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Ct. No. 18  
16.03.2021

**C.O. No. 616 of 2021  
(Via Video Conference)**

**Smt. Nupur Neogy  
Vs.  
Anindya Guha & Anr.**

Mr. Ayan Banerjee,  
Mr. Soumo Chaudhury ... For the petitioner.

Mr. Kajal Ray,  
Mr. Aditya Sen ... For the opposite parties.

The petitioner aggrieved by the decree of eviction passed in Title Suit No. 2177 of 2014 has preferred connected Title Appeal No. 76 of 2019.

The appeal Court below by the order impugned in the present application under Article 227 of the Constitution of India being Order No. 4 dated March 4, 2020 has disposed of an application filed by the petitioner praying stay of all further proceedings of execution case levied to execute the decree under appeal.

The appeal Court below has fixed occupational charges @ Rs. 6,000/- per month as the condition for grant of stay as prayed for.

The petitioner is aggrieved by the quantum of the said occupational charges. Mr. Ayan Banerjee, learned counsel appearing on behalf of the petitioner submits that the assessment of Rs. 6,000/- per month is thrice of the contractual rent and much higher than the rate

of rent prevailing in the area where the suit shop room is situated, moreover such assessment has no basis.

Mr. Banerjee, further submits that by the order impugned payment of occupational charges has been directed to be made to the decree-holders without any security but in the event the petitioner succeeds in the appeal there is no guarantee of the refund of the money to be paid.

The decree holders/opposite parties although claimed that the said occupational charges should be at Rs. 15,000/- per month but failed to produce any material in support of their such claim.

The petitioner also did not produce any material before the appeal Court below for assessment of the said occupational charges.

The suit shop room is situated at Chandernagore Station Road, a prime business location. The petitioner is carrying on business from the said shop room.

The learned appeal Court below considering the said location of the suit shop room has assessed the occupational charges at the said rate.

In the absence of any specific material, assessment of occupational charges on some guess work cannot be faulted.

This Court, therefore, does not find any illegality and/or irregularity in the order impugned warranting interference.

However, to avoid unnecessary complication with regard to refund of the occupational charges that may arise if the petitioner/judgment debtor succeeds in the appeal, the petitioner is directed to deposit the occupational charges in the Title Execution Case No. 41 of 2019 pending before the 1<sup>st</sup> Court of learned Civil Judge (Junior Division) Chandernagore, District. Hooghly.

The decree-holders are at liberty to apply in the said execution case for release of the amount to be deposited by the judgment-debtor on account of occupational charges subject to furnishing of security to the satisfaction of the executing Court.

The petitioner shall deposit the arrear occupational charges by three monthly equal installments starting from the month of April 2021, first of such installment shall be deposited within 7<sup>th</sup> April, 2021 and thereafter rest two installments shall be deposited by the petitioner within May 07, 2021 and June 07, 2021. The petitioner shall deposit the current occupational charges along with the installments of the arrear occupational charges.

The petitioner is required to deposit the current occupational charges within 7<sup>th</sup> of each succeeding month for which it falls due.

There shall be an unconditional stay of the said execution case till the end of the month of June 2021. In the event deposits of the occupational charges are

made in the manner and within the time indicated above the stay hereby granted shall continue till the disposal of the connected title appeal.

In default of any of the payments mentioned above the stay hereby granted shall automatically stand vacated and the decree will be executable at once.

The appeal Court below is requested to expedite the disposal of the appeal.

C.O. 616 of 2021 is disposed of with the above terms.

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.)