

OD-5

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE**

**APOT/78/2026
IA No. GA/1/2026, GA/2/2026**

**SANJIB SAHA AND ANR.
-VS-
ANDREW YULE AND CO. LTD.**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellants : Mr. Jaydip Kar, Sr. Adv.
Mr. Sourav Kumar Mukherjee, Adv.
Ms. Sahana Pal, Adv.

For the Respondent : Mr. Suman Dutt, Sr. Adv.
Mr. Rohit Banerjee, Adv.
Mr. Sudarshan Kumar Agarwal, Adv.
Ms. Anushka Chatterjee, Adv.

HEARD ON : 21.05.2026

DELIVERED ON : 21.05.2026

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the plaintiff and directed against judgment and order dated December 12, 2025.
2. By the impugned judgment and order, learned Single Judge, directed the defendant in the suit to pay occupation charges up to

a particular period of time. So far as the balance occupation charges are concerned, the appellant was directed to amend another application for payment of occupation charges.

3. Learned Senior Advocate appearing for the appellant submits that, in a suit for eviction, two several consent orders were passed. He draws the attention of the Court to the consent orders dated May 22, 2003 and May 21, 2009. He submits that, by and under these two consent orders, the respondent was liable to pay occupation charges. In default, defence of the respondent was directed to be struck off.
4. Learned Senior Advocate appearing for the appellant submits that, the respondent failed and neglected to pay occupation charges on and from the month of December, 2019. Consequently, the appellant applied before the learned Single Judge by two several applications for realization of the occupation charges. He submits that, the impugned judgment and order was passed in one of the applications for payment of occupation charges.
5. Learned Senior Advocate appearing for the respondent submits that, in terms of the two several orders that the appellant relied upon, the appellant was required to discharge certain obligations. He submits that, in any perspective, lease stands expired. Upon expiry of the lease, the respondent is not liable to pay any occupation charges.
6. Learned Senior Advocate appearing for the respondent submits that, there are sub-tenancies in respect of the immovable

properties. Such sub-tenancies were created with the consent of the appellant. The respondent is no longer in possession of the property concerned.

7. Learned Senior Advocate appearing for the respondent submits that, in view of the failure of the appellants to discharge their obligations in terms of the two consent orders and sub-tenancies created with the consent of the appellants, the subtenants became direct tenants under the appellant and therefore, they are liable to pay the occupation charges to the appellant.
8. Learned Senior Advocate appearing for the respondent submits that, there is an issue of jurisdiction involved. The appeal Court in one of the proceedings held that, issue of jurisdiction needs to be decided first prior to any order being passed.
9. Learned Senior Advocate appearing for the respondent submits that, the appellant issued a termination notice in 2022 while the suit was filed in 1984. No new suit pursuant to the second termination notice was filed.
10. Learned Senior Advocate appearing for the appellant submits that, the order of the Division Bench dated April 10, 2024, which, the respondent relied up to contend the issue of jurisdiction is kept open, was clarified by the Hon'ble Supreme Court by the order dated December 17, 2024. He submits that, learned Trial Court was granted liberty to proceed with the suit itself in accordance with law.

11. Learned Senior Advocate appearing for the appellant submits that, contention that the respondent is not liable to pay the occupation charges is belied by the developments subsequent to the filing of the suit. He submits that, supplementary lease agreement was entered into where, the respondent acknowledged its liability to pay the occupation charges. In any event, the respondent continued to pay occupation charges till December 2019, after which it stopped payment.
12. Suit for eviction was filed in 1984. Several orders were passed from time to time in the suit at the instance of the parties. Two orders stand out for consideration in the present appeal. They are the consent orders dated May 22, 2023 and May 21, 2019.
13. By these two orders which were passed on consent of the parties, the parties recognized their respective obligations.
14. It is the claim of the appellant that, in terms of these two orders, respondent was liable to pay occupation charges. The respondent failed and neglected to pay the same from the month of December, 2019. The contentions on which the respondent seeks to negate such claims are as noted above.
15. It would be apposite to refer to the relevant portion of the order dated May 22, 2003 which is as follows:

“It is further directed that if the defendant/applicant fails to comply with any part of the orders hereinbefore made the defence of the defendant company shall be struck out and the suit, which stands adjourned for five years from

the date hereof will be transferred to the list of undefended suit for obtaining as ex parte decree.”

16. Similar clause is in the order dated May 21, 2009 which is as follows:

“10. It is further ordered that if the defendant/applicant fails to comply with the Orders hereinbefore made the defence of the defendant company in the Suit shall be struck off and the Suit which stand adjourned for 5 years from the date hereof will be transferred to List of undefended Suit for obtaining an exparte decree.”

17. The two orders dated May 22, 2003 and May 21, 2009 read singularly or cumulatively impose the obligation upon the respondent to pay the occupation charges. Failure to pay the occupation charges visits the respondent with the consequence as noted therein. The consequence is that the defence of the respondent will stand stuck off.
18. Admittedly, on and from the month of December, 2019 occupation charges are not being paid. Contentions of the respondent are that, occupation chargers need not be paid since there is a creation of a sub-tenancy and that, such sub-tenants are the direct tenant of the appellant.
19. With respect, we are unable to accept such contention given the two orders which govern the parties till date. Sub-tenancies were created by the respondent. Creation of the sub-tenancies by the respondent do not obviate their obligation to comply with the two consent orders as noted above. The respondent did not apply for

modification or variation of those two consent orders. These two consent orders continue to bind the parties.

20. Again, the contentions of the respondent that it is not liable to pay occupation charges in terms of the two consent orders on the basis of the execution of the supplementary lease deed or the subsequent notice of eviction are of no consequence on the parity of the same reasoning as noted above.
21. As on date, the respondent is not willing to pay any occupation charges.
22. We are of the view, therefore, that, the default clause in terms of the two consent orders are now operative.
23. The impugned judgment and order is, therefore, modified to hold that, the defence of the respondent stands struck off in terms of the two consent orders dated May 22, 2003 and May 21, 2009 on the respondent not paying occupation charges in terms thereof.
24. APOT/78/2026 along with connected application are disposed of, without any order as to costs.

(DEBANGSU BASAK, J.)

25. I agree

(MD. SHABBAR RASHIDI, J.)