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Ct. 18
25.11.2021

**C.O. No. 1444 of 2021
(Via Video Conference)**

**Smt. Reeta Paul
Vs.
Sri Pannalal Bhattacharjee & Anr.**

Mrs. Sohini Chakrabarty,
Ms. Prajaaini Das ... For the petitioner.

Mr. Gopal Chandra Ghosh... For the opposite parties.

The opposite parties have suffered a decree of eviction in Title Suit No. 312 of 2015; aggrieved by the said decree, they have preferred the connected Title Appeal No. 40 of 2020 which is pending before the learned District Judge, District – 24 Parganas (South) at Alipore.

The appeal Court below by the order impugned being Order No. 11 dated February 10, 2021 has fixed occupation charge @ Rs. 12,000/- per month with effect from the date of the said order as the condition for stay of the Execution case levied to execute the decree under appeal.

Mrs. Chakraborty, learned counsel appearing on behalf of the petitioner submits that the grievance of the petitioner is two-fold, firstly, the quantum of occupation charge is disproportionate with the market value of the suit shop-room and secondly, the occupation charge has been directed to be paid from the date of the order impugned instead from the date of the decree.

Mr. Gopal Chandra Ghosh, learned senior counsel appearing on behalf of the opposite parties submits that the occupation charge fixed by the order impugned is much higher than the rent which the suit shop-room can fetch, nonetheless his clients would manage to pay it but enhancement of the said amount shall cause severe hardships to them.

Having heard the learned counsel for the parties and on perusal of the record, it appears that the suit shop room is situated on Diamond Harbour Road, a prime location of the city of Kolkata. The valuation report submitted by the petitioner in the said appeal for assessment of the occupation charge suggests that the rate of occupation charge fixed by the order impugned is at the lower side. However, considering the rate of rent of the said shop room was Rs. 300/- per month, the rate of occupation charge is enhanced to Rs. 15,000/- per month payable from the date of the decree.

The judgment-debtors are required to pay the said occupation charge to the decree-holder within 7th of each succeeding month for which it falls due.

The arrear occupation charge is required to be cleared by four equal monthly installments commencing from January 2022 along with the current occupation charge.

There shall be unconditional stay of all further proceedings of the Title Execution Case no. 7 of 2020

pending before the 7th Court of learned Civil Judge(Senior Division), Alipore, District- 24 Parganas (South) till the end of the month of December, 2021.

In the event the aforesaid payments are made in terms of this order, the stay hereby granted shall continue till the disposal of the Title Appeal No. 40 of 2020.

But in the event of a single default in paying the occupation charge and/or in the payment of installment of arrear occupation charge, the stay hereby granted shall be automatically vacated and the decree would be executable at once.

If the appeal is allowed, the petitioner shall refund the occupation charge to the opposite parties received by her in terms of this order.

The appeal Court below is requested to expedite the disposal of the said appeal in accordance with law.

C.O. 1444 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.)