

05.12.2025
Ct. No. 06
Item 05
Cp

C.O. No. 3903 of 2025

Mrs. Chinmoyee Roy
Vs.
Avirup Das

Mr. Sounak Bhattacharya
Mr. Anirban Saha Roy

.....for the petitioner.

Mr. Anirban Roy

.....for the opposite party.

The petitioner is aggrieved by an order dated September 23, 2025, passed by the learned Civil Judge (Senior Division), 2nd Court at Barasat, in Title Suit No.245 of 2024.

The petitioner filed an application under Section 151 of the Code of Civil Procedure, seeking a direction upon the opposite party to pay occupational charges at the market rate, from the date of default, i.e., January, 2024 till the disposal of the suit. According to the petitioner, the rent would be approximately Rs.60,000/- per month, considering the location and the size of the property. It is submitted that the learned court did not assign any reason while dismissing the said application.

Learned advocate for the opposite party submits that the court rightly rejected the said application as the petitioner could not claim occupational charges, during the pendency of the suit. Reliance is placed on a decision

dated February 19, 2019, of a Division Bench in a reference in the matter of **K. K. Saha & Co. Pvt. Ltd. vs. Ashok Agarwal (C.O. 3777 of 2016)** and also a decision of a coordinate Bench in the matter of **SAJ Food Products Private Limited vs. Prasanta Sen**, reported in **(2018) 3 ICC 762**.

The reference before the Division Bench was as follows :-

“Whether the Civil Court can direct the tenant to pay the occupational charges, damages, mesne profits during pendency of the eviction proceeding at the prevalent market rate in excess of the contractual rent.”

The reference was already answered by a Division Bench in **K.K. Saha and Company Private Limited vs. A. S. Agarwal** reported in **2018 CHN 1497**. It was held that the Trial Court could not pass any direction upon the defendant/tenant, for payment of occupational charges at the prevalent market rate during the pendency of the suit. The decision did not deal with a situation where the agreed rent or the contractual rent was being claimed.

Learned Advocate for the opposite party is correct to the extent that occupational charges at the market rate cannot be claimed by the plaintiff.

The decision of **SAJ Food Products Private Limited** (supra) also does not render any assistance to the opposite party, inasmuch as, the issue decided was

factually different. The learned trial judge had allowed claim for mesne profits without adjudicating the rate of mesne profit in the trial. The court was of the view that the claim for occupational charges (mesne profits) was one of the reliefs claimed in the suit and, as such without any adjudication on the quantum, the trial court could not have directed payment of the same.

In my view, the learned trial judge did not commit any error in rejecting the application for payment of occupational charges at the market rate. However, occupational charges at the contractual rent or agreed rent should have been allowed. The suit is for eviction of a licensee. The agreed rent was Rs. 15,700/- per month. In the decision of Green Band Apartments **Private Limited & Ors. Vs. Mint Matrix & Ors.**, reported in **(2021) 2 ICC 269**, this court held that the agreed rent or the contractual rent would be payable. Relevant portions of the said judgment are quoted below:-

“** ** 11. I have considered the rival contention of the parties. In the decision of the Delhi High Court in the matter of S.S. Puri (supra) it was held as follows:—

“13. The combined effect of Order 12 Rule 1 and Order 39 Rule 10 of the Code of Civil Procedure is that a Court can, in a case of this kind, in fair exercise of its judicial discretion order for deposit of money pending decision of a suit. Surely, the provisions of Section 151 of the Code of Civil procedure can be invited in aid to cover all such cases as are analogous to these principles. This being the position, invocation of Section 151 in the present case would neither be in conflict with what has been expressly provided in the Code nor against the intention of the legislature.”

12. In the decision of Karam Kapahi (supra) the Hon'ble Apex Court directed payment of rent during the pendency of the suit and laid down as follows:—

“58. In so far as non-payment of lease rent is concerned, the Club has admitted it in its written statement in paragraphs (8) and (10). The Club has also admitted it in its reply to the Trust's petition under Order 12 Rule 6 referred to hereinabove. The Club has also admitted non-payment of rent in its petition under Section 114 of the Transfer of Property Act where it sought the equitable remedy of forfeiture and which has been denied to it by the High Court for valid reasons.

59. From the pleadings between the parties in this case the following things are admitted: (a) the Club has admitted in its written statement that the Trust is its Lessor; (b) the Club has also admitted that it has not paid the lease rent; (c) the Club has also admitted that the lease rent is more than Rs. 3500/- per month in its reply to the Trust's petition under Order 12 Rule 6; (d) the Club has also admitted the receipt of notice of termination of lease issued by the Trust on the ground of non-payment of lease rent.”

13. In the decision of Sanjay Gupta (supra) Delhi High Court held that as there was no dispute with the admitted position that when there existed a landlord-tenant relationship between the plaintiff and the defendant, the liability to pay such rent could not be avoided and the minimum charges could be directed to be paid at the last paid rent either on account of rent or on account of damages or on account of occupation charges till the vacation of the property and the said amount could be adjusted towards mesne profit and damages. The relevant paragraphs are quoted below:—

“39. In a landlord tenant dispute where their relationship is admitted, the obligation of the tenant to pay rent for the tenanted premises during the period that the tenant is in occupation of the premises cannot be disputed. Inherent in this admission is embedded an obligation to pay the rent/occupation charges, because the admission of the said relationship excludes a claim based on any other title to the property. The relationship between a landlord and a tenant is one where the tenant agrees to pay the rent/occupation charges in consideration for the right granted to him by the landlord to use and occupy the premises. Therefore, he cannot, while being in use or occupancy of the premises, not pay the rent/occupation charges therefore. However, the tenant may set up defenses to justify suspension of his obligation to make payment of rent, of the kind raised in the present case. Once those defenses have been considered and rejected by the court, it necessarily

follows that the obligation of the tenant to pay the rent is established and the tenant holds the money due on account of rent on behalf of landlord. In *Sangeeta Prints v. Hemal Prints* the Bombay High Court relied upon its earlier Division Bench Judgment in the case of *Chandrakant Shankarrao Deshmukh v. Haribhau Tukaramji Kathane* 1983 Mah LJ 88 to hold that in case of a landlord and a tenant, the tenant cannot dispute his liability to pay rent to the landlord although the quantum of such rent may be in dispute. The tenant, in fact, is deemed to admit some money is due to the plaintiff. In such situation the court can direct the tenant to deposit such amount as the court may deem fit under Order XXXIX Rule 10 CPC.

40. Also, in *Surjit Singh v. H.N. Pahilaj* this Court while considering the object of Order 12 Rule 6 CPC, held that relief under the said provision was also available where liability to pay is not denied but being avoided on untenable pleas. The power in such cases could also be exercised under Order XXXIX Rule 10 CPC. The court held that under Section 151 every court is constituted for the purpose of doing justice according to law and must be deemed to possess, as a necessary corollary and as inherent in its very constitution, all such powers as may be necessary to do the right and to undo a wrong in the course of the administration of justice. In appropriate cases the Court can exercise powers under Section 151 CPC where Order 12 Rule 6 or Order 39 Rule 10 CPC may not be applicable for the purpose of doing justice or to prevent abuse of the process of the court.

41. There is no dispute and the admitted position is that there existed a landlord-tenant relationship between the Plaintiff and the Defendant. Admittedly, rent/damages/occupation charge has not been paid by the Defendant after May 2002 till the premises were vacated by the Defendant after March 2003. This liability cannot be avoided, since it is to be met by the defendant irrespective of whether the status of the defendant during the period in question was that of a tenant or of a trespasser holding over 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. If it is ultimately found that the tenancy of the suit premises subsisted throughout till the vacation of the property, it would be adjusted towards rent, and if it is found that the lease was validly terminated, it would be adjusted towards partial damages. The defendant is wrong in contending that the plaintiff by way of the applications under considerations is claiming 'rent' while the claim in the suit is for damages. The claim even in the applications is for damages, though, to avoid a controversy at this stage the

plaintiff has limited the prayer for grant of partial damages computed at the rate at which admittedly the rent was last paid. After a trial, it may be found that the lease of the defendant stood validly terminated and in that eventuality the damages could be still higher, but to the extent of the last paid rent it is the minimum. Therefore, so far as the amount of last paid rent is concerned @ Rs. 3.50 lakhs per month, the defendant is liable to pay the same to the plaintiff for the period June 2002 to March 2003. The defendant is hereby directed to pay the same to the plaintiff within two months of the passing of this order for the period 1.6.2002 till 31.3.2003 i.e. for a period of ten months, which translates to Rs. 35 lakhs. The plaintiff had taken a security deposit of Rs. 15 lakhs from the defendant under the lease deed. After adjustment of the same, the defendant would be liable to pay to the plaintiff at this stage, a sum of Rs. 20 lakhs. Since the amount now being directed to be paid to the plaintiff is not in excess of the amount for which the suit is valued, no further court fee is payable at this stage. Consequently, no issue of payment of court fee would arise for the time being. The question of payment of interest, if any, on the said amount would be considered at the final stage. So far as the maintenance charge are concerned, in view of the law discussed hereinabove, since the said liability is conditional upon the rendering of the agreed services by the landlord and it cannot be treated as payment for use and occupation of the tenanted premises and there is a dispute about the said services having been rendered or not, at this stage, I am not inclined to pass any order to direct the defendant to either pay the same to the plaintiff or even to deposit the same in the court. The payments directed by me by this order are without prejudice to the rights and contentions of the plaintiff in relation to its claim for damages and so far as the claim for arrears of maintenance charges are concerned. The said claims, and the claim for interest shall be considered only after the parties have led their evidence in respect thereof.”

14. In the decision of Kanak Projects (supra) a learned Single Judge of this Court held that for occupation of a premises as a trespasser, the defendant had to pay occupational charges for using the property till the date the property was vacated at the market rate on the ground that if payment of occupation charges was deferred till a decree for eviction was passed which could be after several decades, the possession would become very beneficial for the occupant in the sense that the occupant would enjoy possession upon payment of no occupation charges at all. This Court held that the principles laid in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.* and *Purushottam Das Bangur v. B.*

Majumdar Samajpati & sons Hotel Private Limited would apply.

15. Another learned Single Judge of this Court differed with the said decision in the matter of K.K. Saha & Co. Pvt. Ltd. v. Ashok Agarwal, and held as follows:—

“22. What can be logically deduced therefrom that the imposition of conditions at the time of passing an order for stay of the eviction decree or the execution proceeding can be imposed by the Appellate Court but such directions cannot be passed if the eviction proceeding is dismissed by the Trial Court and the appeal is filed by the dissatisfied landlord. On the same analogy if the suit for eviction is still pending and no decree is passed, it is not open to the Court to direct the tenant to pay the occupational charges till the Court passes a decree for eviction. It would be opposed to the definition of a tenant engrafted under Section 2(h) of the West Bengal Premises Tenancy Act, 1997 which clearly provides that the tenant even after the determination of tenancy shall enjoy all the protections and the rights as that of a contractual tenant until a decree for eviction is passed. 23. In view of the above, I am unable to agree with the ratio laid down in Kanak Projects Ltd. (Supra).”

16. The question referred to the Hon'ble Chief Justice for Constitution of a Larger Bench was held as follows:— “Whether the Civil Court can direct the tenant to pay the occupational charges, damages mesne profits during the pendency of the eviction proceeding at the prevalent market rate in excess of the contractual rent.”

17. The question was answered by the Hon'ble Division Bench in K. K. Saha (supra) that the Trial Court could not pass any direction upon the defendant/tenant for payment of occupation charges at the prevalent market rate during the pendency of the suit on a prima facie basis unless, there was an admission on the part of the defendant about the existence of the relationship of landlord and tenant between the parties and the service of notice was admitted. This decision did not deal with a situation as in the instant case, where the landlord is asking for payment of contractual rent/occupation charges.

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.

19. The relevant paragraphs in the written statement filed by the opposite parties are stated below:—

“8. Allegations made in paragraphs 15 to 17 of plaint are partly true and partly untrue statement. It is denied categorically that as per desire the plaintiffs can terminate the contract entered in between the parties by issuing notice upon their advisory. Defendants state that legality and validity of the notice dated 8th October, 2015 is hereby Challenged and/or denied. These defendants are in possession of the suit property as lessee and they have every right to retain the suit property subject to payment of rent. The defendants have no intention to carry out any illegal acts on the suit property or portions thereof. The plaintiffs made attempt to twist the writing dated 22nd December 2015. It is denied categorically that the defendants have assured the plaintiffs to hand over vacant possession of the suit property as wrongly spelt out. Plaintiffs have not received any letter alleged to have been written on 22nd December 2015. Allegations contrary to that and/or inconsistent therewith are hereby denied.

9.***

10.***

11.***

12.***

20. In this case, the petitioners are not claiming rent at the market rate but are claiming the contractual/agreed rent as per the lease deed. The rate of monthly rent was never denied by the opposite parties. The agreed rent for use and occupation of the property in question as per the lease agreement was at the rate of Rs. 5 lakhs per month for the first year and Rs. 6 lakhs per month from the 2nd year to the end of fourth year. The rent was payable month by month every month within the 10th of every succeeding month. In the decision of Sarup

Singh Gupta v. S. Jagdish Singh reported in (2006) 4 SCC 205, the Apex Court has also noted and observed that, in the event of termination of lease, the Courts have followed the practice of permitting the landlord to receive rent every month by way of compensation for the use and occupation of the premises at an amount equal to the monthly rent payable by the tenant.

23. The income of the landlord by renting out a valuable property should not be put on hold till the final decision in the suit. The said amount of rent paid during the pendency of the suit can always be adjusted with the mesne profits and damages, in the event the suit succeeds and if the suit fails, the same shall be adjusted against rent upto the date of vacation of the suit property.

24. In my opinion, the opposite parties/defendants Nos. 1 to 4 are liable to pay the agreed monthly rent at the last paid rate with all arrears payable from the month of September 2016, (the month following the month for which rent was last paid), upto February 2021. The payment of arrears will carry interest at the rate of 6 % per annum payable proportionately with the instalments. The arrears are to be paid in 15 equal monthly instalments to the plaintiffs along with the current monthly rent till the liquidation thereof. The current rent will be paid from the month of March, 2021 within April 10, 2021 and the same arrangement will continue for all succeeding months till the disposal of the suit. The mode of payment will be the same as was followed prior to filing of the suit. All payments and acceptance will be without prejudice to the rights and contentions of the parties and shall be adjusted with the damages/mesne profits if awarded at the time of disposal the suit and against the rent if the suit fails.

25. This revisional application is disposed of. The order impugned is set aside.”

In this case the opposite party shall be liable to deposit the contractual rent or the last paid rent from the date of the application. As there is a dispute with regard to the period of default, arrears cannot be granted. The amount so paid will be adjusted against the mesne profits that shall be calculated by the learned trial judge at the

final hearing of the suit, in case the suit is decreed. If the suit fails, the same will be adjusted with the rent payable.

Although Mr. Bhattacharya, learned advocate for the petitioner, submits that the maintenance charges have not been paid, by applying the decision in ***Green Band Apartments Private Limited*** (supra) this court is of the view that only the agreed amount can be directed to be paid by the occupier of the premises during the pendency of the suit for eviction under Section 106 of the Transfer of Property Act. Neither can occupational charges at the market rate nor mesne profits nor other disputed charges be claimed in excess of the agreed rent. As the opposite party disputes the contention that the maintenance charges are not being paid, this court cannot permit such claim of the petitioner.

Accordingly, the admitted rent of Rs.15,700/- shall be paid month by month to the petitioner within 15th of the succeeding month. Such payment shall be made from the date of the application, i.e., December 2024.

The arrears from the date of the order shall be liquidated in five equal instalments. First of such instalments shall be paid with the monthly rent of December, 2025, within 15th January, 2026 and thereafter with each month's rent, till the amount is liquidated.

The petitioner will supply the particulars of the bank account and the amount shall be transferred to the said account.

It is expected that the learned court shall proceed with the suit and dispose of the same expeditiously.

The revisional application is accordingly disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)