

14.01.2021
(S/L-03)
Ct.-18
(Susanta)

C.O. 22 of 2021

Sri Panna Lal Bhattacharjee & Anr.

-Vs-

Smt. Reeta Paul

Mr. Gopal Chandra Ghosh,

..... For the Petitioners.

Mrs. Sohini Chakraborty,

.... For the Opposite Party.

The petitioners have suffered a decree of eviction and being aggrieved by the said decree has preferred the connected appeal being Title Appeal No 40 of 2020 which is pending before the learned District Judge, Alipore, 24-Parganas (South).

The Appeal Court below by the order impugned being order dated November 25, 2020 has fixed the occupation charge of the suit shop room at the rate of Rs.25,000/- per month as the condition for staying the operation of the decree during the pendency of the connected appeal.

Mr. Ghosh, learned Advocate appearing on behalf of the petitioners submits that the Appeal Court below has assessed the occupation charge at the said rate only on the basis of location of the suit shop room which is disproportionate to the market rate.

Mrs. Chakraborty, learned advocate appearing on behalf of the Opposite party/decreed-holder submits that her client along with the written objection to the application for stay had filed a valuation report, veracity of which since was not questioned by the petitioners, the assessment of occupation charge on the basis of the said valuation report @ Rs. 25,000/- per month is justified.

Heard learned counsel for the parties, perused the materials on record.

The appeal Court below in the order impugned although has mentioned about the said valuation report but it does not appear that the said report was considered while assessing the quantum of occupation charges.

Therefore, to arrive at a just finding regarding the rate of occupation charge of the suit shop room, the application for stay is required to be reconsidered on the basis of the said valuation report.

It is however made clear this Court is not expressing any opinion regarding the correctness of the said valuation report, it is for the appeal Court below to consider.

The order impugned is set aside. C.O. 22 of 2021 is disposed of with the request to the

appeal Court below to decide the application for stay filed by the petitioner afresh in accordance with law.

The appeal Court below is requested to make all endeavour to dispose of the said application within a period of three weeks from the date of communication of this order.

Needless to say, in doing so the appeal Court below shall not entertain the prayer of the parties for any unnecessary adjournment.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)