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C.O. 3107 of 2022

**Nisar Ahmed & Ors
Vs
Md. Shahid & Ors**

Mr. Asit Baran Raut,
Mr. Tuhin Subhra Raut,
Ms. Ishita Raut,
Mr. Asit Kumar Chowdhury, ... For the petitioners.

Mr. Kushal Chatterjee,
Mr. Debrup Chowdhury,
... For the opposite party.

Mr. Asit Baran Raut, learned advocate appearing for the petitioners, while assailing the impugned order dated 3rd September, 2022 passed by learned Civil Judge (Junior Division), 2nd Court, Sealdah in Misc. Case No. 62 of 2022 arising out of Title Suit No. 78 of 2015, submits that quantum of occupational charges has been wrongly assessed in respect of a suit property, which is alleged to be a thika tenancy property.

There has been an ex parte decree granted in this case, which was challenged upon inviting an application under Order 9 Rule 13 of the CPC, and registered as Misc Case No. 62 of 2022. In the meantime, execution was levied, which was interfered by the executing Court below granting stay with an order impugned, directing petitioners to deposit Rs. 25,000/- per month, as occupational charges.

The basis of fixation of quantum of occupational

charges is thus disputed by Mr. Raut.

Per contra, Mr. Kushal Chatterjee, learned advocate appearing for the caveator/opposite party submits that about seven cottahs of land are under in occupation of the petitioners/judgment-debtor. Supporting the order of the Court below, Mr. Chatterjee submits that the assessment of quantum of occupational charges will remain uninterfered with, as the same is most fair and reasonable.

Having considered the submissions of both sides, it appears that quantum of occupational charges is the bone of contention between the parties.

Admittedly, Misc case is pending under Order 9 Rule 13 CPC to assail the decree already granted in this case.

Pending decision of such misc. case, the impugned order is modified directing the petitioners to deposit Rs. 18,000/- per month to the Court below within the period as already ordered by the Court below, which is of course subject to the final decision of the pending litigation of the Court below.

The revisional application stands disposed of.

The impugned order stands modified to the extent mentioned hereinabove.

Other portions of the order will, however, remain unchanged.

The pending misc. case may be disposed of as expeditiously as possible without granting unnecessary adjournment unless it is extremely unavoidable.

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)