a provision

“If a chieftain or a man leaves his house, garden, and field ... and someone else takes possession of his house, garden and field and uses it for three years; if the first owner returns and claims his house, garden, and field, it shall not be given to him, but he who has taken possession of it and used it shall continue to use it.”

However, there was an exception to the aforesaid rule: for a soldier captured or killed in battle and the case of the juvenile son of the owner. In Roman times, attached to the land, a kind of spirit that was nurtured by the possessor. Possessor or user of the land was considered to have a greater “ownership” of the land than the titled owner.

3. We inherited the Common Law concept, being a part of the erstwhile British colony. William in 1066 consolidated ownership of land under the Crown. The Statute of Westminster came in 1275 when land records were very often scarce and literacy was rare, the best evidence of ownership was possession. In 1639, the Statute of Limitation fixed the period for recovery of possession at 20 years. A line of thought was also evolved that the person who possesses the land and produces something of ultimate benefit to the society, must hold the best title to the land. Revenue laws relating to land have been enacted in the spirit to confer the title on the actual tiller of the land. The Statute of Wills in 1540 allowed lands to be passed down to heirs. The Statute of Tenures enacted in 1660 ended the feudal system and created the concept of the title. The adverse possession remained as a part of the law and continues to exist. The concept of adverse possession has a root in the aspect that it awards ownership of land to the person who makes the

best or highest use of the land. The land, which is being used is more valuable than idle land, is the concept of utilitarianism. The concept thus, allows the society as a whole to benefit from the land being held adversely but allows a sufficient period for the “true owner” to recover the land. The adverse possession statutes permit rapid development of “wild” lands with the weak or indeterminate title. It helps in the Doctrine of Administration also as it can be an effective and efficient way to remove or cure clouds of title which with memories grow dim and evidence becomes unclear. The possessor who maintains and improves the land has a more valid claim to the land than the owner who never visits or cares for the land and uses it, is of no utility. If a former owner neglects and allows the gradual dissociation between himself and what he is claiming and he knows that someone else is caring by doing acts, the attachment which one develops by caring cannot be easily parted with. The bundle of ingredients constitutes adverse possession.

34. The operation of the statute of limitation in giving a title is merely negative; it extinguishes the right and title of the dispossessed owner and leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of others to eject him. *Perry v. Clissold (1907) AC 73 (PC)* has been referred to in *Nair Service Society Ltd. v. K.C. Alexander (AIR 1968 SC 1165)* in which it has been observed that it cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the original owner, and if the original owner does not come forward and assert his title by the process of law within the period prescribed under the statute of limitation applicable to the case, his right is forever

extinguished and the possessory owner acquires an absolute title. In Ram Daan (Dead) through LRs. v. Urban Improvement Trust, (2014) 8 SCC 902, this Court has observed thus:

“11. It is settled position of law laid down by the Privy Council in Perry v. Clissold 1907 AC 73 (PC) (AC p. 79)

‘It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title.’

The above statement was quoted with the approval by this Court in Nair Service Society Ltd. v. K.C. Alexander, AIR 1968 SC 1165. Their Lordships at para 22 emphatically stated: (AIR p. 1175)

‘22. The cases of the Judicial Committee are not binding on us but we approve of the dictum in Perry v. Clissold 1907 AC 73 (PC).’.”

32. It was further submitted that the application filed by the Kumars for revocation of dispensation granted to Mani Square under Section 12A of the CC Act, and for dismissal of Mani Square’s suit is still pending. The learned Trial Court should have first disposed of that application before passing any order, far less the impugned order, in the suit filed by Mani Square. Mr. Mitra submitted that the point as to whether or not leave was rightly granted under Section 12A of the CC Act for institution of Mani Square’s suit, has never been decided by any Court.

Submission made on behalf of the respondent (Mani Square)

33. Appearing for the respondent/plaintiff, Mr. Jaydip Kar, learned Senior Counsel, argued that in so far as the issue of revocation of leave granted under Section 12A of the CC Act is concerned, the same has attained finality. Although in the application filed by the appellants/defendants for rejection of the plaint of Mani Square's suit, the case of revocation of Section 12A was initially not run, by filing a supplementary affidavit, it was contended that leave granted under Section 12A should be revoked and the suit should be dismissed for non-compliance with the mandatory requirement of pre-suit mediation prescribed by Section 12A of the CC Act. The learned Trial Judge dismissed the application for rejection of the plaint. Hence, the learned Trial Court is deemed to have rejected the appellants'/defendants' contention that leave granted to Mani Square under Section 12A of the CC Act to file the suit without holding pre-litigation mediation, ought to be revoked and the plaint should be rejected.

34. Mr. Kar, submitted that while disposing of the revisional application being CO 954 of 2024 filed by the present appellants against the Trial Court's order dated March 6, 2024, dismissing the present appellants' demurrer application, in its order dated May 21, 2024, the learned Single Judge noted as follows: - "7. The petitioners also raised a question with regard to the maintainability of the suit in the Commercial Court on account of non-compliance of Section 12A of the CC Act, 2015. It was submitted that mediation had not been initiated by the plaintiff/opposite party." Learned Senior Counsel argued that the learned Judge having noted the aforesaid contention of the present appellants went on to dismiss the civil revisional application thereby rejecting the argument of the present appellants regarding Section 12A of the CC Act.

35. Mr. Kar then pointed out that the Synopsis of the Special Leave Petition filed by the present appellants against the High Court's order dated May 21, 2024, dismissing CO no. 954 of 2024 included a ground that "the learned Trial Court ex

parte granted leave to the plaintiff under Section 12A of the CC Act, 2015 which is dehors of the provisions of Section 12A of the CC Act, 2015 and there was no emergency as contemplated in Section 12A in the matter of suit for eviction.” It was further pointed out that the questions of law framed in the said Special Leave Petition included: - “whether leave could be granted under Section 12A of the CC Act, 2015, in a suit for eviction when there is no urgency?” Mr. Kar then showed us Grounds B and E enumerated in the Special Leave Petition which read as follows: - “B. For that the Calcutta High Court failed to appreciate the provisions of the CC Act, 2015 specially Section 2 and Section 12A of the said Act. E. For that there is no pleading as to how the suit comes within the purview of the CC Act, 2015, in view of the provisions of the Commercial Courts Act, specially Section 2(c)(vii) and 12A of the said Act....”

36. Mr. Kar submitted that the Special Leave Petition was dismissed as being devoid of merits. Hence, the appellants’ contention that leave under Section 12A of the CC Act granted to the respondent/plaintiff should be revoked and the plaint of the suit should be rejected, has been negated throughout up to the Hon’ble Supreme Court. That issue cannot be reopened. The application filed by the Kumars on May 23, 2025, for revocation of leave under Section 12A of the CC Act being IA no. 28 of 2025 in TS (COM)48 of 2023, is mala fide and not maintainable. The issue of Section 12A leave cannot be reopened. In this connection, Mr. Kar relied on the decision of the Hon’ble Supreme Court in the case of **Yashwant Sinha & Ors. v. Central Bureau of Investigation, reported at (2020) 2 SCC 338.**

37. On the issue of the learned Trial Judge directing the appellants herein to pay occupational charge, Mr. Kar, referred to paragraphs 31, 39, 42, 43 and 44 of the learned Trial Judge’s order which is under challenge in this appeal. The said paragraphs read as follows:-

“31. After a gross perusal of the Orders and/or Judgments of the Hon'ble Supreme Court as stated above, this Court finds that the respondents did not object to the interim Order dated 27.08.2021 or the final Order dated 27.06.2022 passed by the Hon'ble Apex Court as regards the payments directed to be made by them. It is also admitted that the payment as directed to be made by the respondents herein is payment which pertains to the occupational charges. As regards, this Court has relied on the averment of the Hon'ble Supreme Court averred in the Order/Judgement dated 27.07.2022, which is *“Before closing, we may also take note of the fact that by way of interim orders dated 15.04.2014 and 22.07.2014, the appellants were directed to make payment towards occupancy charges. The appellants have made certain deposits further an amount of Rs. 20,00,000/- (Rupees twenty lakhs) in the Registry of this Court of which, the contesting respondents were held entitled to withdraw and amount of Rs. 16,50,000/- (Rupees sixteen lakhs fifty thousand) by way of the occupancy charges and the remaining amount was ordered to be invested in a fixed deposit with periodical renewal, to be disbursed subject to the outcome of this appeal. The said deposited amount together with accrual interest is ordered to be disbursed to the respondent no, I while we otherwise leave it open for the said respondent in taking recourse to appropriate remedies, strictly if accordance with law, in relation to any other claim/relief”*. Therefore, from the aforesaid, there is no confusion at all that the Hon'ble Supreme Court directed the respondents to pay occupational charges in respect of stated amount therein. More so, it can also be deduced therefrom that the Hon'ble Supreme Court directed the respondents to pay such occupancy charge to the respondent no. 1 therein i.e., the present

petitioner herein, Mani Square Ltd. However, in the aforesaid Order the Hon'ble Supreme Court further held that “...while we otherwise leave it open for the said respondent in taking recourse to appropriate remedies, strictly in accordance with law, in relation to any other claim/relief”. Therefore, it is further to be stated that the Hon'ble Court granted leave to the Mani Square Ltd. i.e., the present petitioner herein, to take any other claim/relief and such direction further asserted in the M.A. No. 2107/2022 in C.A. No. 2402/2015 as “Needless to reiterate, that the applicant is otherwise free to take recourse to appropriate remedies in accordance with law”. The said relief/claim as opined by this Court is nothing but akin to the present suit as filed by the plaintiff/petitioner herein before this Court.

39. In respect of contention of power to give direction regarding occupational charges, this Court has further relied on the ratio of the ***Bijay Kumar Manish Kumar*** (*Supra*) and also the Order XXXIX Rule 10 of the CPC, which determines the scope of this Court in respect of directing occupational charges Order XXXIX Rule 10 the CPC stipulates as “Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last named party, with or without security, subject to the further direction of the Court”. However, the instant application has been filed und the heading of “Order XXXIX Rule 1 and 2 of CPC”, but it is settle law that nomenclature of a petition does not affect the substance of the petition and this Court has right to modify

and apply prop provision of law to grant relief in a matter to a party if such relief otherwise needs to be granted.

42. Further, on assailing the aforesaid decision of the Hon'ble Calcutta High Court, the Hon'ble Supreme Court in its Order dated 27.07.2022 affirmed the same. However, certain portions of the said decision of the Hon'ble Supreme Court are referred to hereunder:

“59. In view of the above, the High Court held that the landlord's interest in the subject property never vested in the State under the Act of 1981.

(emphasis supplied)

62. In view of the above discussion and findings, the High Court held that the Controller and the Tribunal were not justified in holding that the present appellants were Thika tenants in respect of the subject property and the landlord's interest therein vested with the State under the Act of 2001 with effect from 18.01.1982. Hence, the writ petition was allowed.

(emphasis supplied)

126. In summation of what has been discussed hereinabove, we could broadly say:

1. The Full Bench decision of Calcutta Hi Court in Lakshmimoni Das (supra) is affirmed.
2. The structure, as put up by the appellant and/or their predecessors, had been pucca structure on the property in question.
3. For the structure being pucca in character and the term of lease being 20 years, the appellants and/or their predecessors were not Thika tenants within the meaning of Section 2 of the Act of 1949.

4. The appellants and/or their predecessors were not Thika tenants within the meaning of the Act of 1981 for two major reasons:

- a. that the structure in question was a pucca structure; and
- b. that the Act of 1981 was not operative in relation to the property in question because of the stay order passed by the High Court.

5. On the date when lease expired in the month of November, 1993, the appellants and/or their predecessors were not Thika tenants and, therefore, the Act of 2001 does not enure to their benefit

6. The impugned decision of the High Court, therefore, calls for no interference.

127. Before closing, we may also take note of the fact that by way of interim orders dated 15.04.2014 and 22.07.2014, the appellants were directed to make payment towards occupancy charges. The appellants have made certain deposits and by the order dated 27.08.2021, we had directed the appellants to deposit further an amount of Rs. 20,00,000/ (Rupees twenty lakhs) in the Registry of this Court of which, the contesting respondents were held entitled to withdraw an amount of Rs. 16,50,000/- (Rupees sixteen lakhs fifty thousand) by way of the occupancy charges, and the remaining amount was ordered to be invested in a fixed deposit with periodical renewal, to be disbursed subject to the outcome of this appeal. The said deposited amount together with accrued interest is ordered to be disbursed to the respondent No. 1 while we otherwise leave it open for the said respondent in taking recourse to appropriate remedies, strictly in accordance with law, in relation to any other claim/relief.

(emphasis supplied)

43. During the course of hearing of the instant application, Ld Counsel for the respondents has also referred to another decision, as cited above, in support of their contention. Such decisions have already been distinguished by the Ld Counsel for the petitioner and this Court holds such contentions of the Ld. Counsel for the petitioner is rightful. However, for the convenience, such distinguishing facts need to be referred herein. In *Umadevi Nambiar (supra)* case is distinguishable as the said decision not fall within the issue of occupancy charge. *Poonam Kejriwal (supra)* case is distinguishable to the fact as the Hon'ble Supreme Court held that since injury was not irreparable and was capable of compensated in terms of money, occupancy charges were not granted. Instant case is far different from that of *K.K. Saha (supra)* case, as such, the ratio of the *K.K. Saha(supra)* case cannot be attracted in the present case, since in this case the respondents had never claimed to be governed by the West Bengal Tenancy Premises Act, 1997. Lastly, the *Gopinath Mukherjee (supra)* case also distinguishable as the petitioner herein did not claim to be adjudicated under the provision of Order XVA of the CPC.

44. Therefore, considering the aforesaid, this Court has no hesitation to hold the petitioner herein is entitled to get the occupancy charges during the pendency of the *per se* suit inasmuch as it is unjust to stay and/or occupy in a property without paying any penny (*Bijay Kumar Manish Kumar (supra)* case.) Rather, in this case, the respondents are fetching money by letting out the same to another.”

38. Learned Senior Counsel submitted that contrary to the contention of the appellants, a person in occupation of a property which is the subject matter of an eviction suit may be directed to pay occupational charge at the market rate even at

a pre-decree stage. Whether or not the Court can do so under Order 39 of the CPC, the Court has inherent power to direct such payment under Section 151 of the CPC. In this connection reliance was placed by Mr. Kar on the decision of the Hon'ble Supreme Court in the case of ***Bijay Kumar Manish Kumar HUF v. Ashwin Bhanulal Desai, reported at (2024) 8 SCC 668***. He submitted that the appellants were exploiting the suit property commercially by letting out the same to West Bengal State Beverages Corporation at a monthly rent of Rs.18,30,224/- as would appear from the lease deed executed between the appellants and the said Corporation. The learned Trial Court therefore directed the appellants herein to pay occupational charge at the said rate.

39. As regards the decision of a Division Bench of this Court in ***Poonam Kejriwal, Supra***, learned Counsel submitted that after that decision was rendered in the year 2009, much water has flown. Several Supreme Court decisions have been passed after that, the tenor of which is that a party occupying a property must pay occupational charge at a reasonable rate to the owner thereof even during the pendency of an eviction suit. What a reasonable rate of rent would be, would depend on the facts and circumstances of a particular case. In the present case the learned Trial Judge found that the appellants herein had let out the suit property at a monthly rent of Rs. 18,30, 224/-. The learned Judge found this to be a reasonable sum in the facts of the present case and directed the appellants herein to pay occupational charge at the said rate. Learned Counsel submitted that in ***Poonam Kejriwal, Supra***, the Division Bench considered only Order 39 Rules 1 and 2 of the CPC and no other provision of law.

40. On the point of adverse possession, Mr. Kar submitted that the lease in favour of the Kumars expired on November 30, 1993. On April 9, 2003, Form A was filed by the Kumars under the Thika Tenancy Act claiming to be Thika tenants of the suit property under the State. In other words, it was the contention of the

Kumars that the suit property being a Thika property, had vested in the State and the Kumars became Thika tenants. For a long 19 years, there was litigation on this point. On July 27, 2022, the Hon'ble Supreme Court finally held that the suit property is not a Thika Property, the property did not vest in the State and the Kumars were not Thika tenants in respect of the suit property. The petition filed by the Kumars for review of the judgment and order dated July 27, 2022, was dismissed by the Hon'ble Supreme Court on November 17, 2022. The curative petition of the Kumars was dismissed by the Hon'ble Supreme Court on March 28, 2023. For all those years, the Kumars claimed to be Thika Tenants in respect of the suit property. Hence, at least till March 28, 2023, the possession of the Kumars was not adverse to Mani Square. Within 2 days of dismissal of the Kumars' curative petition, by the Supreme Court, Mani Square filed the eviction suit against the Kumars being TS (COM) 48 of 2023 on March 30, 2023. This was well within the 12 years' limitation period prescribed in Article 65 of the Schedule to the Limitation Act, 1963. Hence, there is no merit in the declaratory suit filed by the Kumars praying for a declaration that they have become owners of the suit property by way of adverse possession. Mani square has filed an application under Order 7 Rule 11 of the CPC for rejection of the plaint of the suit filed by the Kumars which is pending before the learned Trial Court.

Court's view

41. Having carefully scanned the arguments of learned Counsel for the parties, I find that the following issues fall for our determination in this appeal:-

- (a) (i) Was the learned Trial Judge justified in directing the appellants to pay occupational charge to Mani Square?
- (ii) If the answer to the aforesaid question is in the affirmative, was the learned Trial Judge justified in quantifying the occupational charge at Rs. 18,30,224/- per month?

(b) Are the appellants right in contending that since no eviction decree has been passed as yet against the appellants by any competent Court, the appellants could not be directed to pay occupational charge?

(c) Are the appellants right in arguing that since their suit claiming declaration of title in respect of the suit premises on the ground of adverse possession is pending, they ought not to have been directed to pay occupational charge?

(d) Are the appellants right in contending that the learned Judge ought not to have passed the impugned order without first deciding the application of the appellants for revocation of leave granted to Mani Square under Section 12A of the CC Act?

(e) Are the appellants right in urging that the learned Trial Judge could not have passed the impugned direction under Order 39 Rules 1 and 2 of the Code of Civil Procedure?

Issues (a), (b), (c) and (e) are inter-related and are taken up for discussion together.

42. The appellants contended that since they are claiming ownership right in respect of the suit property which they have acquired by prescription of law, they are not liable to pay anything to Mani Square, be it mesne profits or rent or occupational charge. In any event, the appellants cannot be directed to pay any damages or mesne profits to Mani Square since Mani Square's eviction suit has still not been decreed. Mesne profits is payable only upon occupation of a person becoming wrongful. The occupation becomes wrongful only when an eviction decree is passed. In this connection reference was made to Section 2(12) of the CPC.

43. Learned Senior Counsel for the appellants vociferously argued that the reported cases, where the Hon'ble Supreme Court had directed the occupant to pay occupational charge at the prevailing market rate, are all cases where the occupant

had already suffered an eviction decree. As a condition for stay of operation of such decree or stay of the execution proceedings pending disposal of the appeal before the Hon'ble Supreme Court, such directions were passed. In this connection learned Senior Counsel referred to the decisions of the Hon'ble Supreme Court in ***Atma Ram Properties (Supra)*** and ***Asma Lateef (Supra)***. Learned Senior Counsel also relied on the judgment of the Division Bench of this Court in ***Poonam Kejriwal, (Supra)***.

44. It is true that in ***Atma Ram Properties (Supra)***, the Hon'ble Supreme Court was dealing with the Appellate Court's power of staying the operation of an eviction decree passed by the Trial Court, on terms and conditions. It was observed that while ordering stay, the Appellate Court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the Appellate Court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In the said context, the Hon'ble Supreme Court observed in paragraph 4 of the reported judgment, as follows:-

"4. Ordinarily this Court does not interfere with discretionary orders, more so when they are of interim nature, passed by the High Court or subordinate Courts/Tribunals. However, this appeal raises an issue of frequent recurrence and, therefore, we have heard the learned counsel for the parties at length. Landlord-tenant litigation constitutes a large chunk of litigation pending in the Courts and Tribunals. The litigation goes on for unreasonable length of time and the tenants in possession of the premises do not miss any opportunity of filing appeals or revisions so long as they can thereby afford to perpetuate the life of litigation and continue in occupation of the premises. If the plea raised by the learned

senior counsel for the respondent was to be accepted, the tenant, in spite of having lost at the end, does not lose anything and rather stands to gain as he has enjoyed the use and occupation of the premises, earned as well a lot from the premises if they are non-residential in nature and all that he is held liable to pay is damages for use and occupation at the same rate at which he would have paid even otherwise by way of rent and a little amount of costs which is generally insignificant.”

45. In ***Achal Misra (Supra)*** referring to ***Atma Ram Properties***, the Supreme Court, at paragraph 23 of the reported judgment, observed as follows:-

“From the material available on record it does not appear that any rate of rent was appointed at which rent would be payable by the respondents to the landlord. The respondents also do not seem to have taken any steps for fixation of rent of the premises in their occupation. They have been happy to have got the premises in a prime locality, occupying and enjoying the same for no payment. We make it clear that the respondents shall be liable to pay the rent equivalent to mesne profits with effect from the date with which they are found to have ceased to be entitled to retain possession of the premises as tenant and for such period the landlord's entitlement cannot be held pegged to the standard rent. Reference may be had to the law laid down by this Court in *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd. (2005) 1 SCC 705*.”

46. The aforesaid two judgments were cited on behalf of the appellants in support of the submission that if at all, only after the tenant has suffered an eviction decree, can he be directed to pay occupational charge at a rate higher than the contractual rate. However, there is no such observation in the said two judgments. In fact, in ***Atma Ram Properties, (Supra)***, the Hon’ble Supreme Court

clearly noted that a litigation concerning landlord and tenant disputes continues for a notoriously long period of time. The tenant normally spares no effort to prolong the legal proceedings with a view to clinging on to the suit property. Therefore, in my view, it will be grossly unfair to the landlord if under all circumstances, the tenant can get away by paying the contractual rate of rent which may have been agreed upon several years ago. Ultimately, all will depend on the facts and circumstances of a particular case.

47. In this connection one may refer to the decision of the Hon'ble Supreme Court in the case of ***Bijay Kumar Manish Kumar HUF v. Ashwin Bhanulal Desai, (Supra)***. In that case, while deciding the issue as to whether the West Bengal Premises Tenancy Act, 1997, or the Transfer of Property Act 1882 was to be applied for framing the issues in the concerned eviction suit, a learned Judge of this Court had held that the Tenancy Act would govern. Impugning such judgment, a number of Special Leave Petitions were filed before the Hon'ble Supreme Court.

In the Special Leave Petitions, interlocutory applications were filed seeking direction for payment of "monthly occupational charges" at the prevalent market rate. It was argued on behalf of the tenant that since no Court had declared the end of the landlord-tenant relationship, the applicant/landlord asking the respondent/tenant to pay occupational charges as opposed to contractual rent would amount to re-writing of the tenancy agreement. It was also argued that occupational charges were payable only after the lease was validly determined or after an eviction decree was passed, neither of which was the case.

In the above factual context, the Hon'ble Supreme Court observed and held as follows:-

"18. Landlord-tenant disputes often make their way to this Court, and obviously, the payment of rent/mesne profit/occupation charges/damages becomes, more often than not a matter of high contest. Determination, as

alleged to have taken place by the petitioner, can take place at the instance of both the landlord and the tenant. *Halsbury's Laws of England*, 3rd Edn. Vol.23 defines 'determination by landlord' as follows:

"The tenancy is impliedly determined by the landlord when he does any act on the premises which is inconsistent with the continuance of tenancy; for example, when he re-enters to take possession (b), or puts in a new tenant (c), or cuts down trees or carries away stone (d), the trees and stone not being excepted from the demise (e), and also when he does an act off the premises which is inconsistency with the tenancy, as when he conveys the reversion (f), or grants a lease of the premises to commence forthwith (g). An act done off the premises, however, does not determine the tenancy until the tenant has notice of it (h)."

19. According to the petitioner, as already taken note of above, the lease was "forfeited" due to non-payment of rent. Forfeiture, as defined by *Corpus Juris Secundum* is "the right of the lessor to terminate a lease because of lessee's breach of covenant or other wrongful act". Further, it mentions as under:

"The word as used in a lease does not, strictly speaking, refer to any right given to the lessee to terminate the lease. Accordingly, it has been held that provisions for forfeiture, cancellation or termination of a lease are usually inserted for the benefit of the lessor and because of some default on the part of the lessee. A forfeiture is in the nature of a penalty of doing or failing to do a particular thing, and results from failure to keep an obligation."

20. It would also be useful to refer to the concept of tenant at sufferance. As defined in the very same treatise, such a tenant is a person who enters upon a land by lawful title, but continues in possession after the title has ended

without statutory authority and without obtaining consent of the person then entitled.

21. *Wharton's Law Lexicon*, Seventeenth Edn. discusses 'tenancy at sufferance' in the following terms :

“*Sufferance, Tenancy at*, This is the least and lowest estate which can subsist in realty. It is in strictness not an estate, but a mere possession only it arises when a person after his right to the occupation, under a lawful title, is at an end, continues (having no title at all) in possession of the land, without the agreement or disagreement of the person in whom the right of possession resides. Thus if A is a tenant for years, and his term expires, or is a tenant at will, and his lessor dies, and he continues in possession without the disagreement of the person who is entitled to the same, in the one and the other of these cases he said to have the possession by sufferance – that is, merely by permission or indulgence, without any right : the law esteeming it just and reasonable, and for the interest of the tenant, and also of the person entitled to the possession, to deem the occupation to be continued by the permission of the person who has the right, till it is proved that the tenant withholds the possession wrongfully, which the law will not presume. As the party came to the possession by right, the law will esteem that right to continue either in point of estate or by the permission of the owner of the land till it is proved that the possession is held in opposition to the will of that person.”

24. A Bench of three learned Judges in *State of Maharashtra & Anr. v. Super Max International Private Limited* (2009) 9 SCC 772 observed as under:

“**67.** The way this Court has been looking at the relationship between the landlord and the tenant in the past and the shift in the Court's approach

in recent times have been examined in some detail in the decision in *Satyawati Sharma v. Union of India* (2008) 5 SCC 287. In that decision one of us (Singhvi, J.) speaking for the Court referred to a number of earlier decisions of the Court and (in para 12 of the judgment) observed as follows: (SCC pp. 304-05)

‘12. Before proceeding further we consider it necessary to observe that there has been a definite shift in the Court's approach while interpreting the rent control legislations. An analysis of the judgments of 1950s to early 1990s would indicate that in majority of cases the courts heavily leaned in favour of an interpretation which would benefit the tenant—*Mohinder Kumar v. State of Haryana* [(1985) 4 SCC 221], *Prabhakaran Nair v. State of T.N.* [(1987) 4 SCC 238], *D.C. Bhatia v. Union of India* [(1995) 1 SCC 104] and *C.N. Rudramurthy v. K. Barkathulla Khan* [(1998) 8 SCC 275]. In these and other cases, the Court consistently held that the paramount object of every rent control legislation is to provide safeguards for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute scarcity thereof. However, a different trend is clearly discernible in the later judgments.

X

X

X

68. The learned Judge then referred to some later decisions and (in para 14 at SCC p. 306 of the judgment) quoted a passage from the decision in *Joginder Pal v. Naval Kishore Behal* (2002) 5 SCC 397, to the following effect: (SCC p. 404, para 9)

“14. ... ‘9. ... The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as to take care of the interest of the landlord the court should not hesitate (2009) 9 SCC 77211 | SLP(C) 4049 of 2020 in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.’”

X

X

X

79. Before concluding the decision one more question needs to be addressed: what would be the position if the tenant's appeal/revision is allowed and the eviction decree is set aside? In that event, naturally, the status quo ante would be restored and the tenant would be entitled to get back all the amounts that he was made to pay in excess of the contractual rent. That being the position, the amount fixed by the court over and above the contractual monthly rent, ordinarily, should not be directed to be paid to the landlord during the pendency of the appeal/revision. The deposited amount, along with the accrued interest, should only be paid after the final disposal to either side depending upon the result of the case.”

(emphasis in original)

28. A perusal of the judgments extracted above as also other cases where *Atma Ram Properties (Supra)* one common factor can be observed, i.e., the decree of eviction stands passed and the same having been stayed, gives rise to the question of payment of mesne profit. As observed above, the respondent

contends that since, in the present case no decree of eviction is passed, and there is no stay awarded, the question of such payment does not arise.

29. While the above-stated position is generally accepted, it is also within the bounds of law, that a tenant who once entered the property in question lawfully, continues in possession after his right to do so stands extinguished, is liable to compensate the landlord for such time period after the right of occupancy expires. In this regard, we may refer to *Indian Oil Corporation Ltd. v. Sudera Realty Private Limited (2023) 16 SCC 704*, wherein this Court in para 81 observed as under: -

“**81.** A tenant continuing in possession after the expiry of the lease may be treated as a tenant at sufferance, which status is a shade higher than that of a mere trespasser, as in the case of a tenant continuing after the expiry of the lease, his original entry was lawful. But a tenant at sufferance is not a tenant by holding over. While a tenant at sufferance cannot be forcibly dispossessed, that does not detract from the possession of the erstwhile tenant turning unlawful on the expiry of the lease. *Thus, the appellant while continuing in possession after the expiry of the lease became liable to pay mesne profits.*”

(emphasis supplied)

30. It is to be noted that the Court in *Sudera Realty (supra)* observed that mesne profits become payable on continuation of possession after “expiry” of lease. In our considered view, the effect of the words “determination”, “expiry”, “forfeiture” and “termination” would, subject to the facts applicable, be similar i.e. when any of these three words are applied to a lease, henceforth, the rights of the lessee/tenant stand extinguished or in certain cases metamorphosed into weaker iteration of their former selves. Illustratively, *Burton's Legal Thesaurus*, 3rd Edn. suggests the following words as being

similar to “expire” — cease, come to an end; “determine” is similar to — come to a conclusion, bring to an end; “forfeiture” is similar to — deprivation/destruction of a right, divestiture of property; and “terminate” is similar to — bring to an end, cease, conclude. Therefore, in any of these situations, mesne profits would be payable.

31. Having considered the submissions made across the Bar, we note that the disputed nature of the lease deed, in other words, its continuation or forfeiture on account of non-payment is heavily contested and stemming therefrom, so is the nature of payment to be made. We also note that the location of demised premises is in the heart of Kolkata and if the submissions of the petitioner are to be believed, they have been deprived of rent for a considerable period of time. Taking a lock stock and barrel view of the present dispute, the averments and the documents placed before us, we may record a prima facie view, that the respondent tenant has for the reasons yet undemonstrated, been delaying the payment of rent and/or other dues, payable to the petitioner applicant landlord. This denial of monetary benefits accruing from the property, when viewed in terms of the unchallenged market report forming part of the record is undoubtedly substantial and as such, subject to just exceptions, we pass this order for deposit of the amount claimed by the petitioner applicant, to ensure complete justice inter se the parties.

32. After all, we cannot lose sight of the fact that the very purpose for which a property is rented out, is to ensure that the landlord by way of the property is able to secure some income. If the income remains static over a long period of time or in certain cases, as in the present case, yields no income, then such a landlord would be within his rights, subject of course, to the agreement with their tenant, to be aggrieved by the same.”

48. We, therefore, see that in the above case, the Hon'ble Supreme Court directed the tenant to pay occupational charge at a rate higher than the contractual rate even at a pre-eviction decree stage. Indeed, there would be nothing unfair or inequitable in issuing such a direction if the contractual rate which may have been agreed upon decades ago is found to be abysmally low compared to the current market rate of rent in respect of the suit property, the tenant having successfully continued in occupation by prolonging and proliferating litigation. It is just and proper that a person enjoying another person's property even if only for residential purpose, must compensate the owner of the property by paying rent/occupational charge at a rate commensurate with the current market rate or a rate close thereto. This applies a *fortiori* to cases where the concerned property is exploited commercially by the person in occupation.

49. We may note that in the present case the Hon'ble Supreme Court directed the present appellants to pay occupational charges. Taking a cue from that, the learned Trial Judge has passed the direction for payment of occupational charges which is impugned in this appeal. The learned Judge has not imposed damages or mesne profits on the appellants which, it is arguable, can be done only at the termination of the suit if the same culminates in an eviction decree. The learned Judge has merely ensured that during the pendency of the suit, the appellants do not enjoy the suit property free of cost keeping in mind that the property is a valuable one.

50. The appellants argued that Order 39 Rules 1 and 2 of the Code of Civil Procedure did not empower the learned Judge to pass a direction on the appellants to pay monthly occupational charge during pendency of the suit. In support of this argument, reliance was passed on the Division Bench decision in **Poonam Kejriwal, Supra**. However, Poonam Kejriwal only considered Order 39 Rules 1 and 2 and not Section 151 of the Code of Civil Procedure. There is no discussion in that

case on the inherent powers of Court saved by Section 151 of the Code of Civil Procedure, which says that “Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.” In the present case, Section 151 was squarely invoked by Mani Square / plaintiff. In our view, the learned Judge rightly and for the ends of justice directed the appellants herein to pay monthly occupational charge to the plaintiff. It would have been unfair not to pass such a direction and allow the appellants to enjoy valuable property of the plaintiff without paying any compensation to the recorded owner. Justice cannot be bereft of fairness. Justice without fairness is as vain as a fancy motor car without its engine, an expensive air conditioner without its compressor or a beehive without honey. Unfair justice is a contradiction in terms and an antithesis to the Rule of Law. The decision in Poonam Kejriwal is eminently distinguishable.

51. In the case of *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal reported at AIR 1962 SC 527*, one of the questions that fell for determination was whether the Court could pass an order of temporary injunction only if circumstances fell within the provisions of Section 94 of the Code of Civil Procedure read with Order XXXIX thereof or whether the Court has inherent jurisdiction to pass such order even in cases not covered by those provisions of the Code. In that context, **Raghubar Dayal, J. speaking for himself, Wanchoo and Das Gupta, JJ. (J. C. SHAH J. dissenting)** held as follows:-

“**17.** On the first question it is argued for the appellant that the provisions of clause (c) of S. 94, CPC, make it clear that interim injunctions can be issued only if a provision for their issue is made under the rules, as they provide that a Court may, if it is so prescribed, grant temporary injunctions

in order to prevent the ends of justice from being defeated, that the word “prescribed”, according to S. 2, means “prescribed by rules” and that Rules 1 and 2 of Order XXXIX lay down certain circumstances in which a temporary injunction may be issued.”

18. There is difference of opinion between the High Courts on this point. One view is that a Court cannot issue an order of temporary injunction if the circumstances do not fall within the provisions of Order XXXIX of the Code: The other view is that a Court can issue an interim injunction under circumstances which are not covered by Order XXXIX of the Code, if the Court is of opinion that the interests of justice require the issue of such interim injunction..... We are of opinion that the latter view is correct and that the Courts have inherent jurisdiction to issue temporary injunctions in circumstances which are not covered by the provisions of Order XXXIX CPC. There is no such expression in Section 94 which expressly prohibits the issue of a temporary injunction in circumstances not covered by Order XXXIX or by any rules made under the Code. It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. The effect of the expression “if it is so prescribed” is only this that when the rules prescribe the circumstances in which the temporary injunction can be issued, ordinarily the Court is not to use its inherent powers to make the necessary orders in the interests of justice, but is merely to see whether the circumstances of the case bring it within the prescribed rule. If the provisions of S. 94 were not there in the Code, the Court could still issue temporary injunctions, but it could do that in the exercise of its inherent jurisdiction. No party has a right to insist on the

Court's exercising that jurisdiction and the Court exercises its inherent jurisdiction only when it considers it absolutely necessary for the ends of justice to do so.....

19. There is nothing in Order XXXIX Rules 1 and 2 which provide specifically that a temporary injunction is not to be issued in cases which are not mentioned in those rules. The rules only provide that in circumstances mentioned in them the Court may grant a temporary injunction.

20. Further, the provisions of Section 151 of the Code make it clear that the inherent powers are not controlled by the provisions of the Code.....

21. A similar question about the powers of the Court to issue a commission in the exercise of its powers under Section 151 of the Code in circumstances not covered by Section 75 and Order 26, arose in *Padam Sen v. State of Uttar Pradesh (AIR 1961 SC 218)* and this Court held that the Court can issue a commission in such circumstances. It observed at p. 887 thus:

“The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the legislature.”

These observations clearly mean that the inherent powers are not in any way controlled by the provisions of the Code as has been specifically stated

in Section 151 itself. But those powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the Code or against the intentions of the legislature.....

23. The section itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it.....”

52. The above quoted case has been followed subsequently in several decisions of the Hon’ble Supreme Court including in the case of the ***Ram Chand and Sons Sugar Mills (P) Ltd. v. Kanhayalal Bhargava and Ors reported at AIR 1966 SC 1899***. It is quite clear that the inherent power of the Court as is recognised by Section 151 CPC has not been conferred on the Court by CPC. The CPC is not the source of the inherent power of the Court to pass an order *ex debito justitiae* in appropriate cases even where the CPC does not provide for passing of such an order. The idea obviously is to do justice between the parties. In the present case, if the learned Trial Court did not require the Kumars to pay occupational charge in respect of the property they are occupying, the same would have caused injustice to the recorded owner of the property, i.e., Mani Square.

53. In so far as the quantum of monthly occupational charge is concerned, we cannot fault the learned Trial Judge for fixing the amount at Rs. 18,30,224/-. The respondent/plaintiff produced before the learned Trial Court a copy of a lease deed collected by it from West Bengal Beverage Corporation. Under such lease deed, the appellants have or had let out the suit property to the said Corporation at a

monthly rent of Rs. 18,30,224/-. Hence, the said figure would represent a fair market rate of occupational charge in respect of the suit premises. It was submitted on behalf of the appellants that presently the suit property is lying vacant since the said Corporation has surrendered possession and gone away. That is neither here nor there. The monthly rent reserved in the aforesaid lease deed is what we are concerned with. There can be no dispute in respect of such amount as the appellants themselves were receiving that sum of money every month from the said Corporation.

54. Let me come to the issue as to whether or not the learned Trial Court should have refrained from issuing a direction on the present appellants to pay monthly occupational charge in view of the pendency of the appellants' suit. As indicated above, the appellants have filed a suit claiming declaration of ownership of the concerned property on the basis of adverse possession. It is the contention of the appellants that after the 20 years lease granted in their favour expired by efflux of time on November 30, 1993, they have not paid a single farthing for occupying the suit premises wherefore, their possession became adverse to the owners and upon expiry of 12 years from December 1, 1993, they acquired title to the suit property by prescription.

55. Learned Senior Counsel for the appellants rightly submitted that the Courts do not look favourably at a claim of adverse possession and acquisition of title thereby. We have noted hereinabove the arguments advanced by learned Senior Counsel for the appellants on adverse possession. The basic contention of the appellants is that since they claim ownership of the suit property which claim is pending consideration in a civil suit filed before a competent forum, no compensation for the appellants occupying the suit property need be paid to anybody, far less, the respondent/plaintiff herein. There is a basic fallacy in this argument. The appellants' claim of ownership of the said property is yet to be

adjudicated and declared in their favour by the Court. In my view, solely on the basis of pendency of their suit the appellants cannot resist a direction for payment of occupational charge. I also note that there is no interlocutory protective order in favour of the appellants in their civil suit.

56. Even otherwise, prima facie there does not appear to be much merit in the appellants' claim of having acquired title to the suit property by prescription. The lease in favour of the appellants expired on November 30, 1993. They filed form A under the 2001 Thika Act, on April 9, 2003. Therefore, on that date they staked their claim to the suit property as Thika Tenants under the State of West Bengal and not as owners. On September 10, 2007, the present respondent/plaintiff became owner of the suit property. It immediately challenged the appellants' claim to be Thika tenants in respect of the suit property. This challenge ultimately succeeded before the Hon'ble Supreme Court on July 27, 2022. That chapter finally ended with dismissal of the Kumars' curative petition by the Hon'ble Supreme Court on March 28, 2023. Immediately, thereafter, the respondent/plaintiff filed TS (COM) 40 of 2023 on March 30, 2023, seeking eviction of the appellants from the suit property.

57. In the aforesaid factual matrix, it can hardly be said that the respondent/plaintiff was a silent onlooker allowing the appellants to occupy the suit property when they had no right to do so. On the contrary, the respondent/plaintiff continued its battle in Court to establish that the appellants were not Thika tenants and the land had not vested in the State of West Bengal. Hence, it does not appear that the appellants can claim benefit under Section 27 of the Limitation Act or Article 65 of the Schedule thereto. I hasten to clarify that these observations are purely prima facie and made solely for the purpose of deciding this appeal. None of the observations shall have any bearing on either the

declaratory suit filed by the appellants herein or the eviction suit filed by the respondent herein.

58. In this context one may also note that in the judgment and order dated March 10, 2014, whereby a Division Bench of this Court allowed WPLRT 325 of 2013 by setting aside the Tenancy Tribunal's order dated November 13, 2013, the Division Bench observed: "After expiry of the said lease, the lessees became trespassers and/or at best they may be regarded as tenants by sufferance who have no liability to pay rent to their landlord either under the said lease which stood expired in 1993 or under any other law." This also prima facie militates against the appellants' claim of acquiring ownership by adverse possession.

59. Only the issue pertaining to Section 12A of the CC Act remains to be discussed. Mr. Mitra, learned Senior Counsel representing the appellants, submitted that prior to passing any order in the suit of Mani Square, the application of the present appellants for revocation of leave granted under Section 12A of the CC Act should have been disposed of one way or the other. If the application was allowed, there would have been no scope for passing any interlocutory order in the suit since the suit would have stood dismissed.

60. Ordinarily I would have agreed with the contention of Mr. Mitra. However, in the facts of the present case, Mr. Mitra's argument may not hold ground.

61. By an order dated April 1, 2023, the learned Commercial Court at Alipore granted dispensation of pre-suit mediation envisaged under Section 12A of the CC Act, to Mani Square for filing its suit being TS 4 of 2023 (later renumbered as TS (COM) 48 of 2023). This the learned Court did, being satisfied that urgent relief was required in the suit. An order of injunction was passed restraining the defendants in the suit being the Kumars from dealing with and/or encumbering and/or creating third party interest in respect of the suit property.

62. On or about May 4, 2023, the Kumars filed an application under Order VII Rule 11 of the CPC for rejection of the plaint of the suit filed by Mani Square. Although initially the Kumars in their said application did not run the case of revocation of the leave granted under Section 12A of the CC Act and consequent rejection of the plaint, by filing a supplementary affidavit, that ground was brought on record for rejection of the plaint. By an order dated March 6, 2024, learned Trial Court dismissed the application for rejection of the plaint of the suit filed by Mani Square.

63. Assailing such order, the Kumars filed a Civil Revisional Application being CO No. 954 of 2024. In the order dated May 21, 2024, whereby the civil revisional application was dismissed by a learned Single Judge of this Court, it was noted that the petitioners had raised a question of maintainability of the suit on account of non-compliance of the provisions of Section 12A of the CC Act.

64. From the order of dismissal of the Civil Revisional application, the Kumars preferred a Special Leave Petition being SLP(C) No. 15984 of 2024. The synopsis of the Special Leave Petition included a ground that “the learned trial Court ex-parte granted leave to the plaintiff under Section 12A of the Commercial Courts Act which is de hors of the provisions of Section 12A of the Commercial Courts Act, 2015, and there was no emergency as contemplated in Section 12A in the matter of suit for eviction”. The questions of law formulated in the Special Leave Petition included “whether leave could be granted under Section 12A of the Commercial Courts Act, 2015, in a suit for eviction when there is no urgency?” The grounds enumerated in the special leave petition included:- “For that the High Court failed to appreciate the provisions of the Commercial Courts Act, 2015, specially Section 2 and Section 12A of the said Act.”

65. The Special Leave Petition was dismissed by the Hon’ble Supreme Court by an order dated September 10, 2024.

66. We, therefore, see that the issue of revocation of leave granted to Mani Square under Section 12A of the CC Act was there before the learned Trial Court, before the High Court in the civil revisional application and also before the Hon'ble Supreme Court. However, the Kumars' argument on such issue was not accepted by any of the said three fora. Hence, the point must be deemed to have been rejected right up to the Hon'ble Supreme Court. Had the point appealed to the learned Trial Court or the High Court or the Hon'ble Supreme Court, the order granting dispensation of the requirement of pre-suit litigation would have been revoked and as a necessary corollary, the suit would have stood dismissed.

67. In this connection Section 11 of the CPC may be noticed along with explanation V thereunder which read as follows:-

“Section 11. Res judicata-

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation V.- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.”

68. Referring to Section 11 of CPC and Explanation V thereunder, in the case of ***Yashwant Sinha & Ors. (Supra)***, at paragraphs 85 and 86 of the judgment, the Hon'ble Supreme Court observed as follows:-

“85. Where a party institutes a proceeding, if the proceeding is of a civil nature, there would be a cause of action. There would be reliefs sought on the basis of the cause of action. Materials are produced both in support and

against the claim. The court thereafter renders a judgment either accepting the case or rejecting the case. When the court rejects the case, it necessarily involves refusing to grant the relief sought for by the plaintiff/petitioner. It may transpire that the petitioner may not press for certain reliefs. The court may, after applying its mind to the case, find that the petitioner is not entitled to the relief and decline the prayers sought. It may also happen that the court does refer to the reliefs sought but thereafter does not undertake any discussion regarding the case for the relief sought and proceeds to non-suit the party. It is clear that in this case, it is the last aspect which is revealed by the judgment sought to be reviewed.

86. A judgment may be silent in regard to a relief which is sought by a party. It is apposite, in this regard, to notice Section 11 CPC. If a decree is silent, as regards any relief which is claimed by the plaintiff, Explanation V to Section 11 declares that the relief must be treated as declined. The Explanation reads as follows:

.....”

69. It is established law that although Section 11 of the CPC refers to suits - a former suit and a later suit -, the principle of *res judicata* applies to different stages of the same suit. In this connection one may refer to the decision of the Hon’ble Supreme Court in the case of **Arjun Singh v. Mohindra Kumar and Ors reported at AIR 1964 SC 993**. In paragraph 10 of the reported judgment it was observed as follows:-

“10. That the question of fact which arose in the two proceedings was identical would not be in doubt. Of course, they were not in successive suits so as to make the provisions of s. 11 of the Civil Procedure Code applicable in terms. That the scope of the principle of *res judicata* is not confined to what is contained in s. 11 but is of more general application is also not in

dispute. Again, *res judicata* could be as much applicable to different stages of the same suit as to findings on issues in different suits. In this connection we were referred to what this Court said in *Satyadhyan Ghosal v. Sm. Deorajin Debi*, AIR 1960 SC 941 where Das Gupta, J. speaking for the Court expressed himself thus:

“The principle of *res judicata* is based on the need of giving a finality to judicial decisions. What it says is that once a *res* is *judicata*, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter - whether on a question of fact or on a question of law has been decided between two parties in one suit or proceeding and the decision is final either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again..... The principle of *res judicata* applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.”

70. In my *prima facie* opinion, therefore, the issue of revocation of the leave granted to Mani Square for institution of its suit without holding pre-suit mediation, is *res judicata*. The learned Trial Court, therefore, committed no major error in passing the impugned order without first disposing of the application filed by the Kumars for revocation of leave under Section 12A of the CC Act granted by the Trial Court to Mani Square for institution of its suit and the Kumars have not suffered any prejudice on that score.

71. In fine, all the issues framed above, are answered in favour of the respondent/plaintiff and against the appellants. I find no reason to interfere with the order under appeal. The appeal and the connected application stand dismissed. There will be no order as to costs.

72. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I agree.

(Om Narayan Rai, J.)

(Arijit Banerjee, J.)

Later:-

After judgment is delivered in Court, learned advocate for the appellants prays for stay of operation of the judgment and order.

The prayer is considered and refused.

(Om Narayan Rai, J.)

(Arijit Banerjee, J.)