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C.O. 133 of 2022

**Mr. Bijoy Kumar Shaw & Ors
Vs
Dipendra Nath Bose & Ors**

Mr. Ayan Banerjee,
Mr. Arijit Bhowmick,
Ms. Debasree Dhamali, ... for the petitioners.

Mr. Partha Sarathi Bhattacharyya, Sr. Adv
Mr. Gautam Das,
Mr. Rju Bhattacharya,
Mr. Tanweer J. Mandal, ... for the opposite parties.

The subject matter of challenge in this revisional application is against the occupational charges being granted at the rate of Rs. 40,000/- per month.

Mr. Ayan Banerjee, learned advocate appearing for the petitioners/defendants submits that against the decision of the Trial Court, an appeal has been preferred being Title Appeal No. 11 of 2021, now pending before the learned Additional District Judge, First Court, Sealdah, and in connection there with, on the prayer of the opposite parties/plaintiffs, there has been an order requiring the petitioners to pay occupational charges at an exorbitant rate of Rs. 40,000/- per month.

Mr. Banerjee contends that the decree granted in this case by the Trial Court is a nullity, as the petitioners/appellants were thika tenants. Though such point was raised before the Trial Court, but it

could not be decided appropriately. It is thus strenuously contended by Mr. Banerjee that Trial Court ought not to have granted decision, granting decree, as the Trial Court was denuded from giving any decision particularly on Thika Tenancy issue.

Rather Trial Court was obliged to refer the matter before the Rent Controller for appropriate decision.

It is incidentally submitted by petitioners that there is no reasonable basis in support of the quantification of such exorbitant amount of occupational charges being fixed in a case, where the petitioners/appellants have already been depositing his rent before the Thika Controller per month.

Mr. Partha Sarathi Bhattacharya, learned Senior advocate appearing for the plaintiffs/opposite parties submits that such point was not taken in the memo of appeal, and the point now raises is for the first time, and that too in the form of oral submission before this Court, which is far from pleadings.

The attention of the Court is drawn by Mr. Bhattacharya to a petition, filed by the petitioners/defendants under Section 21 of the West Bengal Premises Tenancy Act, wherein the petitioners themselves have disclosed to be monthly tenant. According to the opposite parties, the point now raises has no reasonable basis, more so when there has already been a finding reached by the Trial Court in

connection with a specific issue already framed by the learned Court below, pending decision of 1st Appeal such finding should remain undisturbed.

Be that as it may, there is a finding already reached by the Trial Court pertaining to a specific issue, framed for the purpose, now raises once again, and that too in connection with an issue alleging arbitrary fixation of occupational charges.

An appeal is also pending, wherein the decree of eviction is under challenge.

From the order impugned, it appears that there is a tea stall in suit property. More so, there is no structure standing over the suit property, though it is situated within KMC area. As per schedule of the decree, the suit premises is found to be of one and a half cottah, wherein there is a tea stall appertaining to premises No. 8B, Bhairab Mukherjee Lane, Ultadanga, Kolkata-700 004.

The basis of assessment of occupational charges has not been disclosed in so many years in the impugned order, while quantifying occupational charges at the rate of Rs. 40,000/- per month.

When there is a tea stall in the suit property, the same should not be allowed to be conducted without paying necessarily occupational charges pending decision of the appeal. However, a little reduction in the amount of occupational charges would felicitate the

petitioners to pay off such charges without making any departure.

The amount thus, should be assessed in a manner so that the same cannot be taken to a repressive on the part of the petitioners/defendants.

In that view of the matter, a little reduction in the quantum of occupational charges is felt necessary.

The occupational charges is thus modified to Rs. 20,000/- per month, instead of Rs. 40,000/- per month with effect from the date, as already ordered by the Court below.

The other portions of the order will, however, remain unchanged.

It is, however, clarified that this would not prevent the first lower appellate Court to ensure expeditious disposal of the appeal, providing sufficient opportunities of hearing to either of the parties of this case.

It is also clarified that in the event of the appeal being succeeded, the First Lower Appellate Court would duly redress the issue with regard to the occupational charges paid by the petitioners to opposite parties, making appropriate provisions, in accordance with provisions of law.

Since Mr. Banerjee expresses serious financial stringency on the part of the petitioners to liquidate arrears of occupational charges, the same may be

liquidated in three (03) equal installments, to be commenced from June, 2022.

With this direction and observation this revisional application stands disposed of.

(Subhasis Dasgupta, J)