

CO No.1273 of 2021

Rakesh Chandra Agarwal

-vs-

Din Dayal Kayan

Mr. Bratin Kumar Dey
... for the petitioner

Mr. Rahul Karmakar
... for the opposite party

The impugned order dated 12th March 2021 passed by the Learned Chief Judge, City Civil Court in Title Appeal No. 29 of 2019 granting occupational charges payable by the appellant/defendant to the respondent/plaintiff at the rate of Rs.8750/- per month at the rate of Rs. 50/- per sq. feet is the subject of challenge in this revisional application.

Admittedly, the tenanted premises is situated at New market area and it is used for commercial purpose prior to 15th September 2009. The plaintiff/landlord in connection with an eviction suit was favoured with an eviction decree and, thereafter, an Execution Case being 99 of 2019 was initiated. The appellant/tenant being aggrieved with the eviction decree preferred an appeal being Title Appeal no. 29 of 2019 before the Learned Chief Judge, City Civil Court, which is pending for hearing.

Mr. Bratin Roy, learned advocate appearing for the petitioner/tenant has challenged the amount granted as occupational charge in respect of the tenanted premises being occupied by the tenant, and obtained an interim order, directing the occupational charges to be enhanced at the rate of Rs.3500/- per month. According to Mr. Roy, the

quantification of the occupational charge has not been properly done, taking into account the rent payable to the landlord in respect of the tenanted premises together with adjoining tenants living in the adjoining locality.

Mr. Rahul Karmakar, learned advocate representing the opposite party raises objection submitting that the suit premises is situated in a posh area, and supporting the order of the Learned Court below, contends that there lies no irregularity, requiring interference by this Court. It is further submitted by Mr. Karmakar that because of the pendency of this appeal, the desired relief already obtained in this case, could not be executed resulting in the respondent / landlord to face utter hardship and serious consequence thereof. Mr. Karmakar incidentally proposes for passing a direction so that the appeal may be disposed of as expeditiously as possible, framing a time limit, therefor.

The point is very short and simple requiring no extensive hearing. Admittedly, the tenanted shop is located at New Market area and that is mainly for commercial purpose.

True, that it is situated within a commercial area, but more important is that pandemic is going on and the shop owner had to suffer serious consequences in view of the proliferation of COVID-19, which must be taken into account while making quantifications of the occupational charges in respect of the tenanted premises.

It is not disputed that the petitioner/tenant has been occupying the suit premises prior to 15th September 2009.

Having considered the submissions of both sides, this Court is of the view that a little enhancement of the amount as

regards occupational charge will not cause any prejudice to either of the parties to this case, and order impugned is thus modified granting occupational charge at the rate of Rs.5000/- per month, instead of Rs.8750/- per month, with effect from the date as already ordered by the Learned First Lower Appellate Court, i.e., 20th February 2019.

With the above directions and observations, the civil revisional application being CO 1273 of 2021 is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Subhasis Dasgupta, J.)