

ORDER

APOT/144/2022
WITH
CS/38/2022
IA NO.GA/1/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

POWER MAX (INDIA) PVT. LTD.
VERSUS
DR. ANEETA KHOSLA

BEFORE
The Hon'ble Justice HARISH TANDON
The Hon'ble Justice PRASENJIT BISWAS
Date: 8TH SEPTEMBER, 2022

Appearance
Mr. Priyankar Saha, Advocate
Mr. Debraj Saha, Advocate
Ms. Nafisa Yasmin, Advocate
....for the appellant
Ms. Suchishmita Ghosh Chatterjee, Advocate
Ms. Amrita Panja Moulick, Advocate
..for the respondent

The Court : Admittedly, a suit for recovery of possession and arrear occupational charges has been instituted by the plaintiff/respondent against the appellant under the provisions of the Transfer of Property. Admittedly, the property in question does not come within the purview of the West Bengal Premises Tenancy Act, 1997 and, therefore, the suit is simplicitor based on notice terminating the lease by issuing a notice under Section 106 of the Transfer of Property. Since the arrear occupational charges were also claimed as a part of the decree and an application was

taken out seeking direction upon the appellant to pay the arrear occupational charges, the Court, by the impugned order, directed the appellant to deposit a sum of Rs.3,50,000/- without prejudice to the rights and contentions which in effect have passed a part decree in the said suit. Obviously, the suit for recovery of possession is still pending and even if it is considered that the occupation of the appellant is wrongful, it is open to the plaintiff to claim the mesne profits for such wrongful occupation but not at the nascent stage of the said suit. There is no provision contained in the Transfer of Property relating to the deposit of occupational charges pending the suit for recovery of possession nor there is any corresponding provision applicable to the State of West Bengal in the Code of Civil Procedure. Furthermore, the order does not reveal any reasons for passing such an order and appears to have been passed on the submission of the plaintiff.

Since the application under Order XII Rule 6 of the Code of Civil Procedure filed by the respondent is pending adjudication before the Trial Court and the affidavits have been exchanged, it would be prudent on the part of the Trial Court to take a decision as permissible under the aforesaid provisions and in the event it is found that the ingredients required under the provision of Order XII Rule 6 of the Code is eminently proved by cogent evidence, the consequential order thereupon may be passed but not at this stage at which the impugned order has been passed.

We, therefore, set aside the impugned order. The Trial Court is requested to proceed and dispose of the application under Order XII Rule 6 of the Code of Civil Procedure as expeditiously as possible without being influenced by any observation made hereinabove.

Both the appeal and application are disposed of.

There is no order as to costs.

[HARISH TANDON, J.]

[PRASENJIT BISWAS, J.]