

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

C.O. 2587 of 2022

Smt. Sikha Sengupta

Vs.

Smt. Swapna Mazumder

Mr. Amit Baran Dash

Ms. Subhra Nag

Ms. A. Sarkar

... For the Petitioner.

Learned Advocate for the petitioner is present.

None appears for the respondent.

This application is directed against an order No. 9 dated 16th July, 2022 passed by the learned Additional District Judge, Fast Track Court-II, Howrah in title Appeal No. 33 of 2022.

The petitioner who is the plaintiff/landlord in the trial court being aggrieved by the order passed by the Appellate Court has come up with the instant application.

Learned Advocate for the petitioner/plaintiff submits that although the decree of eviction is passed against the respondent and the occupational charge since 2015 is pending but the learned appellate court without imposing any condition of payment of occupational charge has passed an order of stay of execution of the decree.

S.D.

Although, the argument advanced by the learned Advocate has some substance as it is observed by the Hon'ble Supreme Court in different cases that

pursuant to the order of eviction being passed occupational charges shall be paid at the market rate which may not be the same as the contractual rent. The plaintiff/petitioner has challenged the order passed by the learned Appellate Court but nowhere in the order, it appears that the plaintiff/petitioner has filed an application for fixation of occupation charge and for a direction of payment.

Thus no fruitful purpose will be served in keeping this application pending by causing service upon the respondent.

Thus this application is disposed of by granting liberty to the petitioner to apply for fixation and payment of occupation charges in accordance with law.

If such application is made learned appellate court shall decide the same after giving reasonable opportunity of being heard to both the parties.

Learned Appellate Court is requested to dispose the said application for fixation of occupation charges if made very expeditiously. It is made clear that this court is not gone into the merits of the case.

Thus with the above mentioned observation, this application stands disposed of.

(Biswaroop Chowdhury, J.)

