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22.07.2021
TN

CO No.810 of 2021

Jagadish Bose and another
Vs.
Subhra Bhattacharjee

(Via video conference)

Mr. Jayanta Samanta,
Ms. Karunamoyee Samanta

.... for the petitioners

Mr. Bratindra Narayan Roy,
Ms. Setparna Roy

.... for the opposite party

Learned counsel appearing for the petitioners/decreed holders contends that, despite having obtained an eviction decree, the petitioners could not gain the fruits thereof in view of an appeal being filed by the judgment debtor/opposite party. In connection with such appeal, vide impugned Order No.09 dated March 18, 2021, stay was granted to the appellant/opposite party on condition of payment of occupations charges of Rs.6,000/-.

Learned counsel for the petitioners contends that such sum is even below the amount of the rent of

the suit property, at which rate it was being last paid. Moreover, the petitioners rely on a report purportedly prepared by a Chartered Engineer, annexed at page 180 of the revisional application, to contend that the monthly occupation charges should be Rs.39,450/- for the property.

Learned counsel appearing for the opposite party contends that, since the revisionist petitioner has always been claiming rent of Rs.6,050/-, it is beyond the scope of the litigation for the appellate court to allow the occupation charges higher than that.

That apart, it is submitted by learned counsel for the opposite party that a small chicken meat shop is being run from the decretal premises. Due to the ongoing pandemic, such business has suffered immensely. As such, it is argued by the opposite party that the occupation charges were correctly fixed and need not be enhanced.

Upon going through the impugned order and considering the submissions of the parties, it is seen that the appellate court imposed occupation charges of Rs.6,000/- per month as a condition of grant of stay, only going by the rent last paid by the opposite party. However, it is well-settled that occupation charges, granted as a condition for stay under Order

XLI Rule 5 of the Code of Civil Procedure, have to be commensurate with the current market value, which the property-in-question can fetch at the juncture when the stay order is passed.

In view of the absence of such consideration in the impugned order, Order No.09 dated March 18, 2021, is set aside, directing the appellate court below to re-hear the application for stay filed in connection with Title Appeal No.17, 2020, upon giving both the parties opportunity of producing evidence in support of their respective contentions as regards occupation charges, if necessary, by appointing an Engineer Commissioner to so ascertain.

The stay order granted in the impugned order, however, shall continue during pendency of the stay application on condition that the opposite party goes on paying Rs.6,000/- per month as occupation charges on an *ad hoc* basis.

It is made clear that the merits of the matter have not been gone into by this court, nor the actual occupation charges, which can be fetched for the suit property, has been considered by this court.

The trial court shall re-adjudicate and dispose of the stay application afresh on its own merits as directed above, without being influenced by any of the observations made herein, as expeditiously as

possible, positively within two months from the date of communication of this order to the appellate court.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)