

Present: Smt. Suparna Ray (JO Code:WB00711)
Judge, Commercial Court at Alipore
Title Suit 04 of 2023
Renumbered as TS (Com) 48 of 2023
CNR No. WBSP18-000041-2023

Order No.62

Date: 22.07.2025

In the matter of:

Suit for recovery of possession and mesne profit valued at Rs. 171,80,41,276/- and for injunction at Rs. 100/-.

AND

In the matter of:

Mani Square Limited.

Vs.

Shri Subhash Kumar and 04 Ors.

Appearance:

Mr. Jaydip Kar...Ld. Sr. Advocate
Mr. Pranit Bag... Ld. Advocate
Ms. Sayantani Das...Ld. Advocate
Ms. Rituparna Chatterjee...Ld. Advocate
Ms. Megha Yadav...Ld. Advocate
.....**for the Plaintiff/Petitioner.**

Mr. S. P. Mukherjee...Ld. Sr. Adv.
Mr. Shuvasish Sengupta... Ld. Adv.
Mr. Pushan Kar..Ld. Adv.
Mr. Souvik Majumdar...Ld. Adv.
Ms. Annapurba Banerjee..Ld. Adv.
Ms. Ajeya Chowdhury...Ld. Adv.
.....**for the Defendants/Respondents.**

Order

Today is fixed for passing the Order of I.A. No.13 of 2023.

Plaintiff and defendant nos. 2 to 6 file their respective haziras.

Now, the instant record is taken up for passing order in respect of the aforesaid I.A.

I.A. No. 13 of 2023

1. The instant application has been filed by the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 praying for reliefs as stated therein.

2. Affidavit of opposition to the aforesaid application has been filed and reply to that has also been filed.

3. The contention of the plaintiff/petitioner herein has fully been germinated from the facts which have more-fully been delineated in the plaint as well as in the instant application. Epitome of such fact is as follows:

4. One Jitendra Nath Ghosh, the original owner of the property in question, by virtue of a deed dated 15th December, 1973 leased out the suit property to Kumar Industries for a period of 20 years and by efflux of time said deed expired on 30th November, 1993. Mr. Jitendra Nath Ghosh died on 15th September, 1995 leaving behind his seven sons. In the meantime, the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 was promulgated and came into effect on and from 1st March, 2003 whereby Thika Tenancies were deemed to have vested with the State with retrospective effect from 18th January, 1982. The provisions of the said Act of 2001 mandates that Thika Tenancy and rights there under could be decided by a Thika Controller and Section 4, 5 and 27 of the said Act of 2001 are relevant in the present proceeding. On April 9, 2003 i.e. immediately after the said Act of 2001 was brought into effect, the properties of Kumar Industries claimed to be Thika Tenants and deposited rent with respect to the property in favour of the State of West Bengal. Then, on 10th September, 2007 the plaintiff herein purchased the said suit property from the absolute owners of the said premises being seven sons of Jitendra Nath Ghosh. On 27th January, 2010 an order passed by the Learned Controller holding that the said Kumar Industries qualified as Thika Tenants under the said Act of 2001 and being aggrieved by this Order plaintiff

preferred an application before the State Govt. under Section 13 of the Act of 2001 and the Joint Secretary to the Government of West Bengal in its Department of Land and Land Revenue requested the Kolkata Thika Controller to dispose of the application filed by hearing the parties and the said application was disposed of on August 1, 2012 against the plaintiff and in favour of the Kumar Industries. Then the plaintiff again filed an application before the West Bengal Land Reforms and Tenancy Tribunal and the Ld. Tribunal rejected the said appeal on 18th November, 2013. The plaintiff challenged the said order before the Hon'ble High Court at Calcutta and the said Hon'ble High Court set aside the order of WBLRTT on March 10, 2014. Thereafter, the matter was reached before the Hon'ble Supreme Court and the Hon'ble Apex Court finally decided the matter on 27th July, 2022 declaring that the defendants were not Thika tenants within the meaning of the Act of 1981 giving reasons to that effect.

5. In view of the aforesaid, the plaintiff chose to file the instant suit along with the interlocutory applications before this Court praying for recovery of possession and the mesne profit along with other ancillary relief(s) thereto. In respect of the said application, this Court was pleased to grant an *ad interim* order in favour of the petitioner, *vide* the Order dated 01.04.2023.

6. The contention of the petitioner:

The respondents are trespassers. The respondents are unauthorized, unlawful and in wrongful possession of the suit property. The respondents have no right, title and interest and any

basis to remain in possession thereof. Since the lease has expired by efflux of time, the respondents are occupying the property without payment of any occupational charges.

Taking into consideration that the respondents are occupying the premises without payment of occupational charges, the Hon'ble Supreme Court from time to time had directed deposit of Rs. 1,00,000/- per month and thereafter, @ Rs. 1,50,000/- per month vide Orders dated 15.04.2014 and 22.07.2014 respectively and subsequently, Rs. 20,00,000/- vide Order dated 27.08.2021. The entire amount was released to the petitioner by the Hon'ble Supreme Court of India.

The further contention of the petitioner is that with the adjudication as to the petitioner's title to the suit property having attained finality with the order of the Hon'ble Supreme Court of India dated 27.07.2022 and further the Review application of the respondents having been dismissed, the issue that the petitioner is the sole and absolute owner of the suit premises is beyond any pale of doubt. It is also beyond any pale of doubt that the respondents are unauthorized occupants/trespassers in the suit property, having no right to continue in possession as the lease on the basis whereof the predecessors in interest of the respondents had entered into the property to possess the same have expired by efflux of time. Thus, the respondents have no right to occupy the suit premises. Thus, till the suit is decided by this Court, the respondents are liable to deposit occupation charges in respect of their occupation of the suit premises at the prevailing market price.

As per the petitioner, the petitioner has been able to ascertain that the respondents from 10.01.2018 have let out the suit property to the West Bengal State Beverage Corporation Ltd. at a monthly rent of Rs. 18,30,224/-. The respondents, at least since January 2018, have actually received rent from the suit property, being in wrongful possession thereof a sum of Rs. 18,30,224/- per month. As regards, the petitioner has annexed a letter dated 15.09.2022 written by the West Bengal State Beverage Corporation Ltd. in response to an application dated 12.09.2022 made under the Right to Information Act, 2005.

By referring to the aforesaid letter, the petitioner has contended that the respondents have not only been wrongfully occupying the suit property but also commercially exploiting the same and earning revenue at the cost of the petitioner, who alone is entitled to receive the said sum being the sole and absolute owner of the premises. The occupational charges claimed is just and reasonable and is corroborated by the assessment of market value by a Registered Valuer whose report dated 14.09.2023 is annexed with the instant application. Therefore, the petitioner in the instant application has prayed for order directing the respondents to make payment of occupational charges to the petitioner at the last received rent by the respondents from the West Bengal State Beverages Corporation Ltd. being an amount of Rs. 18,30,224/- per month, which the respondents have earned through commercial exploitation of the petitioner's property, being in unauthorized occupation thereof. Such amount be paid on a monthly basis

without prejudice to the rights and contentions of the parties in the present suit and subject to final result thereof.

7. The contention of the defendants:

To the instant application, the defendants/respondents have ramified their defence into five cleavages which are as follows:

- i.** The defendants stated that they filed a separate suit for declaration that the defendants are the owners by way of adverse possession in respect of the suit and deed of conveyance executed by the legal representatives of Jitendra Nath Ghosh in favour of the plaintiff is null and void. The said suit is pending and the status of the plaintiff and the defendants are sub-judice before this Court.
- ii.** As per the defendants, the Hon'ble Supreme Court imposed the occupational charges as precondition to grant a stay order in exercise of the powers under Order XLI Rule 5 of the Code of Civil Procedure, 1908 and Article 142 of the Constitution of India. Moreover, the directions passed by the Hon'ble Supreme Court for further deposit and withdrawal were "without prejudice to the rights and contentions of the parties"
- iii.** The plaintiff in the present case filed an application under Order XXXIX Rules 1 and 2 of the CPC and the Court has no jurisdiction to pass any order for payment of occupational charges under Order XXXIX Rule 1 and 2 of the CPC.

iv. According to the defendants, during the pendency of the instant suit, the Court cannot impose occupational charges which are in the nature of damages. Till the issue is finally decided by this Court that whether the defendants are the owners by way of adverse possession and/or whether the plaintiff is entitled to recovery of possession from the defendants, the Court has no jurisdiction to impose any occupational charges. Before deciding the suit, this Court has no power to impose any occupational charges under Order XLI Rule 5 of CPC.

v. Lastly, the defendants stated that the relationship between the plaintiff and the defendants is not that of the landlord tenant and therefore, the question of depositing the rent under the West Bengal Premises Tenancy Act or under the Transfer of Property Act does not and cannot arise. The plaintiff has alleged that the defendants are trespasser and on the other hand, the defendants have claimed to ownership and in such a situation, the Court cannot determine the occupational charges.

8. Based on the aforesaid defence and/or counter-statement as buoyed by the defendants, Mr. Mukherjee, Ld. Sr. Advocate and Mr. Sengupta, Ld. Advocate, have set forth their conjoint argument before this Court.

9. Ld. Counsel for the defendants submitted that the heirs and/or legal representatives of the Jitendra Nath Ghosh had knowledge regarding the wrongful and illegal possession of Kumar

brothers, but have not interfered with the possession and allowed the continuous and uninterrupted possession for more than 12 years. Hence, the Jitendra Nath Ghosh and his legal heirs lost their right, title and interest in the property in question after 2005 and the same has extinguished. The purported transfer by the heirs and/or legal representative of Jitendra Nath Ghosh is *ex facie* null and void as they cannot convey any right, title and interest in favour of the plaintiff in the year 2007 when they have lost their right, title and interest in the property in question. As regards, Ld. Counsel referred to the legal maxim "*memo datquod non habet*" and the decision of the Hon'ble Supreme Court reported in **(2022) 7 SCC 90 [Umadevi Nambiar vs. Thamarasseril Roman Catholic Diocese]**.

10. Regarding the scope of Order XXXIX Rule 1 and 2 of CPC for imposition of the occupational charges, Ld. Counsel relied on the decision of the Hon'ble Division Bench of the Hon'ble High Court at Calcutta reported in **AIR 2009 Cal 221 [Poonam Kejriwal vs. Bhagwandas Auto Finance & Ors.]**. According to the Ld. Counsel, in the said case the Hon'ble High Court stated that the scope of grant of any temporary mandatory injunction regarding payment or deposit certain amount as occupational charges is not within the ambit of Order XXXIX Rule 1 and 2 of CPC.

11. It is submitted by the Ld. Counsel for the defendants that the plaintiff's claim as regards payment of occupational charges solely based on the contention that the Hon'ble Supreme Court directed the defendant to pay the same and this Court should pass such

type of order during the pendency of the instant suit. But, such order, according to the Ld. Counsel for the defendants, ought not to be passed by this Court inasmuch as the order of deposit of occupational charges made by the Hon'ble Apex Court was a precondition for granting stay in exercise of powers under Order XLI Rule 5 of the CPC and in exercise of powers under Article 142 of the Constitution of India. This Court has not vested any such power under Article 142 of the Constitution of India and further, being not an appellate Court, this Court lacks powers under Order XLI Rule 5 of CPC. The power to impose occupation charges lies with the appeal court to stay the decree under Order XLI Rule 5 of the CPC. As regards, Ld. Counsel for the defendants relied on the following cases:

- i. **(2005) 1 SCC 705 [Atma Ram Properties (P) Ltd. vs Federal Motors Pvt. Ltd.]**
- ii. **(2005) 6 SCC 489 [Anderson Wright & Co. vs. Amar Nath Roy & Ors.]**
- iii. **(2009) 9 SCC 772 [State of Maharashtra &Anr. vs. Super Max International Pvt. Ltd. & Ors.]**
- iv. **(2022) 8 SCC 527 [Martin and Harris Pvt. Ltd. &Anr. vs. Rajendra Mehta & Ors.]**

12. Ld. Counsel for the defendants pointed out to this Cour that in the Order dated 27.08.2021 the Hon'ble Supreme Court directed to deposit occupation charges by the defendants herein and allowed the plaintiff to withdraw the same, whereas, in the said Order the Hon'ble Apex Court made it clear that "*the stated deposit as well as*

withdrawal will be without prejudice to the rights and contentions of the parties". According to the Ld. Counsel the words "without prejudice" means "without loss of any right; in a way that does not harm or cancel the legal right or privilege of a party". As regards, Ld. Counsel referred to the Black's Law Dictionary and the decision of the Hon'ble Supreme Court reported in **(1978) 3 SCC 113** [**Superintendent (Tech.I) Central Excise, IDD Jabbalpur & Ors. vs. Pratap Rai**].

13. Delving into the scope of payment of the occupation charge within the four-corners of law, Ld. Counsel stated that in the case reported in **(2014) 2 CHN Cal 405**[**Kanak Projects Limited vs. Oil and Natural Gas Corporation Limited**], the Hon'ble Calcutta High Court held that an occupational charges can be imposed during the pendency of the suit if the trial court finds that there is absolutely no defence put forth by the defendant against the claim for eviction. However, in the case reported in **2016 SCC Online Cal 5489** [**K.K. Saha & Co. (P) Ltd. vs. Ashok Agarwal**] a Co-ordinate Bench of the Hon'ble High Court at Calcutta differed with the ratio laid down in Kanak Projects' case and referred the matter to a larger bench. Then, the Hon'ble Division Bench in the case reported in **2018 (1) CHN 497**[**K.K. Saha & Co. (P) Ltd. vs. Ashok Agarwal**]laid down its decision inclined to the view taken by the Hon'ble Single Bench in the case reported in **2016 SCC Online Cal 5489**. Thereafter, an S.L.P. was preferred before the Hon'ble Apex Court and the Hon'ble Apex Court remand back the same before the Hon'ble Division Bench stating that "*....the High Court may now*

determine whether the rent act is applicable and in case the same is not applicable, the High Court may further consider the matter in accordance with law". However, after remanding back the matter before the Hon'ble High Court, the Hon'ble High Court did not interfere with the Judgement reported in **2018 (1) CHN 497**.

14. Apart from the aforesaid, Ld. Counsel submitted that application of Order XVA of the CPC is not applicable to any State apart from the State of Maharashtra and the said position of law was clarified by the Hon'ble High Court at Calcutta in the case reported in **AIR 2009 Cal 58 [Gopinath Mukjerjee vs. Uttam Bharati]**.

15. On the other hand, Mr. Kar Ld. Sr. Advocate assisted with Mr. Bag, Ld. Advocate appearing for the plaintiff/petitioner has countered to the aforesaid contention of the defendants/respondents' Ld. Counsel.

16. The Ld. Counsel appearing for the plaintiff/petitioner has submitted before this Court that the respondents, being the Kumar Brothers herein, did not object or challenge the interim orders as passed by the Hon'ble Apex Court of India on 27.08.2021 and further on the final order dated 27.07.2022 wherein the Hon'ble Apex Court observed that the wrongful occupation of the respondents/defendants herein on the suit property and earnings therefrom as trespassers from December, 1993. The respondents herein have already been stated as trespassers by the Hon'ble Division Bench of the Hon'ble High Court at Calcutta, which was not interfered with by the Hon'ble Supreme Court. As such, the

respondents are very much bound to pay the occupational charges to the petitioner. As per the ascertaining of the petitioner, the respondents have been fetching a monthly rent of Rs. 18,30,224/- by letting out the suit property to the West Bengal State Beverages Corporation Limited from January 10, 2018, thereby making large monetary gains, while the petitioner is deprived of the right to use, occupy or exploit the property. Even, as per the Ld. Counsel of the petitioner, during the course of hearing of the instant application, the respondents did not object to or dispute the amounts received by them.

17. Ld. Counsel for the petitioner has further submitted that it is an admitted fact that the property is being used for commercial purposes. The market value of the property as assessed by a registered valuer on 14.08.2023 also establishes the contention of the petitioner, as regards, Ld. Counsel for the petitioner has referred to the valuation report as annexed at page no. 52 of the instant application. Therefore, in view of the aforesaid facts, the petitioner is entitled to occupational charges Rs. 18,30,224/- per month from the respondents which the respondents are earning through commercial exploitation of the suit property, being trespassers of the suit property. The said amount of Rs. 18,30,224/- is the admitted value which the property can fetch.

18. The further contention of the Ld. Counsel for the petitioner is that the points raised in the Affidavit-in-opposition are sham and baseless since a decree is not necessary for payment of occupational charges in favour of the petitioner nor can it be

contended under any circumstances that the petitioner is not landlord of the said premises. It has already been held by the Hon'ble High Court that the respondents are trespassers in the property. It has also never been contended by the respondents that the sum of money was being deposited with the Registry of the Hon'ble Apex Court without prejudice to the rights of the respondents as alleged in the said Affidavit-in-opposition. Rather, this Court has ample powers under the CPC to direct payment of occupancy charges.

19. To buttress the whole aforesaid contention of the petitioner, Ld. Counsel for petitioner has heavily relied on the case reported in **(2024) 8 SCC 668 [Bijay Kumar Manish Kumar (HUF) vs. Ashwin Bhanulal Desai]**. However, Ld. Counsel for the petitioner has also distinguished the decisions and/or cases as referred to and/or relied on the Ld. Counsel for the respondents during the course of hearing of the instant application, which is stated in the following portion of this order.

20. Before going into further, this Court needs to accumulate the bric-a-brac facts of the instant case into one manger to form the basin wherefrom the seed of the instant application has been sprouted, which is as follows:

21. One Jitendra Nath Ghosh was the sole and absolute owner of a piece and parcel of land being the suit property herein and by dint of a registered indenture dated 15th December, 1973 had leased out the same to one Badri Narayan Kumar and one Nemaï Chandra Kumar who claimed and represented themselves to be the

proprietors of one “Kumar Industries” for a term of 20 years commencing from 01.12.1973 for the commercial purpose of running a ferrous and non-ferrous foundry and machine shop, factory etc. at the rent and on the terms and conditions contained therein. It is fact that the lease of the suit property got subsequently determined by efflux of time i.e. on 30.11.1993. Thereafter, the said Jitendra Nath Ghosh died intestate on 15.09.1995 leaving behind him his seven sons. In the meantime, the State of West Bengal promulgated the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (hereinafter referred to as the “said 2001 Act”) which came into effect on and from 01.03.2003.

22. In terms of the provisions of the said 2001 Act, lands comprised in and appurtenant to tenancies of thika tenants along with the interest of landlords therein were deemed to have vested in the State with effect from 18.01.1982. The said 2001 Act further provides that if any question arises as to whether a person is a thika tenant or not or whether the land in question is thika land or not, the same can only be determined by the concerned Thika Controller.

23. However, the said Kumar brothers had started depositing of rent in respect of the suit property in favour of the State of West Bengal. On such time, in respect of the aforesaid reason, the said Ghosh brothers were prevented from enforcing their right as the owners of the suit property until determination by the concerned Thika Controller as to whether the said Kumar brothers were Thika tenants of the suit property or not.

24. Thereafter, by a registered Deed of Conveyance dated 10.09.2007, the said Ananta Kumar Ghosh and six others as the absolute owners had sold the suit property to the plaintiff/petitioner herein and six other companies for valuable consideration. By an Order dated 19.09.2008, the Hon'ble High Court at Calcutta sanctioned a Scheme of Amalgamation, whereby the said six other companies were amalgamated with the petitioner and consequently all the assets and properties of the said six other companies vested in the petitioner.

25. On 27.01.2010, Learned Controller, Kolkata Thika Tenancy passed an Order holding that the said Kumar Brothers qualified as Thika Tenants under the said 2001 Act in respect of the suit property. Thereafter, the petitioner made a representation dated 26.08.2010 before the State Government under Section 13 of the said 2001 Act whereupon the Joint Secretary to the Government of West Bengal in its Department of Land and Land Reforms requested the Learned Controller to dispose of the application of the petitioner after giving an opportunity of hearing to all concerned. Such application/objection of the petitioner was disposed of by the Thika Controller by an Order dated 01.08.2012 reiterating that the said Kumar Brothers were the Thika Tenants in respect of the suit property and after the death of Badri Narayan Kumar on 06.07.2006, his heirs and heiresses being the respondent nos. 3 to 6 abovenamed along with Nemai Chandra Kumar became the joint Thika Tenants in respect of the suit property. The aforesaid Order dated 01.08.2012 was challenged by the petitioner before the West

Bengal Land Reforms and Tenancy Tribunal and the said Tribunal by a Judgment and Order dated 18.11.2013 had rejected the said appeal. The said Order dated 18.11.2013 was challenged before the Hon'ble High Court at Calcutta. The Hon'ble High Court by a Judgment and Order dated 10.03.2014 hold that the Controller and the Tribunal were not justified in holding that the private respondents before the Hon'ble High Court being the Kumars Brothers were Thika Tenants in respect of the suit property and in further holding that the landlord's interest in the suit property did not vest with the State under the Act of 2001 with effect from 18.01.1982 was pleased to set aside the Order passed by the Tenancy Tribunal.

26. Being aggrieved by the said Judgment and Order passed by the Hon'ble High Court, said Nemai Chandra Kumar and Others had filed a S.L.P. being the S.L.P. (Civil) No. 8297 of 2014 before the Hon'ble Supreme Court of India.

27. In the aforesaid S.L.P., the Hon'ble Apex Court passed two interims Orders dated 15.04.2014 and 22.07.2014 directing the Kumars to deposit occupancy charge initially @ Rs. 1,00,000/- per month from the month of April, 2014 and thereafter Rs. 1,00,000/- per month from July, 2014. In pursuance of the said Orders, a sum of Rs. 4,50,000/- in total was deposited by the Kumars with the Registry of the Hon'ble Supreme Court of India. Then, the said S.L.P. was renumbered as Civil Appeal No. 2402 of 2015. The said Civil Appeal was, thereafter, allowed by the Hon'ble Apex Court of India by a Judgment and Order dated 24.02.2015, upholding that

the property is a Thika Property and that the Kumars were Thika Tenants. Petitioner then filed a petition for reviewing the Order dated 24.02.2015, which was allowed by the Hon'ble Apex Court by a Judgment and Order dated 03.03.2021 when the said Civil Appeal was revived to be considered on its own merit. While restoring the said appeal as aforesaid, the Hon'ble Supreme Court of India was also pleased to revive all interim orders passed in the said Civil Appeal. The said Judgment and Order has been reported in **2021 SCC Online 587**.

28. During the pendency of the said review petition and on 10.11.2016, the said Nemai Chandra Kumar died leaving behind him the respondent nos. 1 and 2 abovenamed as his heirs and legal representatives. After restoration of the said Civil Appeal as aforesaid, in an application made by the petitioner on 27.09.2021 a further Order dated 27.08.2021 was passed by the Hon'ble Supreme Court of India directing the Kumars to deposit a further sum of Rs. 20,00,000/- in the Registry of the Court within two weeks and further directing that out of the deposited amount, the petitioner will be entitled to withdraw a sum of Rs. 16,50,000/- by way of occupancy charges. The Kumars in the said Civil Appeal had complied with the said order by depositing Rs. 20,00,000/- only and the petitioner herein had duly withdrawn the said sum of Rs. 16,50,000/- only as directed. Finally, the Hon'ble Supreme Court of India by a Judgment and Order dated 27.07.2022 was pleased to dismiss the said appeal of the Kumars, *inter alia*, holding that the predecessors of the respondents were not Thika Tenants within the

meaning of the Act of 1981 and that they were also not the Thika Tenants under the Act of 2001. By the said Judgment and Order, the Hon'ble Supreme Court of India was further pleased to direct that the deposited amount together with accrued interest would be disbursed to the petitioner herein and left it open for the petitioner herein to take recourse to appropriate remedies strictly in accordance with law in relation to any other claim/relief. The said Judgment and Order has been reported in **2022 SCC Online SC 920**. Thereafter, the Kumar brothers filed a review application being registered as Review Petition [Civil] No. 1206 of 2022 before the Hon'ble Supreme Court, which was dismissed by an Order dated 17.11.2022. Then, the petitioner made an application being registered as M.A. No. 2017 of 2022 before the Hon'ble Supreme Court of India in the said civil appeal for a direction on the respondents herein to forthwith hand over/deliver the vacant and peaceful possession of the suit property and for further direction on the respondents herein to pay occupational charges. The said application was disposed of by an Order dated 12.12.2022 with an observation that "Needless to reiterate, that the applicant is otherwise free to take recourse to appropriate remedies in accordance with law".

29. It is submitted by the petitioner in the instant application that on passing of the said Judgment and Order dated 27.07.2022 by the Hon'ble Supreme Court of India as aforesaid, the claim made by the predecessors of the respondents and subsequently, by the respondents to be the Thika Tenants of the suit property was finally

rejected and the title of the petitioner as the landlord was affirmed and restored. Therefore, the petitioner, thus, became and is entitled to recover possession of the suit property and further to recover mesne profit from the respondents for their wrongful and illegal occupation of the suit property as a trespasser.

30. Whether the aforesaid claim and/or contention of the petitioner may be the efflux of the Hon'ble Supreme Court's Orders as stated above or not? Is the crucial question which needs to be determined herein.

31. After a gross perusal of the Orders and/or Judgments of the Hon'ble Supreme Court as stated above, this Court finds that the respondents did not object to the interim Order dated 27.08.2021 or the final Order dated 27.06.2022 passed by the Hon'ble Apex Court as regards the payments directed to be made by them. It is also admitted that the payment as directed to be made by the respondents herein is payment which pertains to the occupational charges. As regards, this Court has relied on the averment of the Hon'ble Supreme Court averred in the Order/Judgement dated 27.07.2022, which is *"Before closing, we may also take note of the fact that by way of interim orders dated 15.04.2014 and 22.07.2014, the appellants were directed to make payment towards occupancy charges. The appellants have made certain deposits further an amount of Rs. 20,00,000/- (Rupees twenty lakhs) in the Registry of this Court of which, the contesting respondents were held entitled to withdraw and amount of Rs. 16,50,000/- (Rupees sixteen lakhs fifty thousand) by way of the occupancy charges and the remaining*

amount was ordered to be invested in a fixed deposit with periodical renewal, to be disbursed subject to the outcome of this appeal. The said deposited amount together with accrual interest is ordered to be disbursed to the respondent no. 1 while we otherwise leave it open for the said respondent in taking recourse to appropriate remedies, strictly if accordance with law, in relation to any other claim/relief.”

Therefore, from the aforesaid, there is no confusion at all that the Hon’ble Supreme Court directed the respondents to pay occupational charges in respect of stated amount therein. More so, it can also be deduced therefrom that the Hon’ble Supreme Court directed the respondents to pay such occupancy charge to the respondent no. 1 therein i.e. the present petitioner herein, Mani Square Ltd. However, in the aforesaid Order the Hon’ble Supreme Court further held that “...while we otherwise leave it open for the said respondent in taking recourse to appropriate remedies, strictly in accordance with law, in relation to any other claim/relief”. Therefore, it is further to be stated that the Hon’ble Court granted leave to the Mani Square Ltd. i.e. the present petitioner herein, to take any other claim/relief and such direction further asserted in the M.A. No. 2107/2022 in C.A. No. 2402/2015 as “Needless to reiterate, that the applicant is otherwise free to take recourse to appropriate remedies in accordance with law”. The said relief/claim as opined by this Court is nothing but akin to the present suit as filed by the plaintiff/petitioner herein before this Court.

32. The instant suit was filed on 20.03.2023 by the petitioner. It is also to be stated that in respect of the application filed under Order

XXXIX Rule 1 and 2 of the CPC, this Court was pleased to grant an *ad interim* order in favour of the petitioner, *vide* the Order dated 01.04.2023. After that, the respondents herein also filed a suit being T.S. Com 04 of 2023 on 05.04.2023 (although, the same was initially filed before the Ld. Civil Judge, Senior Division at Alipore then it was transferred before this Court by the Order of the Hon'ble High Court at Calcutta).

33. That being the position as aforesaid, the defendants/respondents in the instant application have raised objections to the contention of the petitioner regarding payment of occupancy charges. However, in the preceding paragraphs of this Order this Court has tried to summarize such contentions but for more convenient such contentions of the defendants/respondents have now been epitomized herein.

34. As per respondents/defendants since the instant suit for eviction is pending and no decree has been passed yet, it is not open to this Court to direct the respondents to pay occupational charges and that any direction for occupational charges can be passed only upon deciding the issue of legality of possession of the respondents. As such Ld. Counsel for the respondents relied on the ratios of cases made in ***Atma Ram Properties (supra)***, ***Anderson Wright & Co. (supra)***, ***State of Maharashtra & Anr (supra)*** and ***Martin and Harris (supra)***. In respect of such contention, this Court has relied on the preceding averment of this Court wherein this Court has tried to clarify the view of the Hon'ble Supreme Court of India made in the instant matter while determining the

issue whether the respondents are thika tenant or not. However, in spite of the aforesaid, this Court has further relied on the ratio of the case ***Bijay Kumar Manish Kumar*** (*supra*) as cited by Ld. Counsel of the petitioner. In the said ***Bijay Kumar Manish Kumar*** (*supra*), during the pendency of S.L.P.s, the Landlord filed interlocutory applications seeking payment of rent and other benefits. The Landlord argued that the Lease Deed had been forfeited due to non-payment, and the Tenant was liable to pay mesne profits. However, in this case, admittedly the lease deed was forfeited by efflux of time. The Tenant therein countered before the Hon'ble Supreme Court that no court had declared the end of the landlord-tenant relationship, and thus no occupation charges were due. The Tenant further contented that since no decree of eviction is passed, and there is no stay awarded, the question of such payment does not arise. With due diligence, it can safely be stated that same set of argument and/or contention has also been raised in this case. And, the Tenant of the ***Bijay Kumar Manish Kumar*** (*supra*) case relied on the cases of ***Atma Ram Properties, State of Maharashtra & Anr*** and ***Martin and Harris*** alike to the present respondents herein. However, it is pertinent to state that in such cases, the Hon'ble Supreme Court granted the entitlement of the Landlords in respect of mesne profits and/or occupancy charges in the post-eviction decree. However, The Hon'ble Supreme Court in ***Bijay Kumar Manish Kumar*** (*supra*) case considered the aforesaid cases and, in this regard, the Hon'ble Supreme Court relied on the judgment reported in **2022 SCC OnLine 1161 [Indian Oil**

Corporation Ltd. v. Sudera Realty Private Limited] to state that mesne profit becomes payable on continuation of possession after ‘expiry’ of lease deed. The ratio of the Hon’ble Supreme Court as regards, needs to be averred in *verbatim*;

“29. While the above-stated position is generally accepted, it is also within the bounds of law, that a tenant who once entered the property in question lawfully, continues in possession after his right to do so stands extinguished, is liable to compensate the landlord for such time period after the right of occupancy expires. In this regard, we may refer to Indian Oil Corporation Ltd. v. Sudera Realty Private Limited, wherein this Court in SCC para 81 observed as under:

“81. A tenant continuing in possession after the expiry of the lease may be treated as a tenant at sufferance, which status is a shade higher than that of a mere trespasser, as in the case of a tenant continuing after the expiry of the lease, his original entry was lawful. But a tenant at sufferance is not a tenant by holding over. While a tenant at sufferance cannot be forcibly dispossessed, that does not detract from the possession of the erstwhile tenant turning unlawful on the expiry of the lease. Thus, the appellant while continuing in possession after the expiry of the lease became liable to pay mesne profits.”

30. It is to be noted that the Court in *Sudera Realty (supra)* observed that mesne profits become payable on continuation of possession after ‘expiry’ of lease. In our considered view, the effect of the words ‘determination’, ‘expiry’, ‘forfeiture’ and ‘termination’ would, subject to the facts applicable, be similar, i.e., when any of these three words are applied to a lease, henceforth, the rights of the lessee/tenant stand extinguished or in certain cases metamorphosed into weaker iteration of their former selves. Illustratively, *Burton’s Legal Thesaurus 3rd Edn.* suggests the following words as being similar to ‘expire’ - cease, come to an end; ‘determine’ is similar to - come to a conclusion, bring to an end;

‘forfeiture’ is similar to – deprivation/destruction of a right, divestiture of property; and ‘terminate’ is similar to – bring to an end, cease, conclude. Therefore, in any of these situations, mesne profit would be payable”.

(emphasis supplied)

35. The Hon’ble Supreme Court of India has further observed in the ***Bijay Kumar Manish Kumar*** (*supra*) case as:

“31. Having considered the submissions made across the Bar, we note that the disputed nature of the lease deed, in other words, its continuation or forfeiture on account of non-payment is heavily contested and stemming therefrom, so is the nature of payment to be made. We also note that the location of demised premises is in the heart of Kolkata and if the submissions of the petitioner are to be believed, they have been deprived of rent for a considerable period of time. Taking a lock stock and barrel view of the present dispute, the averments and the documents placed before us, we may record a prima facie view, that the respondent-tenant has for the reasons yet undemonstrated, been delaying the payment of rent and/or other dues, payable to the petitioner-applicant landlord. This denial of monetary benefits accruing from the property, when viewed in terms of the unchallenged market report forming part of the record is undoubtedly substantial and as such, subject to just exceptions, we pass this order for deposit of the amount claimed by the petitioner-applicant, to ensure complete justice inter se the parties.

32. After all, we cannot lose sight of the fact that the very purpose for which a property is rented out, is to ensure that the landlord by way of the property is able to secure some income. If the income remains static over a long period of time or in certain cases, as in the present case, yields no income, then such a landlord would be within his rights, subject of course, to the agreement with their tenant, to be aggrieved by the same”.

(emphasis supplied)

36. Last, the Hon’ble Supreme Court held that as:

ratio of the Hon'ble Supreme made in ***Bijay Kumar Manish Kumar*** (*supra*) case.

38. The respondents herein have also contended that in the Supreme Court the money was deposited before the Hon'ble Supreme Court without prejudice to the rights of the respondents and that the Hon'ble Supreme Court could pass such order in exercise of power under Article 142 of the Constitution of India, which is not available with the present Court.

39. In respect of contention of power to give direction regarding occupational charges, this Court has further relied on the ratio of the ***Bijay Kumar Manish Kumar*** (*supra*) and also the Order XXXIX Rule 10 of the CPC, which determines the scope of this Court in respect of directing occupational charges. Order XXXIX Rule 10 of the CPC stipulates as "*Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court*". However, the instant application has been filed under the heading of "Order XXXIX Rule 1 and 2 of CPC", but it is settled law that nomenclature of a petition does not affect the substance of the petition and this Court has right to modify and apply proper provision of law to grant relief in a matter to a party if such relief otherwise needs to be granted.

40. Now, in view of contention regarding “without prejudice”, it is to be stated that admittedly in the Order dated 27.08.2021, the Hon’ble Supreme Court while holding to pay the occupational charges to the petitioner stated therein that “*The stated deposit as well as withdrawal will be without prejudice to the rights and contentions of the parties*”. In my view, usage of words “without prejudice” in the Order passed by the Hon’ble Supreme Court does not bar fresh proceedings. It only referred to the fact that merits were not gone into. More so, this Court in consonance with the contention of the Ld. Counsel for the petitioner states that in any event, at the time when the Order dated 27.08.2021 was passed, the S.L.P. was not finally adjudicated and when the same was finally adjudicated by the Order dated 27.07.2022, the Hon’ble Supreme Court did not hold such. Therefore, the ratio of *Superintendent (Tech.I) Central Exercise (supra)* as cited by the Ld. Counsel for the respondents does not attract in the present case.

41. In respect of another contention of the respondents that the petitioner is not a landlord of the respondents and no landlord tenant relationship exists between the parties, which disentitle the petitioner to the relief claims in the petition. In that respect, Ld. Counsel for the petitioner has submitted that such allegation and/or contention is baseless inasmuch as the Hon’ble High Court at Calcutta already held that the respondents are trespassers in the property in question. However, considering the contention of both sides, this Court needs to state that to decide the issue of occupancy charge, considered view of the Hon’ble Supreme Court

made in its aforesaid solemn Orders has to be looked after and this Court has already tried to curve out such view of the Hon'ble Supreme Court in the preceding paragraph(s), more particularly in paragraph no. 31, of this Order. However, for the sake of convenient, it is further stated herein that in the Orders as passed by the Hon'ble Supreme Court, Hon'ble Supreme Court decided to pay the occupational charge to the present petitioner and in the final Order dated 27.07.2015 the Hon'ble Supreme Court categorically directed to disburse the deposited money as occupancy charges to the present petitioner i.e. Mani Square Ltd. herein. As such, such issue ought to be stopped herein with a view to that if any occupational charges are to be made and/or directed, it will go to the present petitioner i.e. Mani Square Ltd. However, this Court has occasion to read with the decision of the Hon'ble Division Bench of the High Court at Calcutta reported in **2014 SCC Online Cal 5448**, wherein the Hon'ble Court held as follows:

“The definition of thika tenant under Section 2(14) of 2001 Act as mentioned above was almost identical with the definition of thika tenant as mentioned in Section 3(8) of 1981 Act except the exclusion part regarding structure which stood forfeited to the State under SubSection 2(6) of the said Act. The definition of thika tenant in Section 2 (14) of Act of 2001 was amended by the Amendment Act of 2010 and thereby the words “by purchase or gift any structure on such land” was substituted by the words “by purchase or gift any structure including pucca structure if any on such land”. Thus the expression “pucca structure” was included in the definition clause of Section 2(14) of the said Act for the first time by the Amendment Act of 2010 and effect of such amendment was given prospectively with effect from 1st November, 2010. The effect of the amendment

was not given from the date when the 2001 Act came into operation from 18th July, 1981. Thus, existence of pucca structure on the said land as on 1st November, 2010 will itself be of no help to the private respondent inasmuch as on 1 st November, 2010 there was no subsisting lease and/or contract under which original lessees were liable to pay rent to their landlords in respect of the land comprising in the said premises. The lease dated 15th December, 1973 expired by efflux of time on 30th September, 1993. After expiry of the said lease, the lessees became trespassers and/or at best they may be regarded as tenant by sufferance who had no liability to pay rent to their landlord either under the said lease which stood expired in 1993 or under any other law. Thus, the first part of the requirement of Section 2(14) of the said Act is not fulfilled in the instant case. As such the land which was comprising in the said tenancy of the predecessor-in-interest of the private respondent cannot vest with the State under Section 4 of the said Act.

(emphasis supplied)

“In fact, this was the decision which was misconstrued by the Thika Controller while drawing his conclusion that since thika tenant raised pucca construction during continuance of his lease, they became thika tenant. In our reading, we find a different principle was laid down in the said decision which could not be properly understood by the controller and the Tribunal which ultimately affirmed the Controller's said order. It was simply decided therein that if a thika tenant raises any pucca construction during the continuance of his lease without the landlord's consent, then the landlord may initiate action for demolition of such unauthorized construction. It was never held in the said decision, that if tenant of a land raises pucca structure, he will automatically be a thika tenant. Since the said decision was the sheet anchor for coming to the conclusion that the private respondents were thika tenant, we cannot approve the said order of the Controller for the aforesaid reason.

Thus, we conclude by holding that the Controller and the Tribunal were not justified in holding that the private respondents were thika tenants in respect of the petitioners' said premises and the landlord's interest in the said premises vested with the State under the Act of 2001 with effect from 18th January 1982. The impugned order passed by the Tribunal is thus set aside. The writ petition is thus allowed."

(emphasis supplied)

42. Further, on assailing the aforesaid decision of the Hon'ble Calcutta High Court, the Hon'ble Supreme Court in its Order dated 27.07.2022 affirmed the same. However, certain portions of the said decision of the Hon'ble Supreme Court are referred to hereunder:

"59. In view of the above, the High Court held that the landlord's interest in the subject property never vested in the State under the Act of 1981.

(emphasis supplied)

62. In view of the above discussion and findings, the High Court held that the Controller and the Tribunal were not justified in holding that the present appellants were thika tenants in respect of the subject property and the landlord's interest therein vested with the State under the Act of 2001 with effect from 18.01.1982. Hence, the writ petition was allowed.

(emphasis supplied)

126. In summation of what has been discussed hereinabove, we could broadly say:

1. The Full Bench decision of Calcutta High Court in Lakshmimoni Das (supra) is affirmed.

2. The structure, as put up by the appellants and/or their predecessors, had been pucca structure on the property in question.

3. For the structure being pucca in character and the term of lease being 20 years, the appellants and/or their predecessors were not thika tenants within the meaning of Section 2(5) of the Act of 1949.

4. The appellants and/or their predecessors were not thika tenants within the meaning of the Act of 1981 for two major reasons:

a. that the structure in question was a pucca structure; and
b. that the Act of 1981 was not operative in relation to the property in question because of the stay order passed by the High Court.

5. On the date when lease expired in the month of November, 1993, the appellants and/or their predecessors were not thika tenants and, therefore, the Act of 2001 does not enure to their benefit.

6. The impugned decision of the High Court, therefore, calls for no interference.

127. Before closing, we may also take note of the fact that by way of interim orders dated 15.04.2014 and 22.07.2014, the appellants were directed to make payment towards occupancy charges. The appellants have made certain deposits and by the order dated 27.08.2021, we had directed the appellants to deposit further an amount of Rs. 20,00,000/- (Rupees twenty lakhs) in the Registry of this Court of which, the contesting respondents were held entitled to withdraw an amount of Rs. 16,50,000/- (Rupees sixteen lakhs fifty thousand) by way of the occupancy charges; and the remaining amount was ordered to be invested in a fixed deposit with periodical renewal, to be disbursed subject to the outcome of this appeal. The said deposited amount together with accrued interest is ordered to be disbursed to the respondent No. 1 while we otherwise leave it open for the said respondent in taking recourse to appropriate remedies, strictly in accordance with law, in relation to any other claim/relief. **(emphasis supplied)**

43. During the course of hearing of the instant application, Ld. Counsel for the respondents has also referred to another decision, as cited above, in support of their contention. Such decisions have already been distinguished by the Ld. Counsel for the petitioner and

this Court holds such contentions of the Ld. Counsel for the petitioner is rightful. However, for the convenience, such distinguishing facts need to be referred herein. In *Umadevi Nambiar (supra)* case is distinguishable as the said decision not fall within the issue of occupancy charge. *Poonam Kejriwal (supra)* case is distinguishable to the fact as the Hon'ble Supreme Court held that since injury was not irreparable and was capable of compensated in terms of money, occupancy charges were not granted. Instant case is far different from that of *K.K. Saha(supra)* case, as such, the ratio of the *K.K. Saha(supra)* case cannot be attracted in the present case, since in this case the respondents had never claimed to be governed by the West Bengal Tenancy Premises Act, 1997. Lastly, the *Gopinath Mukherjee(supra)* case also distinguishable as the petitioner herein did not claim to be adjudicated under the provision of Order XVA of the CPC.

44. Therefore, considering the aforesaid, this Court has no hesitation to hold that the petitioner herein is entitled to get the occupancy charges during the pendency of the *per se* suit inasmuch as it is unjust to stay and/or occupy in a property without paying any penny (*Bjay Kumar Manish Kumar (supra)* case). Rather, in this case, the respondents are fetching money by letting out the same to another.

45. Now, the next hurdle is what amount ought to be determined as occupational charges. As regards, this Court has further relied on the *Bjay Kumar Manish Kumar (supra)* case, wherein the Hon'ble Supreme Court supported the ratio of the case reported in **(2011) 7**

SCC 755 [Mohd. Ahmad v. Atma Ram Chauhan] wherein it is held that *“If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently”*. Therefore, the market value should be worked out. In the instant case, this Court has two references to determine such value. One is the valuation report as annexed by the petitioner with the instant application (page no. 52 of the instant application) wherefrom it appears that the petitioner assessed the market value of the property by a registered valuer on 14.08.2023 and another is the R.T.I. Report as annexed with page nos. 39 to 51 of the instant application, wherein it is expounded that since 10.01.2018 the respondents have been letting out the suit property to West Bengal State Beverages Corporation Limited at a monthly rent of Rs. 18,30,224/- . Considering the aforesaid two references, this Court holds that the second one may be better and more impartial to the first one. Therefore, said amount i.e. Rs. 18,30,224/- is to be considered as the occupancy charges of the suit property. Rather, the petitioner in the instant application has also prayed for the said amount to be decided as occupancy charges.

46. Accordingly, this Court appoints Mr. Souvik Ghosh, Ld. Advocate (Mob. No. 9073584107) and Mr. Jayanta Mukherjee (Mob. No. 7980406038) as Joint Receivers in the instant case with the following directions, which are as follows:

i. The respondents are hereby directed to deposit a sum of Rs. 18,30,224/- (Eighteen lakhs thirty thousand two hundred twenty-four) before the Ld. Receivers within 10th day of per month, through any accepted mode of service, till adjudication of the instant suit. Out of such deposited amount, the petitioner will be entitled to withdraw a sum of Rs. 15,00,000/- (Fifteen lakhs) by way of occupancy charges from the Ld. Receivers. The balance amount i.e. 3,30,224/- (Three lakhs thirty thousand two hundred twenty four) be kept by the Ld. Receivers in a interest bearing account with a nationalized bank and shall be renewed periodically, which will be disbursed subject to the outcome of the *per se* suit. The aforesaid settlement will be rolled on from the next following month i.e. August, 2025.

ii. Ld. Receivers are hereby directed to open a current bank account so as to initially receive the amount of Rs. 18,30,224/- from the respondents and then to maintain the directive as given in the very preceding paragraph of this Order and file details of such current bank account periodically before this Court till the adjudication of the instant suit. Ld. Receivers are also asked to maintain each and every aspect so as to make the limpid delivery of justice by this Court upon adjudicating the instant suit.

iii. Petitioner is directed to pay a sum of Rs. 25,000/- (Twenty-five thousand) to each of the Ld. Receivers as their

initial fees and file a money to that effect on the next date as fixed hereunder. Writ will be issued thereafter.

iv. Ld. Receivers shall have liberty to raise their respective bills periodically as regards their monthly remuneration including all charges and the petitioner herein shall have to pay the same without any undue delay. Both the parties are directed to help the Ld. Receivers to fructify the Order of this Court.

v. If required, Ld. Receivers may have liberty to approach before this Court regarding any further clarification of the instant order.

vi. Petitioner is directed to intimate the Ld. Receivers as regards their appointment. Ld. Receivers are asked to file their written consent before this Court regarding their willingness to be the Receiver in the instant case on or before **28.07.2025**.

47. It is pertinent to mention herein that the defendant no. 1 as impleaded in the original plaint had left heavenly abode and as such, the plaintiff/petitioner herein moved an application being registered as I.A. No. 06 of 2023 for striking out the name of the said defendant no. 1 from the array of the party defendants in the instant suit. This Court in that respect passed an Order dated 17.06.2023 whereby struck off the name of the said defendant no. 1. Henceforth, the defendant nos. 2 to 6 have been contesting the instant suit. Therefore, it is clarified that, in the instant Order respondents and/or defendants mean to the contesting defendants and/or respondents i.e. defendants and/or respondents nos. 2 to 6.

48. Petitioner is hereby directed to file money receipt by **28.07.2025** and if the same be filed, Writ will be issued accordingly.

List the matter on **30.07.2025 from 3:00 to 3:30 p.m.** for hearing of I.A. No. 28 of 2025 and I.A No. 29 of 2025.

Parties to act on the basis of the downloaded copy of the order sheet from the website/E-court App.

Dictated and corrected by me,

Sd/-

Judge, Commercial Court at Alipore,
for South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

Sd/-

Judge, Commercial Court at Alipore,
for South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram