

S/L 26
24.03.2022
Court No.7
SD

C.O. 484 of 2022

Suresh Kumar Singh
Vs.
Arbind Kumar Gupta & Ors.

Mr. Tarak Nath Halder

...for the Petitioner.

Mr. Saunak Bhattacharyya

Mr. Sounak Mandal

...for the Opposite Parties.

The subject of challenge in this revisional application is against the arbitrary fixation of occupational charges at the rate of Rs.10,000/-.

Admittedly, the petitioner is the defendant-tenant in respect of a shop room. The suit for eviction instituted by the opposite parties/plaintiffs was dismissed on contest. An appeal was then carried before the first lower appellate court and an ex parte decree was granted.

Mr. Tarak Nath Halder, learned advocate appearing for the petitioner, submits that without causing service of notice of appeal, the first lower appellate court decided the appeal ex parte. Consequent upon the decree being passed by the first lower appellate court, an execution proceeding was taken out. In the meantime, the petitioner filed an application under Order XLI Rule 21 along with Order IX Rule 13 of the Code of Civil Procedure praying for vacating the ex parte appellate decree. In the pending execution case, an application for stay was preferred by the petitioner and in

connection therewith the petitioner was directed to deposit Rs.10,000/- as occupational charges.

Such order, fixing the occupational charges at the rate of Rs.10,000/-, is impugned in this revisional application.

Mr. Halder submits that the petitioner is a poor shop owner of household articles. The court below has arbitrarily quantified the occupational charges without making consideration of any convincing materials or documents connected therewith for proper assessment of occupational charges, giving due regard to the rents payable by the adjoining shop owners of same locality.

Mr. Saunak Bhattacharyya, learned advocate appearing for the opposite parties/plaintiffs, disputes with the submission advanced by the learned advocate for the petitioner, and submits that the court below has rightly assessed the occupational charges, otherwise the fruits of the decree, granted by the first appellate court, would be frustrated, and in effect the decree would be rendered infructuous. While supporting the order of the learned court below, Mr. Bhattacharyya submits that the shop room is located at the prime area, and there lies nothing to interfere with the impugned order, and the amount of the occupational charges, so quantified, must go unaltered.

Having considered the submission of both the parties and bearing in mind the nature of the business conducted over there by the petitioner with respect to his shop, a little

reduction in the amount would, however, facilitate the petitioner to pay monthly occupational charges to the landlords/opposite parties without making any departure. The occupational charges is, thus, modified to Rs.6,500/- per month, instead of Rs.10,000/- per month, with effect from the date of order, already passed by the first appellate court which must be deposited to the landlord within 10th of each succeeding English calendar month in the bank account of plaintiffs/opposite parties, to be furnished to the learned advocate for the petitioner/defendant appearing before the first appellate court, within fortnight from the date of this order. The other portions of the order will, however, remain unchanged. The arrears, if there be any, must be deposited within two months from hence.

In view of the materials disclosed in the impugned order, let there be a direction requiring the first lower appellate court to dispose of the pending misc. case within six months from the date of communication of this order, without granting unnecessary adjournment, unless it is extremely unavailable. While endeavouring such exercise, an opportunity of hearing to both the parties must be ensured.

With this modification, the revisional application stands disposed of.

There shall be no order as to costs.

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

(Subhasis Dasgupta, J.)