

AD. 10.
July 23, 2021.
MNS.

C. O. No. 1214 of 2021
(**Via video conference**)

Anisur Rahaman
Vs.
Golab Murshed and others

Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee

... for the petitioner.

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

Despite service, none appears on behalf of
the opposite parties.

Learned counsel for the petitioner
contends that the impugned order, whereby
occupation charges at the rate of Rs.3,000/-
(Rupees three thousand) only per month was
imposed as condition of grant of stay of an
eviction decree on the appellant-petitioner,
without adverting to any material in support of
such quantum and even in the absence of any
written objection being filed to the stay application
by the respondents-opposite parties.

A bare perusal of the impugned order
makes it clear that the appellate court proceeded
merely on conjecture and surmise to fix the rate

of occupation charges at Rs.3,000/- (Rupees three thousand) only per month, without any indication as to the market rate, which the suit property can fetch at the present moment being produced or pleaded by the opposite parties.

Hence, C. O. No. 1214 of 2021 is allowed, thereby setting aside the impugned order and directing the Civil Judge (Senior Division) Jangipur, District- Murshidabad, to dispose of the stay application filed in Title Appeal No. 9 of 2020, pending in the said court, upon giving an opportunity to both sides to produce sufficient materials in order to ascertain the appropriate occupation charges as condition for grant of stay. Such disposal shall be made as expeditiously as possible, positively within two months from the date of communication of this order to the appellate court below.

The stay order granted by the appellate court shall continue till the fresh disposal of the application for stay, on condition that the revisionist petitioner goes on paying Rs.1,000/- (Rupees one thousand) only per month on an *ad hoc* basis as a condition for such stay.

However, it is made clear that the merits of the actual quantum of appropriate occupation

charges have not been gone into by this court and the appellate court shall independently decide the same without being influenced by any of the observations made in this order.

In the event of default in payment of any of the monthly instalments of occupation charges, which shall commence from the month of August, 2021, payable by the 15th of each current month for which occupation charges becomes due, this order shall stand automatically vacated without further reference to court.

The parties as well as the appellate court below shall act on the communication of this order by the learned advocate for the petitioner, accompanied by a server copy of this order, without insisting upon prior production of a certified copy thereof.

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.)