IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Rai Chattopadhyay

CO 4059 of 2025

Shamshad Navazish Khan
Vs.
Md. Shahid & Ors.

For the Petitioner	: Mr. Anindya Sundar Das : Mr. Shaunak Ghosh : Ms. Paramita Mondal : Mr. Syed Ali Afzal : Mr. Suman Halder : Ms. Susmita Das
For the Opposite Parties	: Mr. Tarique Quasimuddin : Mr. Abbas Ibrahim Khan : Ms. Meena Shabnam
Heard on	**: 07.09.2026**
Judgment on	**: 20.11.2026**
Uploaded on	**: 20.11.2026**

Rai Chattopadhyay, J. :-

1. In the instant revision, the petitioner/tenant has challenged the order of the Court dated 24.7.2025 in Title Suit No. 979 of 2023. The Court, that is Judge Bench VI, City Civil Court, by dint of the said order, has allowed installment for the occupation charge, earlier directed against the present petitioner/tenant, to be paid to the opposite party / landlord, in connection with the said suit.

The Court enhanced the number of installments for payment of arrear occupation charge from 10 to 20, directing the petitioner/tenant to pay a sum of Rs. 63,250/- per installment. Ultimately, the Court directed the present petitioner/tenant to pay the current occupation charge, along with the monthly installment of the arrear occupation charge to the tune of Rs. 63,250 /-per month.

2. The present revision is to challenge the said order. Let the factual background culminating into the present revision to be filed by the petitioner be stated in a nutshell, which is as follows: - As stated earlier, the petitioner is the tenant, whereas the opposite party is the landlord of the subject premises. A Title Suit No. TS 388 of 2023 was filed by the tenant before the 6th Bench of City Civil Court, which was for a decree of declaration and permanent injunction. Subsequently, the landlord has filed the other Title Suit No. TS 979 of 2023 for a decree of declaration, permanent injunction, mesne profit, and arrear rent value to the tune of Rs. 70,52,00/- along with an application under order 39 Rule 1 and 2 of the CPC, before the same Court. In Title Suit No. 979 of 2023, the present petitioner being the defendant, filed his written statement and written objection as to the plaintiff landlord's prayer under order 39 Rule 1 and 2 of the CPC.

3. In connection with the said suit, that is TS 979 of 23, the plaintiff/landlord filed an application on 25.9.23, praying for occupation charge. The landlord stated that leave and license agreement between the parties dated 1.4.22 had expired on 28.2.23. However, allegedly in spite thereof, the present petitioner/defendant did not vacate the licensed premises and continued unauthorized possession over there for months together. According to the landlord, the license fee was settled to

be Rs. 55,000/- per month payable by the licensee/petitioner and due to his unauthorized overstay on the premises, such fee fell due from the month of March, 2023 to September, 2023 and thereafter. By filing the said application in connection with the suit as above, the landlord has sought for direction of the Court that for the period of alleged unauthorized overstay of the petitioner licensee in the suit premises, he may be directed to pay occupation charge to the tune of Rs. 55,000/- per month; considering his unauthorized occupation period and non-payment of any charges therefor, the landlord said that an amount of Rs. 70,52,00/- stood as outstanding. The prayer was made that during the time of unauthorized overstay of the petitioner/defendant at the suit premises and also till the time of pendency of the instant suit, he may be directed to pay the occupation charge at the rate as above including the arrear prayed for by the landlord.

4. In the impugned order, the Court has found that during pendency of the suit, the plaintiff/ landlord/opposite party would be entitled for occupation charge and directed the same to be paid by the defendant/licensee/the present petitioner, the actual current amount of occupation charge and also the arrear in 20 installments. Hence being aggrieved, the petitioner challenges the said order before this Court.

5. Mr. Shaunak Ghosh, learned advocate for the petitioner, has submitted that the impugned order suffers from gross illegality and the same is in stark contradiction with the position of law settled as on date. Mr. Ghosh says that the Court would not be justified in allowing occupation charge at an interim stage of the proceeding without finally determining the respective rights and liabilities of the parties in the suit. In this regard, he was referred

to the judgment of Division Bench of this Court in ***Poonam Kejriwal v. Bhagwandas Auto Finance Ltd. & Ors.*** reported in ***2009 SCC OnLine Cal 1203***. He specifically relies on the portion of the judgment where the Court has held that in a suit for eviction and mesne profit against the alleged trespasser, there is no scope for the Court to pass any interim order in terms of order 39 of the Code, directing the defendant to pay any amount of money as occupation charge, as condition of staying in the property, before decision on merit. Therefore, according to Mr. Ghosh, the Court has dealt with the law in the manner that before final decision as regards the respective rights and liabilities of the parties in a suit, the Court cannot direct for payment of money by the occupier of the property as occupation charge. Since in the instant suit the respective rights of the parties are yet to be decided by the suit Court, Mr. Ghosh submits that according to the law settled by the Hon'ble Division Bench in the judgment of ***Poonam Kejriwal (supra)***, the Court could not have directed for grant of occupation charge. According to him, on that score, the impugned order suffers from illegality and requires immediate intervention of this Court. It is submitted that the same is liable to be set aside.

6. The opposite party raises objection to such contention and prayer of the petitioner. It is submitted firstly that the monthly license fee is an agreed sum of money which the petitioner used to pay during the period of his license. It is submitted that after expiry of the period of license, though the petitioner continued to occupy the premises unauthorizedly without any license agreement, but stopped paying any fee or any charges therefor. It is submitted that so far as the petitioner is in occupation of the premises, he cannot refrain from paying for the same of an

amount which is agreed between the parties. That, the petitioner has been violating the condition for payment of fees or charges for occupying the property is an admitted fact in the instant case, and the petitioner would be legally obliged to bear the consequences thereof. So far as the impugned order dated 24.7.2025 is concerned, according to Mr. Tarique Quasimuddin, learned advocate appearing for the respondent/opposite party, there is no illegality or impropriety in the same as alleged. That, since it is an admitted fact on record that the petitioner is in possession of the suit property beyond period of license and without payment of any charges therefor, the Court has come to a just and lawful finding that the petitioner would be liable for payment of occupation charge including the arrears thereof.

7. The following judgments have been referred to by Mr. Tarique Quasimuddin: -

i. ***Karam Kapahi and Others versus Lal Chand Public Charitable Trust and Another*** reported in ***(2010) 4 SCC 753***
ii. ***Frostees India Private Limited versus Ahuja & Company*** reported in ***2025 SCC OnLine Cal 6316***
iii. ***Green Band Apartments Private Limited and Others versus Mint Matrix and Others*** reported in ***2021 SCC OnLine Cal 428***
iv. ***Sanhita Roy versus Indrani Basak*** reported in ***2024 SCC OnLine Cal 7468***

8. It appears that a leave and license agreement was entered into between the parties with respect to the suit property on 01.04.2022. The same expired on 28.02.2023. It appears that the petitioner, who happened to be the licensee over the suit premises under the said agreement dated 01.04.2022, continued

possessing over the suit property even thereafter and till date. He has also filed a suit for declaration and permanent injunction bearing Title suit No. 388 of 2023.

9. The other suit between the parties is that No. TS 979 of 2023, in connection with which the present revision arises.

10. In view of the fact that the petitioner being admittedly in occupation of the suit premises beyond the period of license earlier granted in his favor by the landlord to occupy the same, would be liable for payment of occupation charge as per law. His suit for declaration and injunction may not bear any relevance or connection not to hold him liable for payment of occupation charge for a portion of property on which apparently his right to occupy extinguishes with extinction of the validity period of the leave and license agreement. In the impugned order, the learned trial Court has recognized this right of the opposite party/ landlord that is to receive occupation charge during the pendency of the suit. The Court has gone further to allow the petitioner a substantial amount of easy installments to liquidate his arrear. The fact of occupation of the premises beyond period of leave and license agreement being not disputed in the instant case, this Court finds hardly any impropriety, much less any illegality, in the impugned order of the Court dated 24.7.2025.

11. The judgment cited by the petitioner is of no avail to him in connection with the instant case for the reason that the same pertains to an order for payment of charges passed by the Court under order 39 Rule 1 and 2, wherein the Court has held that a direction for payment of charges for occupying the premises is beyond scope of provision under order 39 of the CPC and while deciding on a prayer under that provision of law, the Court cannot pass such a direction. In the instant case, the Court has

passed the impugned order dated 24.7.2025 while deciding a prayer of the petitioner under Section 151 of the CPC, which confers wide discretionary power to the Court. Warranting circumstances cannot preclude the Court from exercising its inherent jurisdiction. Scope of both the said legal provisions are distinct and distinguishable. The principle laid down in ***Poonam Kejriwal (supra)*** is confined to the exercise of jurisdiction under Order 39 Rules 1 and 2 CPC and does not lay down an absolute prohibition against every interim direction for payment of occupation charges during the pendency of a suit. In the present case, the impugned direction was issued in exercise of the inherent jurisdiction under Section 151 CPC, which operates in a distinct field and enables the Court, in appropriate circumstances, to secure the ends of justice and prevent abuse of its process. The trial court has not granted the monetary relief as a condition for obtaining or retaining an interim injunction, but has recognised the obligation arising from the petitioner's continued occupation of the premises beyond the agreed period of licence without payment of any occupation charges. Consequently, the ratio of the aforesaid Division Bench judgment does not operate as a bar to the particular exercise of inherent jurisdiction undertaken by the trial court in the facts and circumstances of the present case. In the factual background of the present case therefore, the ratio of the Division Benches' judgment as above shall not have any manner of application.

12. The admitted fact that the petitioner continued to occupy the suit premises even after expiry of the leave and licence agreement, without making payment of any amount towards such occupation, furnishes a sufficient prima facie basis for directing payment of interim occupation charges. The parties had

admittedly agreed upon a monthly licence fee of Rs.55,000/-, which, though not conclusive of the damages payable for unauthorised occupation, provides an objective and mutually accepted contractual benchmark for determining the provisional financial liability during the pendency of the proceedings. Permitting the petitioner to continue enjoying the premises without making any payment whatsoever, merely because the respective rights of the parties are awaiting final adjudication, would result in an inequitable advantage to the petitioner at the expense of the opposite party. Such an interim direction is intended neither to finally determine the quantum of mesne profits nor to prejudge the legality of the petitioner's claim to continued occupation, but merely to regulate the financial consequences of such occupation pending adjudication. The amount so directed to be paid would remain subject to adjustment or appropriate determination by the trial court while finally deciding the respective rights and liabilities of the parties. In these circumstances, the direction for payment of provisional occupation charges, particularly when the trial court has also extended the facility of payment of arrears by instalments, cannot be regarded as an impermissible adjudication of the substantive dispute between the parties.

13. The expiry of a leave and licence agreement and the legal consequences flowing from the licensee's continued occupation thereafter are two distinct, though interconnected, legal questions. Expiry of the contractual period brings the authority to occupy the premises under the licence to an end, but it does not, by itself, conclusively determine the nature of the licensee's subsequent occupation, the legal character of his possession or the extent of his financial liability. Such consequences have to be

examined with reference to the terms of the agreement, the conduct of the parties and the circumstances in which occupation has continued. Nevertheless, a licensee cannot ordinarily claim an unrestricted right to enjoy the premises without financial consideration merely because the landlord's entitlement to recover possession or the quantum of damages remains subject to adjudication. The admitted contractual rate of licence fee may, in an appropriate case, furnish a prima facie and provisional basis for determining interim occupation charges, without necessarily constituting the final measure of mesne profits or damages for unauthorised occupation. Therefore, while the ultimate legal status of the petitioner and his liability for mesne profits must remain open for determination in the pending suit, the admitted fact of continued occupation beyond the contractual period may legitimately be taken into consideration for regulating the interim financial obligations of the parties.

14. For the reasons as above, in the considered opinion of this Court, the instant revision does not merit any success, and the same is liable to be rejected. Hence, it is ordered that the revision No. C.O. 4059 of 2025 is dismissed.

15. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)