

In the High Court at Calcutta  
(Civil Revisional Jurisdiction)  
Appellate side

S/L No. 13  
28.02.2023  
Ct-237  
(RD)

**C.O. 463 of 2023**

**Kunal Krishna Deb  
Vs.  
Sajal Chowdhury & Anr**

Mr. Asit Barman Raut, Advocate  
Mr. Tuhin Subha Raut, Advocate  
Mr. Asit Kr. Chowdhury, Advocate  
Ms. Ishita Raut, Advocate  
.... For the petitioner

Mr. Tarknath Halder, Advocate  
... for the opposite parties

The order under challenge was promulgated by the  
Ld. Additional District Judge, First Tract II, Sealdah,  
imposing occupational charge of Rs. 50,000/- *per*  
*mensem.*

Petitioner/ defendant was a tenant in respect of  
subject premises no. 3, Bhairav Mukherjee Lane,  
Ultadanga, Kolkata 700004 comprising of 10 rooms 3  
kitchens 2 bath and privy, at a monthly rental of Rs.  
200/- payable at a English Calendar.

Opposite parties/ plaintiffs filed one Ejectment Suit  
No. 323 of 2004 after serving notice to quit and vacate.  
The said suit was disposed of by the Ld. Civil judge  
(junior Division) Additional Court, Sealdah, 24 Parganas  
(South) by recording a judgment on 11.04.2022.  
Thereby, Learned Civil Judge (Junior Division) recorded  
and order of eviction against the petitioner/defendant  
with a direction to vacate the premises. However, failure

on the part of the petitioner/defendant to vacate the premises within stipulated time, opposite parties/ plaintiffs filed Execution Case No. 31 of 2022 before the Court of Ld. Civil Judge (Junior Division), Additional Court, Sealdah.

Being aggrieved petitioner/defendant preferred an Ejectment Appeal being no. 8 of 2022 against the judgment passed by Learned Civil Judge on 11.04.2022. Petitioner/ defendant submitted one application before the Learned Appellate Court with a prayer for stay of Execution Case No. 31 of 2022.

Learned Appellate Court recorded the order of stay subject to payment of occupational charges of Rs. 50,000/- *per mensem*.

Petitioner/ defendant challenged the order dated 21.01.2023 passed by the Learned Appellate Court to the effect of only occupational charges of Rs. 50,000/-.

Ld. Mr. Asit Barman Raut, appearing on behalf of the petitioner assailed the amount assessed towards occupational charges on the ground of dilapidated condition of the premises. Mr. Raut has submitted that Ld. Appellate Court only harped on the string of guess work instead of inquiry into the matter in terms of current rent of the residential units of the area. In support of his contention, he relied on a case of **Niyaz Ahmad Khan Vs. Mahmood Rahmat Ullah Khan & Anr reported in AIR 2008 SC (Supp) 280** and also a case of **M/s. Special Steel & Wire Wings Vs. Radhe Shyam Bhootra & ors reported in 2022 (2) Indian**

***Civil cases 106 (Cal.)***

In opposition to that, Mr. Taraknath Haldar, appearing on behalf of the opposite parties has contended that subject premises is a big property having 10 rooms 3 kitchens 2 baths and privy and petitioner was occupying in the property at a rental of Rs. 200/- per month only. In support of his contention, he has referred to orders passed by the Hon'ble Co-ordinate Bench of this Court in C.O no. 3340 of 2018 and C.O 4222 of 2018.

Hon'ble Justice Sabyasachi Bhattacharyya, in both the C.O., did not interfere with the guess work of Learned Additional District Judge, Sealdaha, in assessing occupational charge in terms of current rent and position of locality.

From the document available on record it appears that opposite parties submitted a reply to the stay petition describing the subject premises as well as facilities attached thereto. But, that reply remained uncontroverted by the petitioner by way of seeking leave to file any affidavit-in-reply. Presumably, therefore, appellate Court had no other option but to pry into the track of guess work relying on the description and facilities supplied by the opposite parties. It is not also out of place to mention that in course of hearing before this Court Mr. Raut did not controvert the description of the property as well as facilities thereto except dilapidated condition.

In ***Radhe Shyam Bootra*** (supra) a Co-ordinate

bench of this Court also dealt with a dilapidated flat measuring 2400 sq. ft. situated prime location and assessed occupational charges at Rs. 5000/- per month.

Though, Mr. Halder submitted that Hon'ble Apex Court, in special leave petition no. 5058 of 2022, enhanced the occupational charges of Rs. 50,000/- to 1,00,000/-, in connection with **Radhe Shyam Bhootra** (supra).

In **Niyaz Ahmad Khan** (supra) Hon'ble Apex Court discouraged the order of Hon'ble Single Judge increasing the rent pending consideration of the writ petition though there was no prayer for a direction for payment of any rent or for payment of any increased rent in the writ application.

Therefore, the principle laid down in **Niyaz Ahmad Khan** (supra) is, in my humble opinion, not applicable to the dispute of our case.

Subject matter of **Radhe Shyam Bhootra** (supra) was in respect of a dilapidated flat measuring 2400 sq. ft. for which Hon'ble Apex Court, as I have discussed earlier, fixed occupational charge at Rs. 1,00,000/-.

In our case, uncontroverted description and facilities suggest that the subject premises is situated in a prime location of the city having 10 rooms 3 kitchens 2 bath and privy. Learned Appellate Court assessed occupational charge at Rs. 50,000/- *per mensem* considering nature and other amenities of the premises.

That is why, I am sorry to interfere with the order no. 8 dated 201.2023 in connection with ejection appeal no.

08 of 2022 passed by Ld. Additional District Judge, First Track Court II, Sealdah, 24 Parganas (south).

With the aforesaid observation C.O. No. 463 of 2023 stands dismissed.

All parties are directed to act on a server copy of this order downloaded from the official website of this Court.

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

**(Bibhas Ranjan De)**