

18. 12.08.2025
Court No.06.

(Pritam)

CO 2882 of 2025

Tapan Kr. Dutta.

-Vs.-

Biswanath Daw & Ors.

Mr. Nikhil Kr. Gupta,
Mr. Shibnath Ganguly.

....for the petitioner.

1. This application under Section 227 of the Constitution of India is at the instance of the plaintiff and is directed against a judgment and order dated July 1, 2025 passed by the learned District Judge, Howrah in Misc. Appeal No.70 of 2025.
2. The petitioner filed a suit for declaration of tenancy right and for permanent injunction. In such a suit, the petitioner filed an application under Order 39 Rule 1 & 2 of the Code of Civil Procedure and the learned Trial Judge by an order dated April 8, 2025 rejected the application under Section 39 Rule 1 & 2 of the Code of Civil Procedure.
3. Being aggrieved by such an order, the petitioner preferred a miscellaneous appeal being no.78 of 2025 and the learned District Judge, Howrah by a judgment and order dated July 1, 2025 dismissed the appeal

thereby affirming the order passed by the learned District Judge.

4. Being aggrieved by such an order, the plaintiff has approached this court by filing the present civil revisional application.
5. The learned advocate appearing for the petitioner submits that the petitioner is the lawful tenant in respect of two bedrooms, one kitchen with verandah, one bathroom with privy room together with the right over common tube well situated in the ground floor at premises No.11A, Akshoy Chatterjee Lane in the Howrah district.
6. He submits that taking advantage of the temporary absence of the petitioner in the suit property, the opposite parties therein along with their men and agents broke open the padlock and took forcible possession of the property in question. He submits that the petitioner is a tenant in respect of the suit property and even by way of taking forcible possession of the property, the tenancy right cannot stand extinguished.
7. In the plaint, it has been stated that on March 11, 2019 when the petitioner and his family members were not in the house, some anti-socials entered into the suit property by breaking open the padlock and have stolen some important documents of the petitioner and the petitioner lodged a complaint before the local police station.

8. It is the case of the opposite party that the petitioner has already handed over vacant possession of the suit property to the landlord in the year 2010 in presence of some local people and the plaintiff is not in possession of the suit property. It is the further case of the opposite party that the petitioner is trying to create pressure upon the owners of the suit property as well as to hand over possession, totally free of cost. It is the further case of the opposite parties that the tenanted property as alleged by the petitioner is no longer in existence as the old structures were demolished by the developers for the purpose of construction of a new building within the knowledge of the plaintiff.
9. Record reveals that a Commission was held and the learned advocate Commissioner in the report has indicated that there is no existence of the tenanted room.
10. It is the case of the petitioner that they are the tenants in respect of the property in question and the possession of the property was taken forcibly in violation of an order of injunction. On the other hand, it is the case of the opposite parties that the petitioner has surrendered possession of the suit property in favour of the opposite parties. Such a dispute requires an adjudication by trial of evidence.
11. There is no quarrel to the proposition of law that a tenancy right cannot be extinguished merely due to

non-payment of rent. Tenancy right can be extinguished either by surrendering of tenancy by the tenants or by eviction of the tenants by following due process of law.

12. The learned advocate appearing for the petitioner places strong reliance upon the decision of a co-ordinate bench in the case of *Sandhya Das (Khan) & Ors. Vs. Manik Banik & Ors.* order passed on August 18, 2011 in CO No.1607 of 2009. In the said decision, the co-ordinate bench after taking note of the fact that entire building had been demolished and the suit premises is no longer in existence as on that date, held that the plaintiff is not entitled to an order of injunction.

13. The said decision cannot come to the aid of the petitioner. It, however, supports the case of the opposite party.

14. The learned Judge of the Trial Court after taking note of the said decision as well as the fact that the building is no longer in existence and the petitioner is not in possession of the suit property dismissed the misc. appeal thereby affirming the order passed by the learned trial judge rejecting the application in Order 39 Rule 1 & 2 of the Code of Civil Procedure. Learned Judge of the appellate court assigned cogent reasons in support of its ultimate conclusion. This court is not inclined to interfere with the order impugned. However, the learned Civil Judge (Jr. Div), 5th Court, Howrah is

requested to dispose the title suit property no.317 of 2019 as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

15. Accordingly, CO 2882 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)