

AD. 9.
July 23, 2021.
MNS.

C. O. No. 1186 of 2021
(**Via video conference**)

Smt. Arati Ash
Vs.
Sri Anadi Kumar Das and others

Mr. Arijit Bardhan,
Mr. Debanik Banjeree

... for the petitioner.

Mr. Utpal Majumdar,
Mr. Dwaipayan Ghosh

...for the defendant-opposite party no. 1.

Affidavit-of-service filed in Court today be
taken on record.

Heard learned counsel for the parties.

The grievance of the petitioner is that the appellate court granted stay of operation of an eviction decree by imposing meagre occupation charges at the rate of Rs.10,000/- (Rupees ten thousand) only per month, that too, from the date of the order instead of from the date of the eviction decree, without adverting to the materials produced by the petitioner in support of the amount which the property can fetch in the market currently.

Learned counsel for the judgment debtor/opposite party contends that the opposite parties disputed squarely the area of the premises as disclosed by the revisionist petitioner in their appeal and the written objection to the said application filed by the opposite parties.

It is contended that, on the basis of such pleadings made for the first time before the appellate court, the appellant ought not to have granted occupation charges at all. It is further submitted that the amount as directed by the appellate court to be paid as a condition of stay was more than sufficient.

It appears from the materials on record that the revisionist petitioner specifically referred to a valuer's report, filed along with the written objection, which was not considered by the appellate court. In fact, no materials, apart from valuer's report, were produced in support of the respective contentions of the parties adequate to establish the market value which the property can fetch at the present juncture.

It is also noticed that, as per the general norms as settled by the Supreme Court, occupation charges are granted from the date of the impugned eviction decree and not from the

date of the order of stay. Such aspect was also not taken into consideration by the appellate court while passing the impugned order.

Accordingly, C. O. No. 1186 of 2021 is allowed, thereby setting aside the impugned order and directing the appellate court below to dispose of the stay application filed in connection with Title Appeal No. 23 of 2020 pending in the said court, afresh upon adverting to the pleadings on record as well as granting fresh opportunity to both the parties to produce adequate materials to substantiate their respective cases as regards the appropriate occupation charges of the suit property, keeping in view the necessary yardsticks as set forth by the Supreme Court in various judgments.

As such, the fresh hearing of the stay application shall be concluded by the appellate court at the earliest, latest within one month from the date of communication of this order to the said court.

During pendency of the stay application for hearing, the defendant-opposite party no. 1 shall go on paying Rs.10,000/- (Rupees ten thousand) only per month, within 15th of the current month for which the amount is due, starting from the

month of August, 2021, as a precondition for the continuance of stay.

In the event such deposits are made without default, the order of stay granted in the impugned order shall continue to remain in force subject to the result of the re-hearing of the stay application. In case of default, however, this order shall stand automatically vacated without further reference to court.

It is made clear that the merits of the contentions of the parties regarding appropriate occupation charges have not been gone into at all and the appellate court will be free to proceed independently to adjudicate the stay application along with the objection on their own merits, without being influenced by any of the observations made herein.

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.)