

IN THE HIGH COURT AT CALCUTTA

(Civil Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.O. 192 of 2023

Bharat Petroleum Corporation Ltd.

Vs.

Lalit Kumar Gopaldass & Ors.

For the Petitioner :Mr. Sanjib Kumar Mal, Adv.

Mr. Bimalendu Das, Adv.

Ms. Shomrita Das, Adv.

Mr. K. Sarat, Adv.

For the Opposite party :Mr. Partha Pratim Ray, Adv.

Ms. Kivita Rani, Adv.

Heard on : April 21, 2023

Judgment on : April 27, 2023

Bibhas Ranjan De, J.

1. Order no. 34 dated 06.09.2022 passed by Learned Additional District Judge, 1st Court at Alipore in connection with First Appeal No. 123 of 2018.

- 2.** By the order impugned Learned Judge stay the execution proceeding being no. 13 of 2018 subject to payment of occupational charge of Rs. 5,27,760/- after applying Rs. 60 per sq. ft. for the area 8796 sq. ft. which is the subject property.
- 3.** Learned advocate, Mr. Sanjib Kumar Mal, appearing on behalf of the petitioner/defendant has submitted that in course of adjudicating occupational charge several documents were produced on behalf of the petitioner/ defendant to assess the occupational charge pursuant to deeds of lease in respect of posh area. It is further submitted that no document was produced on behalf of the opposite party/plaintiffs but, learned Judge came to his opinion only on guess work.
- 4.** Learned advocate, Mr. Partha Pratim Ray, appearing on behalf of the respondents/plaintiffs has submitted that the deed of lease between Shipra Ghosh & Bharat Petroleum Corporation Limited produced on behalf of the petitioner/defendant clearly justify the occupational charge assessed by the order impugned. He has submitted that for a land measuring 600 sq. ft. was rented @ 45,000/- (with enhancement of 50% after every five years). It is submitted that measurement of subject

property in hand is 9000 sq. ft. from that point of view, in the opinion of the learned advocate on behalf of the respondent/plaintiff, assessment of occupational charge by the impugned order was correct.

5. After careful perusal of the order assailed, I find that learned Judge considered location of the suit property and nature of business carried on by the petitioner/defendant as submitted on behalf of the opposite party/plaintiff.
6. It is not intelligible that how learned Judge assessed monthly **fair rent** in absence of any document produced to that effect. Learned Judge also assessed the occupational charge only on guess work by observing as follows:-

“It is fact that nowadays, Rs. 3000/- per month or Rs. 30,000/- per month as occupational charge of an area measuring 8796 sq.ft. at Bhawanipore in Kolkata is unthinkable and in imaginable.....”

“.....In a judgement Dilip Kumar Gooptu & Others Vs Hindustan Petroleum Corporation of our Honble High Court (passed on 28.02.2015), while assessing mesne profit, it has been observed that rate of Rs.

50/- per sq. ft. was prevailing for the period 2013-2014 of a property situated at Camac Street. It is true that the market value is increasing day by day and considering the entire aspect, I am of the opinion that s. 60/- per sq. ft. i.e. 8796 sq. ft. x Rs. 60/- totaling to Rs. 5,27, 760/- be awarded as occupational charge, it will be just and proper.”

- 7.** For the reasons, I find that learned Judge ought to have assessed occupational charge after making an inquiry after giving an opportunity to both the parties to file reliable documents.
- 8.** With the aforesaid observation, the matter is being remanded to the learned Judge to re-assess the occupational charge and in case of reduce the occupational charge to be paid by the petitioner/ defendant shall be adjusted with the future occupational charge.
- 9.** I make it clear that, imposition of occupational charge of Rs. 5,27,760/- be stayed till re-assessment of occupational charges subject to payment of Rs. 1,50,000/- as occupational charge.

10. The revision application stands disposed off on contest.

There is no order as to costs.

11. Let a copy of this order be communicated to the Learned Additional District Judge, 1st Court, Alipore for information.

12. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

13. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]