

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE Kesang Doma Bhutia.

C.O. No. 1785 of 2021

M/s. Special Steel & Wire Wings

VS.

Sri Radhe Shyam Bhootra & Ors.

For the Petitioner : Mr. Gopal Chandra Ghosh

Mr. Goutam Das

Mr. P. Das

For the opposite parties : Mr. Probal Kumar Mukherjee

Mr. TarakNathHalder.

Hearing concluded on : 20.12.2021

Judgment on : 24.01.2022

KesangDomaBhutia, J:-The tenant/Judgment Debtor has filed an application under Article 227 of the Constitution of India, being aggrieved by the order of payment of occupational charge at the rate of rupees of 2,40,000 per month passed by the Additional District, Judge, 1st Court, Sealdah in Ejectment appeal no. 2 Of 2021 on

13.08.2021, while granting stay of the operation of Ejectment Execution Case no. 4 of 2021 pending before the Court of Additional, Civil Judge (Junior Division) Sealdah.

The facts giving rise to the present case in brief is that opposite parties being the owners/land lords brought an Ejectment Suit being no. 107 of 2007 (renumbered as Title Suit No. 5 of 2010) against the petitioner, a partnership firm to whom 1st Floor measuring 2400 sq.ft. space was let out for purpose of residence of one of the partners of the firm at a monthly rent of Rs.1000/- only. The landlords/opposite parties were successful in obtaining a decree of eviction of the tenant on 16.10.2020. The landlord put the decree into execution by filling Ejectment Execution Case No.4 of 2021.

On the other hand the tenant preferred an appeal being Ejectment Appeal no. 2 of 21 before the Additional District, Judge, 1st Court, Sealdah. That in such appeal the tenant/ JDR filed an application for stay of the execution proceeding and while granting the stay of operation of ejectment decree, the Appellate Court directed the tenant to pay occupational charge at the rate of 2,00,000 per month on 22.03.2021.

Being aggrieved by such order the tenant moved the Hon'ble High Court and filed C.O. No 1276 of 2021. The Hon'ble co-ordinate bench of this High Court disposes of the C.O. on 27.07.2021 with

adirection to the Appellate Court to re-visit the quantum of occupational charge fresh and to dispose of stay application.

The learned first Appellate court in compliance of such order passed in C.O.1276 of 2021 re assessed the occupational charge and fixed the same at the rate of rupees 2,40,000 per month from Rupees two lakhs fixed earlier. Being aggrieved by such order the JDR once again moved this High Court by filling the present revisional application.

Therefore, only question that requires determination is whether the learned Appellate Court below is justified in fixing the occupational charge at Rupees 2,40,000/- per month in respect of disputed tenancy?.

Learned advocate for the opposite parties/deed holders submits that the disputed tenancy is located at Shakespeare Sarani, a posh and prime area of Kolkata city, where the present market rent is rupees 100 rupees per sq.ft. and produced copy of lease agreement executed by Punjab National Bank situated diagonally opposite to the disputed tenancy and photographs of the front face of the disputed tenanted building and its surrounding areas.

On the other hand the learned Advocate for the tenant contended the contractual rent of the disputed tenancy was rupees 1000/- per month and learned court below without applying judicial

mind fixed the occupational charge of the disputed tenancy a dilapidated structure at irrational rate of Rupees 2,40,000/- per month. The calculation was made by the learned Court below after taking into consideration the lease deed of a commercial bank situated in a newly built building.

He has further submitted that in and around Kolkata City and in Posh area like Burdwan Road, Alipore Road and Emami City with all modern facilities the rent per sq.ft. is about Rs.22/-. In places like Topsia prevailing rent per sq.ft. is about Rs.18/- to Rs.20/- and in another Posh area like Rowdon Street, situated somewhere near the disputed property rent per sq.ft. is about Rs.28/- to Rs.30/-. The tenant got the tenanted property surveyed by a Registered Government Valuer cum Registered Surveyor and Loss Assessor and who after taking into consideration the present condition of the tenanted premises assessed the rent by adopting fund sinking method and assessed the rent of the disputed tenancy at rupees 49,000 per month. Learned Advocate for the petitioner also produced copies of license/ lease agreements executed between different tenants and different landlords in respect of different properties situated in different parts of Kolkata, to show that the occupational charge assess by the learned court below is irrational.

It is true that the tenanted premises in-question is situated in the prime location of the city of Kolkata known as Shakespeare Sarani a very posh area, normally people with the high end means reside in this area. However, from the photographs filed by the petitioners of the property-in-question, it is seen the tenancy in question to be an old structure. The landlord in page 6 of the plaint has admitted the existing structure is in a dilapidate condition. That they are interested to demolish the existing structure and develop and promote the said building. Apparently, from the photographs of the front face of the building filed by the landlords and from architectural design, I find the same being constructed during colonial period. The outer front face of the first floor and ground floor of the building appears to be freshly painted but the second and third floor appears to be in abandon condition and appears in dilapidated condition.

From the photographs filed by the tenant it is seen growth of plants on the outer back side wall of the building. The paint of the interior wall of the disputed tenancy in peeling condition and corrugated tin sheet being put on the roof of the disputed tenancy supported by G.I. pipes on which hangs the ceiling fan. The wall of the staircase leading to the roof appeared to be in damaged condition and plasters being fallen off with exposure of the rods. It has been alleged by the petitioner at present there is no water connection in the suit tenancy.

On the other hand the buildings in which the Punjab and National Bank and Decathlon showroom are housed and situated opposite to the disputed building appear to be newly constructed structure. Therefore, rent of a newly build modern structure with modern amenities and that too let out to a commercial bank cannot be equated with a residential structure constructed during colonial period and which is in a dilapidated condition, though both the structures are situated in the same locality. The rent of a commercial bank cannot be taken into consideration for assessing the occupational charge of a residential flat which is in a dilapidated condition.

In *Atma Ram Properties (P) Limited. Vs. Federal Motors (P) Limited* Reported in (2005) 1 SCC 705, it has been held that Appellate Court has discretion to grant or not to grant stay of the operation of the decree of eviction. If the Appellate Court proposed to grant stay it may impose certain condition. The power to grant stay is equitable in nature, an applicant for stay must do equity for seeking equity. Depending on the facts of a given case an 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. Applicant can be put on such reasonable terms as would in the opinion of the Appellate Court reasonably compensate the decree holder for loss occasioned by the

delay in execution of the decree by the grant of stay, in the event of the appeal being dismissed.

In *Anderson Wright & Co. Vs. Amar Nath Roy & Ors.* Reported in SCC (2005) 2 WBLR (SC) 230, the Hon'ble Supreme Court held that while determining the quantum of the amount of mesne profits or compensation for use and occupation of the premises, the rent which the land lord would get if the premises is let out on being vacated by the tenant or in other words the market rent should be taken into consideration and not the contractual rent which was prevalent prior to the date of decree. The appellant should be put on such reasonable terms which in the opinion of the Appellate Court reasonable compensate the decree holder for loss occasioned by delaying execution of the decree by the grant of stay.

In *State of Maharashtra Vs. Super Max International (P) Ltd.*, Reported in (2009) SCC 772 : (2009) 3 SCC (Civ) 857, it has been held in fixing the occupational charge Court should not fix any excessive fanciful and punitive amount for determination of occupational charge. The Court can fix the occupational charge with reference to Stamp Duty Ready Reckoner, so reasonableness cannot be doubted.

In the present case the contractual rent is rupees one thousand per month in respect of a flat measuring 2400 sq.ft. though in a dilapidated condition but located in the prime area of Kolkata

appeared to be too meager and it is like price of a peanut. So, the petitioner against whom decree of eviction is passed cannot be allowed to enjoy the disputed tenancy at a meager amount of rupees one thousand per month.

However, learned lawyer for the petitioner has produced Xerox copies of several lease and license agreements in respect of properties situated in different parts of city of Kolkata. Learned lawyer for the opposite parties contended since those documents relates to property not situated near and around the disputed tenancy the same cannot be taken into consideration for determination of occupational charge.

The Xerox copy of lease and license agreement produced by the petitioner can be taken into consideration for collateral purpose to see what is the prevailing market rent of the area which are also situated in the prime and posh location of city of Kolkata. From those documents it is seen the rent of 2750 sq.ft. Residential plat situated at Burdwan Road, Alipore is about rupees sixty thousand. Lease agreement of the year 2020 in respect of 1922 sq.ft. office space situated at Shakespeare Sarani shows rent of the same to be Rs. 76,880/- per month and agreement dated 2020 in respect of a residential flat situated at 3 Clyde Row, Hastings rent of the same is about rupees 32,500/- per month.

No doubt the rent of Punjab and National Bank a commercial bank situated in a newly constructed building situated opposite of the disputed tenanted building was fixed at rupees 100 per sq.ft. But, for determination of occupational charge of a dilapidated residential flat whose contractual rent is only rupees one thousand per month such rate cannot be taken into consideration.

Having regards to the documents that have been produced by the petitioners in respect of market rent of residential flats situated equally in posh and prime location of Kolkata and with all the amenities show the prevailing market rate is below rupees thirty per sq.ft. Therefore, this Court holds the occupational charge assessed by the learned Appellate Court below in respect of the disputed tenancy @ Rs.100/- per sq.ft. to be unreasonable and irrational.

Taking into consideration the present condition of the disputed tenancy which is in a dilapidated condition and devoid of basic facilities which is normally attached to a tenancy and prevailing market rate of rent in respect of the flats situated in equally posh and prime area of the City of Kolkata and with all amenities, I hereby fix the occupational charge of the disputed tenancy measuring 2400 sq.ft at rupees fifty thousand per month.

The petitioner is directed to pay occupational charge of rupees fifty thousand per month from the date of decree and to pay the arrear

amount within three month from the date hereof and failing which the stay order will stand vacated. The petitioner is further directed to pay occupational charge from the month of January, 2022 within the 10th of each succeeding month till the disposal of the appeal.

The learned Appellate Court below is directed to dispose of the appeal within three month from the date of communication of this order and without granting any adjournment to either of the parties on whatsoever ground.

Accordingly, **C.O. No. 1785 of 2021** is disposed of.

Connected applications are disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Kesang Doma Bhutia, J.)