

N.22S1

151/CL

10.04.2026
DL-63
Ct-06
(S.R.)

CO 2323 of 2025

Miss Renu Shaw & Anr.

v.

Rajendra Prasad Gupta & Anr.

Mr. Asit Baran Routh, Adv.

Mr. Tanmoy Mukherjee, Adv.

Mr. Gautam Das, Adv.

... for the petitioners.

Mr. Pijush Kumar, Adv.

Mr. Nadeem Khan, Adv.

... for the opposite party no.1.

1. This revisional application is directed against an order dated March 29, 2025 passed by the learned Judge, 6th Bench, Presidency Small Causes Court, Calcutta passed in Misc. Case No.103 of 2023 on the petitioners' application under Section 151 of the Code of Civil Procedure, 1908 praying for a direction upon the opposite party no.1 to pay occupational charges. By the order impugned an Advocate Commissioner has been appointed to conduct inspection of the decreetal property and to file a report as regards the condition of building etc. for the purpose of calculation of occupation charges.
2. Mr. Routh, learned advocate appearing for the petitioners submits that the order impugned is erroneous inasmuch as, an Advocate Commissioner would not have the requisite expertise to inspect a property for the purpose of determination of rental

income therefrom and the same can be done only by an expert in the field. It is further submitted that the learned Trial Court has not taken into consideration the documents presented before the learned Trial Court as regards the valuation of the property obtained from the Directorate of Registration and Stamp Revenue.

3. Learned advocate appearing for the opposite party no.1 submits that the order impugned calls for no interference inasmuch as the report of the Advocate Commissioner would help the Court in determining the rental income in respect of the property in suit.
4. Having heard the learned advocates appearing for the respective parties and having considered the material on record, this Court is of the view that the order impugned calls for interference.
5. For the purpose of assessment or determination of occupation charges, the Court has to take into consideration such material that would assist the Court in arriving at the actual rent that the landlord may earn from the subject property. Law laid down by the Hon'ble Supreme Court in the case of ***Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*** reported at ***(2005) 1 SCC 705*** is very clear on such aspect. A conclusion as to what would the occupational charges in respect of such property, may not be appropriately drawn on the basis of the report of an Advocate Commissioner.

6. In such view of the matter, the order impugned dated June 11, 2025 is set aside.
7. The petitioners as well as the opposite party no.1 will be at liberty to bring relevant material before the learned Trial Court to indicate the present rental value of the property in the suit i.e. the rent that the landlord would be able to get if the said property is rented out presently. The learned Trial Court shall also be at liberty to appoint an empanelled valuer for the purpose of assessment/determination of rental value of the suit property in the present context and the learned Trial Court shall thereupon assess and determine the occupational charges that may be required to be paid by the opposite party no.1 to the petitioners, in accordance with law.
8. Since the Execution Case is one of the year 2010, therefore, the learned Executing Court is requested to dispose of Misc. Case No.103 of 2023 as expeditiously as possible keeping in view the mandate of the Hon'ble Supreme Court in the case of ***Periyammal (Dead) through LRs & Ors. vs. V. Rajamani & Anr.*** reported at **(2025) 9 SCC 568**.
9. The learned Executing Court is requested to dispose of the application for occupational charges as expeditiously as possible and preferably within a period of two months from the next date fixed, without granting any unnecessary adjournment to

either of the parties.

10. CO 2323 of 2025 stands disposed of with the above observations. No costs.
11. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)