

D/L- 19
12/09/2025
Ct. No.-6
Aritra

C.O. 3367 of 2025

**Sri Sujit Kumar Dey
Vs.
Smt. Mithu Dey (Plaintiff) & Anr.**

Mr. Biswaroop Bhattacharya
Mr. Arup Nath Bhattacharyya
Ms. Sohini Chakraborty
Ms. Sayani Das
Ms. Srutama Biswas

....for the petitioner

Mr. Rajdeep Bhattacharya
Ms. Sharmila Nath

....for the opposite parties

On the prayer of Mr. Biswaroop Bhattacharya, learned advocate for the petitioner leave is granted to the learned advocate on record of the petitioner to amend the cause title of the civil revision application here and now.

Affidavit of service filed in Court today is taken on record.

This application under Article 227 of the Constitution of India is at the instance of the judgment debtor No.1 and is directed against an order dated August 13, 2025 passed by the learned Civil Judge (Jr. Div.), 1st Court at Alipore in Title Execution Case No.56 of 2018.

By the order impugned, the petitioner was directed to pay occupational charges to the decree-holder at the rate of Rs.57,500/- and was further directed to pay cost of Rs.2 lakh to the decree-holder.

Mr. Biswaroop Bhattacharya, learned advocate appearing for the petitioner submits that the suit property is a shop room measuring about 100 sq. ft. and the property which was leased out by the petitioner is measuring about 500 sq. ft. He further submits that the learned trial judge fixed the occupation charges on the basis of the measurement of the shop room to be of 500 sq. ft. when the decree was passed in respect of a shop room measuring about 100 sq. ft. Mr. Bhattacharya further submits that the learned trial judge imposed an exorbitant cost of Rs.2 lakh on the ground of alleged non-production of the lease deed when the petitioner in effect produced the lease deed before this Hon'ble Court in an earlier round of litigation. He, therefore, submits that the petitioner ought not to have been saddled with the liability to pay cost.

Mr. Rajdeep Bhattacharya, learned advocate appearing for the opposite party submits that as per the sanctioned plan the measurement of the shop room is 100 sq. ft. and not 500 sq. ft. He submits that the shop room which was leased out by the petitioner in favour of the third party was measuring about 100 sq. ft. and not 500 sq. ft. He, therefore, submits that the rent as per the lease deed was rightly directed to be paid by the petitioner to the opposite party No.1 on account of occupation charges. He further submits that in spite of repeated directions being passed by the learned executing Court to produce the lease deed before the learned

Executing Court the same was not produced and the same was only produced before this Hon'ble Court at the time of hearing of C.O. No.4489 of 2024.

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

The opposite party No.1 filed a suit for specific performance of contract and for other consequential reliefs in respect of one shop room measuring about more or less 100 sq. ft. covered area at the ground floor of premises No.169, Rajdanga Nabapally under Police Station-Kasba, Kolkata-700078.

It is not in dispute that the shop room has been leased out by the petitioner in favour of the third party. The learned Executing Court noticed that such lease deed was executed in violation of the order of injunction and for such reason the learned executing Court directed the petitioner to pay occupation charges.

The liability of the petitioner to pay occupation charges to the opposite parties has not been disputed but what is in dispute is the quantum of occupation charges to be paid.

From the schedule of the plaint it is evident that the suit property relates to a shop room measuring about 100 sq. ft. From the schedule of the lease deed it appears that the shop room which was leased out in favour of the third party is measuring about 500 sq. ft.

When the subject matter of the suit property is measuring about 100 sq. ft., this Court is of the

considered view that the occupation charges has to be quantified on the basis of the measurement of a 100 sq. ft. shop-room and not 500 sq. ft. It appears from the lease deed that the lease rent in respect of 500 sq. ft. is Rs.57,500/-.

For such reason this Court is inclined to modify the quantum of occupation charges which was directed to be paid by the petitioner to the opposite party No.1. The petitioner shall be liable to pay occupation charges at the rate of Rs.12,000/- per month in the manner as directed by the learned executing Court by the order impugned. The arrear occupation charges after adjusting the payment already made shall be paid within the time limit as directed by the learned trial judge.

Now, this Court has to consider the issue with regard to imposition of cost.

It is not in dispute that the learned executing Court passed several directions to the petitioner to produce the lease deed and in spite of such direction the lease deed was not produced by the petitioner before the learned executing Court. When the petitioner filed the civil revision application being C.O. No.4489 of 2024, the lease deed was also not disclosed in the civil revision application.

It appears from the record that the opposite party herein alleged that the judgment debtor was collecting the rent at the rate of Rs.40,000/- per month. As observed hereinbefore that as per the lease deed the lease

rent was Rs.57,500/-. Thus the judgment debtor was collecting rent at a rate higher than that was claimed by the decree holders.

Thus, this Court is of the considered view that the petitioner did not produce the lease deed in order to suppress the actual rental income which the petitioner was enjoying in respect of the property which was the subject matter of the lease deed.

It was only at the time of hearing of the civil revision application being C.O. No.4489 of 2024 that the copy of the lease deed was produced and the petitioner was directed to supply a copy of the lease deed. The learned executing Court was thus right in imposing the cost upon the petitioner for non-production of the lease deed in spite of repeated directions..

This Court is, however, of the considered view that the amount of cost which was imposed by the learned executing Court is an exorbitant one and for such reason this Court is inclined to interfere with the quantum of cost imposed by the learned trial judge. The petitioner shall pay cost of Rs.30,000/- to the opposite party No.1 to be paid on or before September 22, 2025.

The impugned order stands modified with the observations and directions. CO 3367 of 2025 stands disposed of.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)