

58,DL,Ct.18
18.02.2021
AJ.

C.O. 1376 of 2020

Miss Manasi Mishra
-Vs-
Prabir Kumar Ghosh & Ors.

Mr. Abhijit Roy.
... for the petitioner.

Mr. Jahar Chakraborty,
Mrs. Sabita Mukherjee Roy Chowdhury.
....for the opposite parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the tenant/appellant and is directed against Orders dated December 20, 2019 and March 12, 2020 passed by the learned Judge, 5th Bench, City Civil Court at Calcutta in Title Appeal No.7 of 2019.

The petitioner has suffered a decree of eviction and aggrieved by the said decree has preferred the connected Title Appeal.

The learned Appeal Court below, by the Order No.10 dated December 20, 2019, has disposed of an application for stay filed by the petitioner by directing payment of occupational charges @ Rs.8,000/- per month.

The petitioner sought review and/or recall of the said order.

The learned Trial Judge, by the Order No.13 dated March 12, 2020, has dismissed the said application.

On perusal of the Order No.10 dated December 20, 2019, it appears that the Appeal Court below although discarded the valuer's report filed by the decree-holders to substantiate their claim that the occupational charges of the suit premises should be not less than Rs.15,200/- per month, but fixed the occupational charges @Rs.8,000/- per month only holding that having considered the location of the premises and all the amenities available surrounding the premises I think that the occupational charges may be assessed at Rs. 8000/- per month for the suit premises.

The availability of amenities in the suit property is required to be investigated before fixing the quantum of occupational charges on the basis of said factor, particularly when the petitioner in her reply to the written objection of the plaintiffs/opposite parties specifically denied availability of such facilities in the suit property.

The application for stay, therefore, requires further consideration.

The orders impugned for the aforesaid reason are set aside.

C.O. 1376 of 2020 is disposed of with a request to the learned Judge, 5th Bench, City Civil Court, Calcutta where the connected Title Appeal No.7 of 2019 is now pending to decide the said application for stay afresh in accordance with law.

It is made clear that this Court has not gone into the merit of the rival claims of the parties, it is for the Appeal Court below to decide the same in accordance with law.

The Appeal Court below is requested to dispose of the said application for stay expeditiously preferably within a period of four weeks from the date of communication of this order and in doing so, shall not grant any unnecessary adjournment to either of the parties.

There shall be no 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.)