

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

**C.O. 3784 of 2024
IA No. CAN 1 of 2025**

**Shahnaz Haque
Vs.
Ansar Ali & ors.**

For the petitioners : Mr. Bijoy adhikary
Ms. Susmita Adhikary

For the opposite party Nos. 1 & 2 : Mr. Rahul Karmakar
Mr. Santu Nandy

Heard on : 01.08.2025

Judgment on : 19.09.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioner herein has challenged the impugned order dated 19th July, 2024 passed by learned Small Causes Court, 4th Bench, Calcutta in Misc. Case No. 196 of 2023, arising out of Ejectment Execution case no. 19 of 2023.

2. By the order impugned learned Court below directed that all further proceedings of Ejectment Execution Case no. 19 of 2023 shall be stayed till

disposal of the said Misc. Case being No..196 of 2023 filed under the provision of order XXI CPC on condition that the petitioner shall pay the occupational charges at the rate of 9,000/- per month. w.e.f. the date of the decree.

3. Mr. Bijoy Adhikary learned Counsel appearing on behalf of the petitioner submits that the premises no. 14C Dedar Box Lane was originally owned by Richard Julias Peterson and his others family members, who subsequently sold an area measuring about 25 Sq.ft. on the ground floor to Sk. Sahanul Haque the proforma Respondent no. 4 by a registered deed of conveyance dated 15.10.1998. Said original owner Richard Julias Peterson and others also transferred the property in favour of Sk. Sahanul Haque proforma respondent no.4 Shahnaz Haque and wife of Sk. Sahanul Haque by registered sale deed dated 27.12.2018.

4. Mr. Adhikari's further contention is Kolkata Municipal corporation has mutated the said premises in favour of said proforma respondent no.4 and his wife and they are regularly paying taxes. Said Sahanul Haque had transferred 2/3rd of his share in the property by registered deed of gift dated 09.09.2020 in favour of proforma respondent no. 3, Sk. Samiul Haque and Sahanaz Haque. The petitioner is joint owner of 14/C Dedar Box lane since long which is undivided and undemarcated. Petitioner is also collecting rent as owner and also on behalf of respondent no.4 by issuing rent receipt to the tenants.

5. The respondent opposite party no. 1 and 2 and one Sk quasim, since deceased, filed an ejectment suit being no. 113 of 2015 against tenant Bagbul Haque for recovery of possession and mesne profit before 4th Bench,

which was decreed ex parte on 22.12.2022. The opposite party /decree holder No. 1& 2 and deceased Sk. quasim filed an application for Execution of decree being aforesaid execution no. 19 of 2023. The opposite party no. 1 and 2 and deceased Sk. Quasim also filed another suit being no. TS 1273 of 2021 before the learned 9th Bench, City Civil Court, Calcutta for declaration in regard to the acquirement of validity of title of the petitioner and for permanent injunction against the petitioner herein which is pending for adjudication. Petitioner's contention is that no intimation about such execution proceeding was given to them and the petitioner on 03.10.2023 came to know that behind the back of the petitioner an execution case has been filed. He at once made contact with his lawyer and under his instruction proforma respondent no. 3 and 4 herein filed an application before the Bench on 15.12.2023 under section 151 152 read with order 21 rule 97 98 99 101 103 and 105 of the Code being aforesaid Misc. Case no. 196 2023, in the Ejectment execution case no. 19 of 2023.

6. Petitioners specific case is that petitioner and respondent no. 3 had independent right title interest over the decretal property by virtue of aforesaid deeds and accordingly they filed the aforesaid Misc. case no. 196 of 2023 in the Ejectment Execution case no. 19 of 2023 and as such the petitioner cannot be evicted without due process of law. Moreover opposite parties herein filed a suit being TS. 1273 of 2021 challenging the title of the petitioner which is pending before 9th Bench city civil court Calcutta, wherein also the validity of the deeds is subject matter for consideration.

7. Accordingly the Trial Court while passed the impugned order did not consider that the proforma Respondent no.4 purchased the property

measuring 25 sq.ft. through registered deed dated 15.10.1998 and that the Kolkata Municipal Corporation has mutated the premises no. 43 Dedar Box lane in favour of proforma respondent no.4 and his wife as owners and they are paying taxes regularly. He further contended that the court below while passed the impugned order for payment of occupational charges did not consider that said proforma Respondent no.4 had transferred his 2/3rd share in favour of proforma respondent no.3 and the petitioner by a registered deed of gift dated 09.09.2020. The court below also did not consider that the petitioner is joint owners of 14/C Dedar Box Lane since long which is undivided and undemarcated and the petitioner and proforma Respondent no. 4 is collecting rent as owner by issuing rent receipt to the tenants. He further contended that without considering petitioners ownership in the suit disputed property, the court below had passed an order for the payment of occupational charges at the rate of Rs. 9,000/- per month without any basis and without having any material for determination of such quantum. Accordingly petitioner prayed for setting aside the order impugned.

8. Mr. Rahul Karmakar learned Counsel appearing on behalf of the opposite party submits that said Ejectment suit being no. 113 of 2015 was filed by the opposite party no. 1 and 2 herein against one Bagbul Haque, who appeared in the said suit but did not contest the same thereafter for non compliance of section 7(1), his defence was struck off under section 7(3) of the W.BPT. 1997. Ld. Trial court decreed the suit on 22nd December, 2022 directing the defendant to vacate the decretal premises within two months. Since the defendant failed to vacate the premise in terms of the

order of the court, the Opposite Party herein put the decree into execution being aforesaid ejectment execution case no. 19 of 2023. When the court bailiff went to execute the decree, it was resisted and at this juncture the petitioner herein along with Opposite Party No. 3 and 4 filed aforesaid application under order 21 of the CPC. In the said Misc. Case filed by the petitioner a stay application was also pressed wherein the stay was granted by the Court below by the impugned order subject to payment of occupational charges. In this context Mr. Karmakar submits that there is no specific provisions under order 21, rule 97 to 101 in the Code which permits an executing court to stay execution proceeding or any proceeding arising out of the decree. It is only by virtue of section 151 of the Code that such powers are exercised under the discretion of the court. Therefore such prayer for stay is guided by the principle of order XLI Rule 5 CPC and in order to avail stay of the execution proceeding, the objector is required to pay occupational charges as settled by this court in (2000) 3 CLT 132 and 2016 (3) CLT 428

9. Mr. Karmakar further submits that such discretion exercised by the court in making direction of payment of occupational charges is neither perverse nor illegal nor can be said to be passed without any authority and is not required to be interfered, invoking courts jurisdiction under Article 227 of the Constitution of India. In this context he also relied upon the judgement of Supreme Court reported in (2022) 4 SCC 181

10. Mr. Karmkar further contended that suit property is situated in the central business district of Kolkata and in such cases principle for

determination of occupational charges has been laid down in the judgment reported in (2023) 11 SCC 495

11. Mr. Karmakar further contended that the petitioners want this court to be converted into a Trial Court for taking evidence and collecting documents. The decree passed by the Trial Court cannot be stalled unconditionally. It is the specific case of the opposite party that they have purchased the said premises by a deed of conveyance by 10th September 2014. Sk Sahanul Haque took the same plea in Ejectment Suit no. 112 of 2015 relying upon the alleged deed and learned court below by an order dated 6th march, 2020 called for record of deed no. 1884 of 2001 and in reply to the said order Registrar of Assurance provided copy of deed to the court below, who scrutinized the deed and passed an order holding that the aforesaid deed does not stand in the name of the petitioner or proforma opposite no. 4 and the said deed is not related to the suit property.

12. In this context Mr. Karmakar further submitted that mutation of any premises does not confer any right or interest in the property. He therefore, submits that since the purported deed no.1884 of 2001 are not in the name of the petitioner or the proforma respondent not said deed has got any connection with the suit property, any subsequent deed if executed is bad in law and have no effect in the eye of law and therefore, the certified copy of the alleged deed of gift dated 09.09.2020e executed by Sahanur in favour of Sk Samiul Haque, Respondent no. 3 and Sahanaz Haque, Respondent no.4 is not binding upon the opposite party no.1 and 2. In fact all the alleged tenants are family member of the petitioner and proforma opposite parties and in collusion and connivance with each other and in order to cast a

cloud upon the valuable right of ownership of the Respondent NO. 1& 2 they have filed the Misc. Case no. 196 of 2023. Mr. Karmakar has also raised question that if by the deed said Sk Sahanul Haque allegedly purchased the suit property in 2001 then why he paid rent to the original owner Peterson family in the year 2013. Therefore, learned Court below on being satisfied to the extent of ownership as well as landlordship of the Respondent No. 1 and 2 in respect of the suit premises granted occupational charges in favour of Opposite party No. 1 and 2 and the issue of ownership is no longer *res integra* and the present application is to be dismissed in limine.

13. I have consider submissions made by both the parties.

14. On perusal of order no 52 dated 12.06.2022, it appears that in course of hearing of the aforesaid Misc. Case, another Misc. Case under the provision of order IX rule 13 of CPC being Misc. Case no. 185 of 2023 has been filed, wherein the prayer has been made for setting aside the exparte decree passed in original Ejectment suit no. 113 of 2015. The impugned order no. 62 dated 19.07.2024 demonstrates that trial court noted on perusal of contents of the petition as well as document filed by the petitioner, that the petitioner's have some valid interest in premises no. 14C Dedar Box lane , Kolkata which reflects from photocopy of deed no. 2944 of 1998 by which the petitioner no. 3 allegedly purchased 25 Sq.ft. in the ground floor and the court below also recorded that the execution case from where the instant case has been germinated relates to recovery of possession in respect of one room attached bath cum toilet one kitchen on the 3rd floor and one open room come manchan on 3rd floor of the said premises. Therefore on the claim of ownership though the court below did

not find any justification in the petitioner's contentions of ownership in respect of the rooms on the 3rd floor but at the same time trial court observed that the decree was passed ex-parte and the petitioner have already filed an application under order IX rule 13 CPC which is pending and therefore it would not be proper to proceed with the execution of the decree prior to the final adjudication of the application under order IX rule 13 of the CPC. Relevant portion of the observation of the Court below may be reproduced below :-

"Be that as it may, this Court cannot ignore that the decree was passed on exparte mode and the petitioners have filed an application under Order IX Rule 13 of the CPC which is pending. It will not be proper to proceed with the execution of the decree prior to the final adjudication of the application under Order IX Rule 13 of the CPC. Whether the petitioners have any right over the decretal premises or not is a question which can be mitigated with the help of the evidence adduced by the parties. So this Court finds that the petitioners shall get a chance to establish their claim and for that the execution proceeding shall be stayed, otherwise the petitioner will suffer irreparable loss which cannot be compensated in lieu of money. But admittedly the petitioners are in occupation of the decretal premises which is situated on the 3rd floor of the decretal building and the deed produced by the petitioner relates to the 25 Sq ft area on the ground floor. So the petitioners are in possession of the decretal premises not being the owners. Whether the possession of the petitioner is lawful or not, that can be decided later but as the petitioners are enjoying the possession of the decretal premises, they may be directed to pay a certain amount of money per mensem as occupational charges."

15. In view of aforesaid circumstances when the opposite parties filed the said ejectment suit being no. 113 of 2015 for eviction of the defendant who stated to be in possession of the property and wherein a Misc. case has already been initiated for setting aside the exparte decree passed in the said suit, I am of the view that the court below ought to have disposed of the said misc case being no. 125 of 2013 under order 9 rule 13 of CPC on priority basis and ought to have decided at the first hand whether sufficient reason

had prevented the defendant/petitioner from appearing before the court when the said suit was called on for hearing or it was the defendants pleasure to get the said suit decreed in favour of the plaintiff.

16. Having considered the aforesaid fact and circumstances of the case the present application being C.O 3784 of 2024 is hereby disposed of with a direction upon the court below to dispose of Application under order IX rule 13 of CPC being Misc. case no 185 of 2023 preferably within a period of three months from the date of communication of the order. The impugned order dated 19.07.2024 so far it relates to the payment of occupational charges by the petitioner in favour of opposite parties is stayed till disposal of the aforesaid Misc. Case being Misc. Case no. 185 of 2023 by the court below.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)