

06,DL,Ct.18.
28.04.2021
AJ.

C.O. 811 of 2021
(Via Video Conference)

Smt. Rekha Singha & Ors.
-Vs-
Sri Kausik Daw

Mr. Shib Shankar Banerjee,
Mr. Santanu Chatterjee.
... for the petitioners.

Mr. Abhijit Roy,
Mr. Shobhan Gupta.
....for the opposite party.

A supplementary affidavit filed on behalf of the petitioners which is taken on record.

The petitioners being the defendants of Ejectment Suit No. 536 of 2012 had suffered a decree of eviction and aggrieved by the said decree have preferred the connected Title Appeal No. 20 of 2020 which is pending before the learned Chief Judge, City Civil Court at Calcutta.

The Appeal Court below by the order impugned has assessed the occupational charges @ Rs. 27,000/- per month as the condition for grant of stay of the execution case levied to execute the decree under appeal.

Mr. Shib Shankar Banerjee learned advocate for the petitioners submits that the plaintiff has prayed for mesne profit @ Rs.500/- per month, as such fixation of the occupational charges at a higher rate than the rate of mesne

profit prayed for is not legally sustainable, particularly when the inquiry as required under Order XX Rule 12 of the Code of Civil Procedure is yet to be conducted. He further submits that the suit premises is a hundred years old building, therefore, the rental value of the suit property is much less than Rs. 27,000/- per month.

Mr. Abhijit Roy, learned advocate for the decree holder/opposite party submits that the petitioners are occupying the entire second floor of the suit premises measuring about 1800 sq. ft.

He draws my attention to the cross-examination of the original defendant, Sukumar Singha, the predecessor-in-interest of the present petitioners recorded on February 06, 2019 wherein the said witness has admitted that the rental value of the suit property would be Rs. 50/- per sq. ft.

Having heard the learned advocates for the parties and on perusal of the materials-on-record, it appears that the petitioners are occupying the entire second floor of the suit premises which is measuring about 1800 sq. ft. and the suit property is situated in Central Kolkata at Amherst Street. The admission of the original defendant in his cross-examination regarding rental value of the suit property is also a relevant consideration in assessing the rate of occupational charges.

The appeal Court below on assessment of the aforementioned materials-on-record has fixed the occupational charges @ Rs. 27,000/- per month.

This Court in exercise of the jurisdiction under Article 227 of the Constitution of India is not inclined to re-appreciate the said materials-on-record to interfere with the order impugned.

The rate at which mesne profit is prayed for and/or inquiry regarding assessment of mesne profit at a stage when the decree is yet to attain finality has no relevance in assessment of the rate of occupational charges to be paid by the judgment-debtor to get an order of stay pending challenge to the decree.

The order impugned for the aforesaid reasons does not call for any interference.

C.O. 811 of 2021 is dismissed without any order for costs.

The learned Court below is directed to expedite the disposal of the appeal itself.

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.)