

D/L - 13
17.01.2025
Court. No. 5
S.Kundu

**C.O. 3564 of 2024
With
CAN 1 of 2025**

**Navdeep Singh Birgi & Anr.
Vs.
M/s. Anderson Wright International & Anr.**

Mr. Rachit Lakhmani,
Mr. M. Kejriwal

...for the petitioners.

Mr. Varun Kothari,
Mr. B.N. Joshi,
Mr. A. Agarwalla,
Ms. Shruti Pal

...for the opposite parties.

In Re: CAN 1 of 2025.

1. This application has been filed *inter alia*, praying for recording of the death of the proforma opposite party and to strike off his name from the case record.
2. Learned advocate appearing in support of the aforesaid application would submit that the proforma opposite party is the grand-father of the petitioner and was the original owner in respect of the suit property.
3. By drawing attention of this Court to the Death Certificate issued by the Department of Health and Family Welfare, he would submit that the proforma opposite party had died during the pendency of this revisional application on 27th November, 2024.
4. Mr. Kothari, learned advocate enters appearance on behalf of the opposite parties.

5. Having heard the learned advocates representing the respective parties and considering that the proforma opposite party has died during the pendency of the instant revisional application, let his death be recorded.
6. Accordingly, the application being CAN 1 of 2025 is disposed of.

In Re: C.O. 3564 of 2024.

7. Challenging the Order No. 17 dated 9th September, 2024 passed by the learned Judge, 6th Bench, City Civil Court at Calcutta in Title Suit No. 597 of 2022, the instant revisional application has been filed.
8. The above application has been filed in connection with the suit filed by the plaintiffs/petitioners *inter alia*, praying for the recovery of khas vacant possession and also for *mesne profit*. According to the petitioners, the opposite party was inducted as a licensee by the proforma opposite party in terms of leave and licence agreement dated 3rd December, 2016 for a period of five years. From the leave and licence agreement, it would transpire that the opposite party was under an obligation to make payment of Rs.50,000/- per month towards licence fee. The petitioners claim that in the interregnum, the proforma opposite party had gifted the suit property by executing a deed of gift on 23rd March, 2018. The said gift deed covers the property which form subject matter of the aforesaid licence agreement.

9. According to the petitioners, despite expiry of the aforesaid agreement by efflux of time, the opposite party having failed to vacate the suit property, the above suit was filed which was registered as Title Suit No. 597 of 2022. It is in connection with such suit, the petitioners had filed an application under Section 151 of the Code of Civil Procedure (hereinafter referred to as the Code) on 19th January, 2023 for a direction upon the opposite party to make payment of the occupational charges at the rate last paid by the opposite party in terms of the leave and licence agreement.
10. By the order dated 9th September, 2024 the learned Judge on contest had allowed the application thereby directing Rs.7,00,000/- to be paid by the opposite party to the petitioner. Mr. Lakhmani, learned advocate appearing for the petitioners would submit that the learned Judge has considered only a part of the prayer made in the application under Section 151 of the Code and thereby has only allowed the occupational charges that had fallen due up to date of filing the application. Unfortunately, no direction for payment of the occupational charges at aforesaid rate for the current period has been directed. He submits that since the opposite party is in occupation of the suit property an order should be made directing the opposite party to make payment of the occupational charges at aforesaid rate as directed to be paid by the learned Judge so long

the opposite party continues to occupy the suit property or till disposal of the suit whichever is earlier.

11. Mr. Kothari, learned advocate appearing on behalf of the opposite party submits on instruction that the opposite party is ready and willing to make payment of the occupational charges at the rate mentioned in the leave and licence agreement. He, however, prays for easy instalment.
12. Having heard the learned advocates for the respective parties and considering the materials on record, I am of the view that since, the opposite party is occupying the suit property, the opposite party cannot absolve the obligation to make payment of occupational charges at least at rate provided for in the leave and licence agreement till such time the opposite party is in occupation of the suit property or till disposal of the suit, whichever is earlier. The aforesaid direction for payment is, however, without prejudice to the rights of the petitioners to claim *mesne* profit.
13. Having regard thereto, I direct the opposite party, to make payment of the occupational charges at the above rate so long the opposite party occupies the suit property or till disposal of the suit whichever is earlier, which amount shall be accepted by the petitioners without prejudice to their rights and contentions in the suit. The opposite party, in addition to making payment of the occupational charges for the arrear,

which has fallen due, shall make payment for the current months, which shall fall due and be payable to the petitioners on or before the 10th of each succeeding English calendar month. The parties agree that a sum of Rs.11,50,000/- has fallen due on account of occupational charges payable by the opposite party for the period upto December, 2024.

14. Having regard thereto, the opposite party shall in addition to the current occupational charges make payment of the arrear occupational charges in the following manner. For the first three months commencing from January, 2025, the opposite party shall pay Rs.3,00,000/- and on the fourth month it shall pay Rs.2,50,000/- in addition to the occupational charges for the current month. So far as the arrear instalment payable in January 2025 is concerned, the same shall be paid on or before 31st January, 2025.
15. The Order No. 17 dated 9th September, 2024 stands varied and/or modified to the extent noted above.
16. The revisional application thus stands disposed of on the above terms.
17. There shall be no order as to costs.

All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)