

21.11.2025
SL No.9
Court No.6
(gc)

CO 3961 of 2025

**Bijoy Kumar Shaw & Ors.
Vs.
Dipendra Nath Bose & Anr.**

Mr. Ayan Banerjee,
Mr. Arijit Bhowmick
Ms. Debasree Dhamali,
Ms. Riya Ghosh,
Ms. Debasree Mukherjee,
Ms. Debolina Ghosh

...for the Petitioners.

Mr. Kushal Chatterjee,
Mr. Subhasish Mitra,
Mr. Shibjit Mitra

...for the Opposite Parties.

1. This revisional application arises out of an order dated July 23, 2025, passed by the learned Civil Judge (Jr. Divn.), 2nd Court, Sealdah, South 24 Parganas in Title Suit No.619 of 1993.
2. By the order impugned, the learned Court rejected the application under Section 151 of the Code of Civil Procedure, thereby, rejecting the petitioners' prayer for refund of the occupational charges which had been paid and which had accumulated to an approximate amount of Rs.7 lakhs. The Court was of the view that only one issue would have to be decided in the suit on the direction of the learned Appellate Court upon remand. The judgment otherwise remained unchanged.
3. Mr. Ayan Banerjee, learned Advocate for the petitioner submits that the money was paid as

occupational charges, as per the direction of the appellate court, during the pendency of the appeal. Such payment was directed by the appellate court, as a condition for stay of operation of the judgment and decree. Once the decree has been set aside as a whole, the question of further deposit does not arise and the decree-holders now stand in the same footing as if there was no decree. Under such circumstances, the money which was paid to the decree-holders who were successful in their suit, so that they enjoyed the fruits of the decree, should be refunded to the petitioners.

4. Mr. Kushal Chatterjee, learned Advocate for the plaintiffs/opposite parties submits that the application is not maintainable. The petitioners sought restitution under Section 144 of the Code of Civil Procedure. The rejection of application filed under Section 151 of the Code of Civil Procedure was in fact a deemed decree. Nomenclature of the application or the caption of the application, should not be the determining factor. The nature of the order passed, and the contents of the application should be looked into. He submits that payment of the occupational charges was a consequence of the decree and as such, the prayer of the petitioners would be covered by the provision of Section 144 of the Code of Civil Procedure.

5. Having heard the learned Advocates for the respective parties, I hold that this revisional application is maintainable. The refund of the money has to be made, to prevent unjust enrichment of the petitioners, who now stand in the same footing as they were before the decree was passed. They are no longer entitled to enjoy the fruits of the decree as there is no decree in their favour. The money deposited as occupational charges was only for the purpose that successful parties/decreed-holders should enjoy the fruits of the decree and the tenants must pay and stay. Such payment was directed to be made at the enhanced market rate. Section 144 of the Code of Civil Procedure contemplates a situation when the refund of money is a consequence of setting aside of the decree. Had the money component been a part of the decree, in that event the issue of restitution under Section 144 will come into play. Such is not the case. Payment of occupational charges by a tenant who suffers a decree of eviction is based on the principle of equity, that is, a successful party should be able to enjoy the fruits of the decree and cannot be kept in a limbo for years together, because proceedings therefrom are pending in a higher forum.
6. Under such circumstances, this Court is of the view that the prayer for refund is justified. As

this is a suit under the Premises Tenancy Act, the tenants' liability to pay the rent would be governed by the said Act and the learned Trial Judge is at liberty to direct so. The tenants are no longer liable to pay occupational charges from the day the decree was set aside and are also entitled to refund of occupational charges already paid. The tenants were unsuccessful in the appeal. The occupational charges must be refunded.

7. However, the matter has been sent on remand and is pending, hence, the opposite parties shall furnish a bank guarantee to the tune of Rs.7 lakhs before the learned Civil Judge (Jr. Divn.), 2nd Court, Sealdah, South 24 Parganas which shall be kept renewed till disposal of the suit.
8. Such bank guarantee shall be deposited within 15th December, 2025. In default, the petitioner will renew the prayer for refund in cash before the learned Trial Court.
9. Accordingly, the revisional application is disposed of.
10. There shall be no order as to costs.
11. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)