

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Dinesh Kumar Sharma

C.O. 3416 of 2022

**Frostees India Private Limited
Vs.
Ahuja & Company**

**For the Petitioner: Mr. Aniruddha Chatterjee, Sr. Adv.,
 Mr. Suchetan Ghosh, Adv.**

**For the opposite party: Mr. Jishnu Chowdhury, Sr. Adv.,
 Mr. Sankarsan Sarkar, Adv.,
 Mr. Kritin Saraf, Adv.**

Reserved on: 25.06.2025

Judgment on: 30.07.2025

Dinesh Kumar Sharma, J.:

1. Present petition has been filed challenging the order dated September 19, 2022 passed by the Learned Civil Judge (Senior Division) First Court, Alipur, in Title suit no. 364 of 2020, whereby the Learned Trial Court while disposing of the application under Order 39, Rule 10 read with Section 151 CPC, filed by the plaintiff/opposite party, directed the petitioner/defendant to pay Rs.1,50,000/- per month within tenth of each succeeding english calendar month from this state to the plaintiff/opposite party as

occupational charge of suit property. The petitioners/defendant was further directed to make payment of Rs.72,00,000/- on account of arrears of occupational charges in four equal installments every second month within tenth of each calendar month from the date of passing of the order. The petitioner has challenged the impugned order on the ground that the Learned Trial Court has fallen into a grave error of law by granting the occupational charges during the pendency of the suit. The petitioner has stated that occupational charges is to be calculated only from the date of the judgment and decree of the suit and not from the date of expiry of the lease. The peitioner has taken a plea that occupational charges cannot be granted at the interim stage.

2. Mr. Aniruddha Chatterjee, Learned Senior Counsel for the petitioner submitted that in the present set of facts and circumstances, Order 39 Rule 10 CPC has wrongly been applied. Learned senior counsel submitted that Order 39 Rule 10 CPC is attracted only when the liability is admitted by a party, or the money or a thing which is the subject matter of the suit is held by it as trustee for another or is due to another party. Learned senior counsel submitted that clear, unequivocal and unambiguous admission is required on the part of the party against whom such an order is proposed to be passed. Learned Senior Counsel further submitted that as in the present case there was no unequivocal and unambiguous admission on the part of the petitioner/defendant and, therefore, the order of the Learned Trial Court

is not correct on the face of it. Learned senior counsel submits that in fact the Learned Trial Court by allowing the present application has granted the final relief at an interim stage. It has further been submitted that the Learned Trial Court has granted the prayer, which was not even prayed for by the plaintiff/opposite party. Learned senior counsel submits that occupational charges, as claimed by the opposite party/plaintiff was on the basis of an agreement entered into between the parties. Such agreement had already been terminated by the opposite party/plaintiff himself and, therefore, on the basis of such terminated agreement the occupational charges could not have been granted. Learned senior counsel submitted that at the best the mesne profit can be granted after completion of the trial.

3. Learned senior counsel submitted that such an order could have been passed only if the Trial Court reaches to the conclusion that there was absolutely no defence on the part of the tenant and the eviction would be a matter of course. Learned senior counsel submits that in the present case the petitioner/defendant/tenant had presented a very sound defence and he was likely to succeed in the same. Learned senior counsel submitted that the Learned Trial Court has exceeded its jurisdiction by granting mesne profit in the garb of occupational charge. Learned senior counsel further submitted that the impugned order is liable to be set aside. In support of his contention learned senior counsel has relied upon the following judgments:

- I. **Saj Food Products Pvt Ltd vs. Prasanta Sen, reported at 2018 SCC OnLine Cal 10421.**
- II. **Kanak Projects Ltd vs. Oil and Natural Gas Corporation Ltd., reported at 2014 (2) CHN 405.**
- III. **K.K. Saha & Co. Pvt. Ltd. vs. Ashok Agarwal, reported at 2018 (1) CHN 497.**
- IV. **Debonair Vanijya Pvt. Ltd. Vs. Eshrat Jahan, reported at 2024 SCC OnLine Cal 1178.**
- V. **Poonan Kejriwal vs. Bhagwandas Auto Finance Ltd. (2009) SCC OnLine Cal 1203 (DB).**
- VI. **Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd. (2005) 1 SCC 705.**
- VII. **Gujarat Co-operative Milk Marketing vs. Jawahar Mal & Sons and Others, reported at 2003 AIR (Del) 208.**

4. Learned senior counsel for the petitioner has further submitted that in the Transfer of Property Act, 1882 the legislature in its wisdom has not provided any provision, wherein the rent can be directed to be paid during the pendency of the suit. Learned senior counsel submitted that the Division Bench of this Court in Poonam Kejriwal (supra), inter alia, held that in any suit for eviction and mesne profit against an alleged trespasser, there is no scope for passing an interim order, in term of Order 39 of the CPC to direct

the defendant to pay any amount of money as occupational charges as condition of staying in the property before the decision on merit.

5. Learned Senior Counsel submits that the proposition as being laid in Atma Ram's case (Supra) cannot be pressed into the present case as that order was passed only after the decree was passed by the Appellate Court exercising its power under Order 41, Rule 5(2) of the CPC. Learned Senior Counsel submitted that thus, in view of the settled position of law as laid down in Poonam Kejriwal (Supra) and K.K. Saha & Company Private Limited (Supra) the impugned order is liable to be set aside. Learned senior counsel further submitted that in the alternative the present case may be sent to the Hon'ble The Chief Justice for being assigned for answering the reference on question as raised in the Civil Revisional Application.
6. Mr. Jishnu Chowdhury, learned Senior Counsel for the opposite party/plaintiff submitted that it is a settled proposition that occupation charges can be claimed during the pendency of the suit on the basis of the last paid rent/admitted rent paid by the tenant to the landlord. Learned senior counsel submitted that at the outset the judgments being cited by the leaned senior counsel for the petitioner are under the West Bengal Premises Tenancy Act, 1997 and, therefore, are not applicable to the present facts and circumstances of the present case. Learned senior counsel submitted that the present suit was filed under Transfer of Property Act, 1882 and the opposite party/plaintiff has claimed occupational charges at

the admitted last paid rent paid by the petitioners/defendant to the opposite party. Learned senior counsel for the opposite party submitted that pursuant to the reference made by the Learned Single Judge of this Court in K.K. Saha & Company Private Limited (Supra) the Division Bench answered the reference setting, inter alia, that the Trial Court cannot pass any direction upon the defendant/tenant for payment of damages during the pendency of the suit. Learned senior counsel submitted that in the present case the plaintiff/opposite party/landlord has claimed the occupational charges at the admitted last paid rent and not the damages. Learned senior counsel for the opposite party further submitted that Saj Food Products Private Limited (Supra) is also distinguishable as the opposite party/plaintiff/landlord has never asked for mesne profit or damages to be paid during the pendency of the suit. The opposite party/plaintiff has sought for a prayer to pay the last paid admitted rent or contractual rent by the petitioner/defendant to the opposite party. Learned senior counsel for the opposite party has relied upon the following judgments:

- i. **Bijay Kumar Manish Kumar HUF vs. Ashwin Bhanulal Desai,** reported at **2024 (8) SCC 668.**
- ii. **Green Band Apartments Private Limited vs. Mint Matrix and Others,** reported at **2021 SCC Online Cal 428.**
- iii. **ATC India Electronics Pvt. Ltd. vs. Frostees Export India Pvt. Ltd. & Anr,** decided on **April 28, 2025.**
- iv. **Smt. Sanhita Roy vs. Smt. Indrani Basak ,** reported at **2024 SCC OnLine Cal 7468.**

- v. ABL International Ltd. vs. M.A. Mahmood, decided on August 12, 2015.
- vi. Amalgamated Fuels Limited vs. Deepak Puri Ors., decided on December 6, 2023.
- vii. Kusum Rathod Ors vs. Ramsarup Industries Limited, decided on November 26, 2009.
- viii. Mahabir Prasad Agarwal Ors. Vs. Alcock Mcphar Geotech India Private, decided on March 19, 2014.
- ix. Payel Commercial Private Limited vs. St Pauls K G Day School, decided on October 3, 2023.
- x. Poddar Projects Limited Anr vs. Economic Transport Organisation, decided on February 16, 2015.
- xi. S P International Pvt. Limited vs. Future Retail Limited, decided on November 24, 2021.
- xii. Sharad Goenka vs Tarit Mitra Ors., decided on March 20, 2024.
- xiii. T E Thomson And Co. Limited vs. Ams Living Private Limited, decided on August 13, 2021.
- xiv. Uttam Shaw vs Mainak Bose, decided on July 14, 2022.

7. Both the parties have also filed written submissions and have rendered able assistance to this Court. The question as being agitated by the Learned counsel for the parties has come up for consideration before this Court several times. In Poonam Kejriwal (Supra) the appellant had filed a title suit before Learned Civil Judge (Senior Division) seeking declaration eviction, possession, injunction and mesne profits. During the pendency of suit an application Order 39, Rule 1 and 2 CPC was filed. The appellant/plaintiff

had setup a case that there was an agreement for license between the appellant and the defendant no.1 for 11 months and even after the expiry of license the defendant no.3 the wife of the defendant no.2 had been staying in the suit property. It was alleged that that defendant no.3 the wife of the director of the defendant no.1 is a rank trespasser and has no right to stay in the said flat. Defendant no. 1 and 2 supported the version of the plaintiff and expressed their inability to vacate the suit property, as the same was stated to be in unauthorized occupation of defendant no.3. Defendant no.3 took a plea that in fact it was an agreement for tenancy between the plaintiff and her husband. On account of the matrimonial dispute the defendant no.2 deserted her and started staying in a separate place. Learned Trial Court rejected the application for grant of mesne profit. Aggrieved of this the appellant invoked the jurisdiction of this Court. The Appellate Court framed a question for determination that:

"whether in a suit for eviction even of a trespasser a Court at the instance of the plaintiff, can compel the defendant by way of interim order granting a mandatory injunction to pay or deposit certain amount as occupation charges".

The Division Bench of this Court after taking into account the law regarding the mandatory injunction and observation of the Apex Court in Purushottam Das Bangur vs. B. Majumdar Samipati & Sons Hotel Private Limited, 2008 (7) SCC 447, inter alia, held that in a suit for eviction and mesne profit against an alleged trespasser there is no scope of passing any interim orders in terms of order 39 of the Code to direct the defendant to

pay any amount of money as occupation charges as condition of staying in the property before decision on merit. It is pertinent to mention here that in Poonam Kejriwal Case (Supra) the Court was considering that whether an order for mesne profit can be passed against an alleged trespasser under Order 39, CPC as mandatory injunction.

8. The question again came for consideration before the Learned Single Judge of this Court in Kanak Projects Limited (Supra). Shorn of the details plaintiff filed an application for the occupation charges at the market rate. The application was opposed on the ground that there is no law whereby the Court can direct the tenant to pay mesne profit in the shape of occupation charges as an interim order. In this case the Court after taking into account the judgment of the Supreme Court in Atma Ram Properties Private Limited (Supra) and Purushottam Das Bangur (Supra), inter alia, held that if the Trial Court finds that there is absolutely no defense with the defendant against the claim for eviction made by the plaintiff and eviction would be as a matter of course, it can apply the principles in Atma Ram Case for award of interim mesne profits pending passing of the final decree. The similar question again came up for consideration before Learned Single Judge of this Court in K.K. Saha & Company Private Limited (Supra) wherein a suit for recovery of khas possession, arrear rent and mesne profit was filed. During the pendency of the suit the landlord filed an application under Section 151 of CPC seeking direction to the defendant to pay occupational

charges. The tenant filed objection to the said application. The learned Trial Court put the applications in abeyance. Aggrieved of which the landlord invoked the jurisdiction of this Court. Learned Single Judge of this Court could not pursue himself to the ratio laid down in Kanak Projects Limited (Supra) and after referring to the various provisions of the West Bengal Premises Tenancy Act and the catena of the judgments directed the matter to be placed before the Hon'ble The Chief Justice for constituting a Larger Bench to answer "whether the Civil Court can direct the tenant to pay the occupational charges, damages, mense profits during the pendency of the eviction proceedings at the prevalent market rate in excess of the contractual rent". The Division Bench of this Court in K.K. Saha and Company Private Company Limited (Supra) noted that the Learned Trial Judge cannot direct defendant/tenant to pay occupational charges at the market rent by way of damages in absence of any provision in law, and such direction can only be passed after the issue as to the legality of the possession of the defendant in the suit premises is finally decided in the suit. Hon'ble Division Bench noted that as in various other states civil procedure code has been amended by introducing a new Order XV, Rule 5A in the CPC dealing with striking of defense of the lessee in the suit for eviction filed by the lessor. However, the State of West Bengal has not amended the CPC. Hon'ble Division Bench answered the reference and, inter alia, held that the Trial Court cannot pass any direction upon the

defendants/tenant for payment of damages during the pendency of the suit.

9. Before proceeding further it is pertinent to mention here that petitioner in K.K. Saha & Company Private Limited (Supra) filed a SLP before the Apex Court against the judgment of the Division Bench dated March 16, 2017. Hon'ble Supreme Court disposed of the petition and remanded the matter back to the High Court with the direction that High Court may determine whether West Bengal Tenancy Premises Act, 1997 is applicable and in case the same is not applicable the High Court may further consider the matter in accordance with law.
10. In the meanwhile learned Single Judge of this Court in Saj Foods Private Limited (Supra) agreed with the proposition laid down by the Division Bench K.K. Saha & Company Private Limited (Supra) and referred the matter again to the Larger Bench in view of the fact that the Apex Court had remanded the matter back to the Division Bench. The Division Bench took up both the matters for consideration and reaffirmed the view taken by the earlier Division Bench vide its judgment dated March 16, 2017. However, reference made in Saj Foods Private Limited (Supra) was referred back to the Learned Single Judge in view of the submissions made by Learned Counsel for petitioners.
11. While the matter rested thus, Learned Single Judge of this Court in Green Band Apartments Private Limited (Supra) again considered the question whether in a suit filed by the landlord for the recovery of vacant possession

after termination of the lease agreement has any right to claim any amount from the tenant on account of contracted rent. Learned Single Judge after taking into account the view expressed by the Division Bench of this Court in K.K. Saha & Company Private Limited (Supra) inter alia, held that the decision of the Division Bench in K.K. Saha & Company Private Limited (Supra) did not deal with a situation where the landlord is asking for payment contractual rent/occupation charges and, inter alia, held as under:

“18. In this case, it is an admitted position that the opposite parties are tenants in respect of the property in question and they have contended that they are entitled to reside in the said property upon payment of rent. The tenancy was terminated by a notice by invoking the sooner termination clause. As has been held in the decision of the Delhi High Court, the Court under exercise of inherent power can direct payment of admitted rent. The decision in K.K. Saha (supra) was on a question whether the court could issue a direction upon the defendant/tenant to pay occupation charges at the market rate in excess of contractual rent by way of damages until the termination notice was upheld. The Division Bench held that without knowing what defence was likely to be advanced by the defendant in the written statement and without there being an admission on the part of the defendant about the existence of the relationship of landlord and tenant between the parties, the question of payment of occupation charges at the market rate during the pendency of a suit could not arise.

The ratio in Poonam Kejriwal (supra) does not apply in the facts of this case as in the said decision it was held that a mandatory order of injunction directing deposit of money as an occupation charge by way of security could not be passed, as a temporary measure”.

12. It was noted by the learned Single Judge that the petitioners/landlord were not claiming rent at the market rate, but are claiming the contractual/agreed rent as per the lease deed. Learned Single Judge placed the reliance upon the judgment of the Hon'ble Supreme Court Sarup Singh Gupta vs. S. Jagdish Singh and Others, (2006) 4 SCC 205.
13. It is pertinent to mention that in reply to the application under Order 39, Rule 10 CPC filed by the opposite party landlord, The petitioner/opposite party did not dispute the landlord tenant relationship between the parties. No dispute was also raised as to the rate of rate of rent as having been agreed between the parties from time to time. It is also pertinent to mention that the petitioner defendant admitted that the tenancy is covered within the meaning of the Transfer of Property Act. Learned Trial Court also in the impugned order has taken note of the admitted position of existing relationship of landlord and tenant between the parties. Learned Trial Court also noted that petitioner/defendant had tried to make payment of rent per month through cheque at the amount of its desire to the plaintiff after expiry of the period of lease. Learned Trial Court took into account the last paid rent calculating maintenance charges at the rate Rs.1,50,000/- per month and directed the payment of land for the period September 01, 2018 till August 31 and further directed to pay a sum of Rs.1,50,000/- per month within tenth of each succeeding month as occupational charges till the disposal of the suit. It may be noted that in written objections to application

under Order 39, Rule 10 CPC the petitioner/defendant has not disputed the rate of rent and the maintenance charges.

14. In the suit filed by the opposite party/plaintiff, the ownership was categorically asserted and it was stated that in the premises in dispute the petitioner/defendant was inducted as monthly tenants in the year 2003 which continued till 2014. In September, 2008 the parties also entered into a maintenance agreement whereby the petitioner/defendant agreed to pay sum of Rs. 26,000/- as maintenance charges from September, 2008 till September, 2013. In March, 2014 lease deed was executed between the parties, which was later on duly registered. Vide this lease deed the premises was let out to the petitioner/defendant for a period of 16 months from September 01, 2013 to August 31, 2018 at a monthly rent of Rs.1,00,000/- per month. A maintenance agreement was also executed in January, 2014 vide which the petitioner/defendant agreed to pay a maintenance charges at the rate of Rs.50,000/- per month from September, 2013 to August, 2018. Since the petitioner/defendant failed to handover the possession in August, 2018, notice under Transfer of Property Act was served and petitioner/defendant was called upon to vacate and handover the peaceful possession of the suit property. An application under Order 39 Rule 10 CPC read with Section 15 CPC was also filed in which similar averments were made in para 4 to para 7. In reply to this application the petitioner/defendant in para 7 of written objections stated that the

statements made in para 2 to 7 are matter of record and asserted that the tenancy is covered within the meaning of Transfer of Property Act as a monthly tenant. It is also pertinent to mention here that the petitioner/defendant did not challenge the ownership or the relationship of landlord and tenant thus, the petitioner/defendant has admitted the relationship of landlord and tenant, period of tenancy and the rate of rent and maintenance charges. The petitioner/defendant in his written objections has also not disputed the notice served under Transfer of Property Act.

15. Learned Trial Court in the impugned order also noted that the relationship of landlord and tenant between the parties is not disputed. Learned Trial Court also noted that petitioner/defendant had tried to make payment per month through cheque at the amount of its desire to the plaintiff after expiry of the period of lease and also has sent a cheque of lump sum amount of 16 months rent as per its calculation. Learned Trial Court taking into account this admission noted that petitioner/defendant cannot avoid its liability to make payment of occupational charges after the determination of the lease since they are in possession as trespasser in the suit property and enjoying and occupying the same.
16. It is a settled proposition that a person who is enjoying the property and commercially exploiting the same cannot be allowed to use it without any payment. The landlord cannot be asked to suffer and wait till the conclusion

of the trial, which takes painfully long time. The plea of the person enjoying the property disputing the payment of even agreed contractual occupational charges cannot be accepted.

17. Recently the Division Bench of this Court in Debonair Vanijya Pvt. Ltd. vs. Eshrat Jahan, 2024 SCC Online Cal 1178 though disagreed on an issue and referred the matter to Hon'ble the Chief Justice for referring to the Hon'ble Third Judge. However, the Hon'ble Division Bench was unanimous on the following point and, inter alia, held as under:

"97. The principle on which mesne profits or occupation charges can be directed to be paid to the plaintiff pending appeal by the defendant against an order of eviction as laid down in Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705 would also apply in case of suits for eviction against occupiers and mesne profits pending trial. This is subject to the plaintiff establishing prima facie that the defendant has practically no defence to the claim of the plaintiff. The award of mesne profits or occupation charges need not be based on the market value of the property. It should only satisfy the test of reasonableness.

98. In our opinion, this view is also compatible with the ratio enunciated in Steelco Syndicate v. Sashi Prasad Goenka, (2011) 2 CHN 687, Kanak Projects Limited v. Oil and Natural Gas Corporation Limited, (2014) 2 CHN 405, K.K. Saha & Co. Pvt. Ltd. v. Ashok Agarwal, (2018) 1 CHN 497, SAJ Food Products Pvt. Ltd. v. Prasanta Sen, 2018 SCC OnLine Cal 10421, Utpal Ghosh v. Manas Kumar Mukherjee, 2020 SCC OnLine Cal 528".

18. In Sanjay Gupta vs. Cottage Industries Exposition Limited, (2008) 102 DRJ 234 the High Court of Delhi, inter alia, held that irrespective of whether the status of the opposite parties during the period in question was that a

tenant or a trespasser, after the determination of the lease, the last paid rent would be the minimum charges that would be payable either on account of rent or on account of damages and if it was ultimately found that the tenancy of the suit premises subsisted throughout till the vacation of the property, the amount would be adjusted towards rent and if it was found that the lease was validly terminated, it would be adjusted towards partial damages.

19. Even at the cost of brevity it may be mentioned that in the written objection to the application under Order 39, Rule 10 CPC the petitioner/defendant has not disputed relationship of landlord and tenant and quantum of monthly rent and maintenance charges. The petitioner/defendant is admittedly using the premises for commercial purposes, therefore, they cannot be legally permitted to enjoy the property for free in such like cases. The Court can even exercise its inherent jurisdiction under Section 151 CPC. Reliance is placed upon S.S. Puri vs. R. Chander Shekar, 1994 1 RCR 375.
20. The legal position so emerged would guide this Court to hold that the last paid rent should be the minimum charges that should be payable as an occupational charges. The Learned Single Judge of this Court in Green Band Apartments Private Limited (Supra) has specifically held that the Division Bench in K.K. Saha (Supra) did not deal with a situation where the landlord is asking for payment of actual rent/occupational charges. In view

of the discussion made herein above the Court considers that there is nothing more which should detain this Court from reaching to an inevitable conclusion that the petitioner/defendant cannot deny the liability to pay the admitted contractual rent as occupational charges. The Court considers that there is no illegality or perversity in the order of the Learned Trial Court. Hence the petition is dismissed. No order as to Cost.

(Dinesh Kumar Sharma, J.)