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C.O. 2247 of 2022

**Life Insurance Corporation of India
Vs
A. N. John Private Limited**

Mr. Aniruddha Chatterjee,
Ms. Sanjukta Ray,

... For the petitioner.

Mr. M. S. Yadav,

... For the opposite party

Mr. Aniruddha Chatterjee, learned advocate appearing for the petitioner/respondent submits that the Court below has granted stay in Appeal without having regard to the provisions contained in Order 41 Rule 5 CPC.

Adverting to decree of eviction and the arrears of rent, mentioned in schedule 2, Mr. Chatterjee submits that opposite party/appellant is in arrears of rent to the extent of Rs. 37,67,396/-.

Mr. Chatterjee submits that the arrears of rent is as good as money decree, and the Court below ought not to have granted blanket stay without making due adherence to Order 41 Rule 5 of the CPC. It is thus contended by Mr. Chatterjee that a security for arrears of rent ought to have been collected by the Court below, while granting stay.

More so, the occupational charges has been assessed without considering the rate of rent available

in the adjoining locality. Incidentally, it is submitted by Mr. Chatterjee that the subject property is situated in Park Street, Kolkata in the ground floor of Queens Mansion Building. There is bank called Axis Bank situated in the same floor of building. The rate of rent of such bank even could not be taken care of by the Court below, together with the rate of rent for the commercial area, situated in Park Street area Kolkata.

The assessment of the Court below regarding occupational charges at the rate of Rs. 15 per square meter for 900 square meters subject property is not according to law, Mr. Chatterjee argues.

It is further contended by Mr. Chatterjee that there may not be any arbitrary assessment of occupational charges in violation of settled parameters of law.

Per contra, Mr. M. S. Yadav, learned advocate appearing for the caveator/opposite party submits that the Court below has rightly assessed the occupational charges, upon consideration of some material documents produced, and the next date for appeal hearing is fixed on 22nd November, 2022. In a situation like this, it is proposed by the learned advocate for the opposite party that this Court should not intervene into the matter, when the appeal has already been set for final hearing.

As regards the arrears of rent, learned advocate

for the opposite party submits that the amount proposed by the petitioner is not correct, though there may be some arrears of rent, which has been rightly reflected in Schedule 2, the outstanding amount which could be Rs. 2,12,396/.

Be that as it may, there is some arrears of rent, which should be treated as money decree, and as such it left the Court below in Appeal for appropriate application under Order 41 Rule 5 CPC upon due exercise of discretion most reasonably and judiciously while granting stay.

The fundamental contention raised by Mr. Chatterjee, as advanced, is that the fair rate of rent operative in the adjoining locality and the tenanted premises for building itself for some other organization and institution has not been taken care of, while assessing occupational charges.

This Court is of the view that the Court below in appeal may consider the same in context with the materials, to be produced by the petitioner at the time of final hearing of the Misc Appeal, when Misc Appeal has already been set for final hearing on 22nd November, 2022.

It would be improper to intervene into the matter at this stage and accordingly the revisional application is disposed of directing the Court below in appeal to revisit the assessment of occupational charges,

incidental to the appeal hearing, so that there may not be any unjust enrichment to any of the parties to this case.

While revisiting the prayer for occupational charges at the time of appeal hearing, it is desirable that the Court below would look into the settled parameters of law and the proposition of law already decided by the Apex Court on this issue.

It is, however, clarified that if for any reasons whatsoever, if the appeal hearing could not be taken up on the scheduled date, the same may be taken up within fortnight thereafter, without granting unnecessary adjournment, unless it is extremely unavoidable.

This would not, however, prevent the petitioner to file an appropriate application for revisiting the prayer for occupational charges, in the event of appeal not being finally disposed of within the period of time, as mentioned hereinabove for some unforeseen circumstances.

Petitioner is directed to make communication of this order to the learned court below.

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

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual

undertakings.

(Subhasis Dasgupta, J)