

01. 03.12.2021
Ct. No.21
A.B.

C.O. 1846 of 2021

Ajay Kr. Majumdar

-VS-

Bhabesh Kumar Banerjee & Ors.

(Through Video Conference)

Mr. Arnab Roy,

...for the Petitioner.

Mr. Debabrata Acharyya,
Mr. Sital Samanta,

...for the Opposite Parties

This Revision is directed against the order passed by the Learned District Judge, South 24 Parganas in Ejectment Appeal No. 2019 on 06.09.2021 and wherein the learned District Judge while staying the operation of eviction decree passed in Ejectment Suit No. 23 of 2006 by Civil Judge (Junior Division), 5th Court, Alipore on 12.03.2019 and in Ejectment Execution Case No. 29 of 2019 has directed the tenant petitioner to pay occupational charge at the rate of Rs.6000/- (Rupees Six Thousand) per month along with arrear, if any, till the disposal of the appeal.

In the instant application the petitioner/ defendant/ tenant has alleged that there is no logical proportion between the occupational charge directed to be paid and the actual rent which the petitioner had been paying for the disputed tenancy. The monthly rent

of the tenancy was/is only Rs.162/- and vide impugned order the petitioner has been directed to pay about 400% above the actual rent towards occupational charge and which he has alleged to be illegal and illogical and that too in respect of a dilapidated tenanted premises.

Learned Advocate for the opposite parties submits that the disputed tenancy is located in the heart of Behala and at Banomali Naskar Road, though in the district of South 24 Parganas, but it is within the City of Kolkata. The petitioner is in occupation of two bed rooms, one kitchen, one veranda and one privy and bath on the ground floor of the disputed property. The present market rent of a tenancy of the same measurement in the same locality would not be less than Rs.11,000/- per month. The occupational charge awarded by the learned Court is lower than the actual present prevailing market rent in the locality.

He also produced photocopy of Civil Deposit Challan no. 8998 dated 15.09.2021 and wherefrom it appears the petitioner has deposited occupational charge of the disputed tenancy for the month of August 2021 at the rate of Rs.6000/- as directed by the learned Court below vide impugned order. Here, I find due compliance of the order under challenge by the petitioner and which makes the present revisional application not maintainable.

Further, Learned Advocate for the opposite parties referred to Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd. Reported in (2005) 1 SCC 705 and where the Hon'ble Supreme Court had mentioned decision of Madhya Pradesh High Court passed in Kikabhai Abdul Hussain Vs. Kamlakar and where the Hon'ble High Court was pleased to hold "if a person continues to be in occupation after the termination of the contractual tenancy then on the passing of the decree for eviction he becomes a wrongful occupant of the accommodation since the date of termination".

The Hon'ble Supreme Court has been pleased to refer to Bhagwandas Lakhamshi vs. Kokabai reported in AIR 1953 Nagpur 186 and where Hon'ble High Court of Nagpur held after determination of the tenancy, the position of the tenant is akin to that of a trespasser and he cannot claim that the measures of damage awardable to the landlord should be kept tact to the rate of rent payable under the provision of the Rent Control Order. If the real value of the property is higher than rent earned that the amount of compensation for continued use and occupation of the property by the tenant can be assessed at the higher value.

Hon'ble Supreme Court has also been pleased to hold that the power to grant stay is a discretionary power of the Court and which flows from the jurisdiction conferred on an Appellate Court which is

equitable in nature. The order of stay must do equity for seeking equity. The Appellate Court while passing an order of stay may put the parties on such terms the enforcement whereof would satisfy the demand for justice of the party found successful at the end of the appeal.

The right of the tenant to continue in possession of the disputed tenancy comes to an end and for any period thereafter, for which he continues to occupy the tenancy, he becomes liable to pay damage for use and occupation at the rate at which the landlord could have let out the premises on being vacated by the tenant. On passing of the decree, the tenant becomes a wrongful occupant of the accommodation and liability to pay damage or mesne profit for such occupation until delivery of the vacant possession.

The Hon'ble Supreme Court has also referred to *Marshall Sons & Co. (I) Ltd. Vs. Sahi Oretrans (P) Ltd.*, (1999) 2 SCC 325 and where it was held "that once a decree for possession has been passed and execution is delayed depriving the judgment-creditor of the fruits of the decree, it is necessary for the Court to pass such appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property".

In the present case admittedly the petitioner is in occupation of two rooms, kitchen, verandah, one privy and bath in a property located on the ground floor of 85/1 Banamali Naskar Road, Behala, Kolkata 700060 that is within the city of Kolkata at meagre monthly rent of Rs.162/-.

If I am to consider the rent which is being paid by the petitioner for the property described above at the rate of Rs.162/- per month to be sufficient at present days, then I am afraid to accept such submission made by the learned Advocate for the petitioner as in the present days inflated market with such paltry amount a man cannot survive even for a day. Further, if the petitioner vacate the disputed tenancy and if the opposite parties let out the same then it would fetch much higher rent than the occupational charge directed to be paid by the learned Court below.

Therefore, considering such facts I do not find any infirmity in the impugned order which demands intervention of this Court.

The revisional application stands thus dismissed any connected application too stands dismissed.

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for be given to the parties upon compliance of the requisite formalities.

(Kesang Doma Bhutia, J.)