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SK
Ct. No. 18
16.04.2021

(Via Video Conference)
C.O. No. 846 of 2021

Sri Chaitanya Dev Nandi
Vs.
Sri Somdev Maiti & Anr.

Mr. Sabyasachi Mukhopadhyay,
Mrs. Koushikee Banerjee ... For the petitioner.

Mr. Debjit Mukherjee,
Mr. Prabir Roy,
Ms. Susmita Chatterjee,
Mr. K. Bhattacharyya ... For the opposite parties.

The petitioner is the defendant of the ejectment suit being Title Suit No. 257 of 2012 and has suffered a decree of eviction in the said suit.

The petitioner has preferred the connected Title Appeal No. 43 of 2020, which is now pending before the 5th Court of learned Additional District Judge, at Howrah.

The appeal Court below by the order impugned has fixed the occupational charges @ Rs. 9,660/- per month as the condition for grant of stay of the decree under appeal.

Mr. Sabyasachi Mukhopadhyay learned advocate for the petitioner submits that the rate of occupational charges is much higher than the present rental value of the suit room.

Mr. Debjit Mukherjee, learned advocate for the opposite parties submits that the petitioner is running

his business from the suit shop-room which is located at a prime business location of the District of Howrah.

He however submits that to avoid unnecessary delay in disposal of the appeal his clients are ready and agreeable to accept the occupation charges @ Rs. 5,000/- per month.

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

The appeal Court below has fixed occupational charges @ Rs. 9660/- per month considering the present market price and costs of essential items, the said considerations are totally irrelevant for the purpose of fixing the rate of occupational charges.

However, when the opposite parties are more interested in expeditious disposal of the appeal instead of remanding the matter back to the appeal Court below for assessment of proper rate of the said charge, the said occupational charges is fixed at Rs. 5000/- per month as suggested by Mr. Debjit Mukherjee learned advocate for the opposite parties.

The said occupational charges is required to be paid from the date of decree. The arrear occupational charges be liquidated by three equal monthly installments.

The petitioner is required to pay the first of such instalments along with the current occupational charges within May 07, 2021 and thereafter the

petitioner shall pay the rests of the instalments and current occupational charges within 7th of each succeeding month for which it falls due.

There shall be an unconditional stay of all further proceedings to the execution case levied to execute the decree under appeal before the 2nd Court of learned Civil Judge, (Junior Division), at Howrah being Title Execution Case No. 46 of 2020 pending till May 15, 2021 and in the event of the deposits are made as directed above within the stipulated time the stay hereby granted shall continue till the disposal of the Title Appeal No. 43 of 2020.

In the event of any default in payment of any of the aforementioned amounts the said stay shall automatically stand vacated and the decree will be executable at once.

The order impugned is modified to the extent indicated above.

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

C.O. 846 of 2021 is disposed of with the above terms without any 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.)

