

11.12.2023
Sl. No.11(DL)
srm

C.O. No. 509 of 2023

Ila Sarkar

Versus

Prabir Kumar Misra

Mr. Saurabh Guha Thakurata,
Ms. Nilanjana Sarkar,
Mr. Abhratanu Sarkar

...for the Petitioner.

Mr. Uttam Kumar De,
Ms. Writi De,
Ms. Riya De

...for the Opposite Party.

The revisional application arises out of an order dated January 17, 2023 passed by the learned Judge, 13th Bench, City Civil 2nd Court at Calcutta, in Title Suit No.2602 of 2022.

By the order impugned, the learned court below directed the petitioner to pay occupational charges at the rate of Rs.8,000/- per month, to the opposite party.

The petitioner challenges the said order on the following grounds:

- (a) The said order was passed at a stage when the written statement had not been filed and the defence was not before the court. There was no admission that rent was payable.

(b) Whether the defendant admitted the ownership of the plaintiff and admitted that contractual/agreed rent was payable by the defendant, were factors to be considered while allowing occupational charges, during pendency of the suit.

(c) The occupational charges was allowed to the extent of Rs.8,000/- per month on the basis of the calculation of Rs.350/- per day as per the market value, whereas no order of eviction had been suffered by the petitioner.

Having considered the order impugned, this Court finds that unless there was an admission on the part of the defendant in the written statement that he was liable to pay the agreed rent or contractual rent to the plaintiff, which was fixed at the time of his induction, the defendant/tenant cannot be made to pay occupational charges at an enhanced rate, during the pendency of the suit. More so, in this case, the written statement was not before the learned court.

The order impugned cannot be sustained. The order impugned is set aside.

It is informed to the Court that the suit is at the stage of preemptory hearing. Issues have been framed.

Under such circumstances, the parties are directed to cooperate with the learned court, so that the suit is expedited and disposed of within the next four months. The evidence shall be recorded in short intervals, so that the *lis* is decided finally within the next four months.

The money claim of the plaintiff shall be decided at the time of determination of mesne profits, if the suit succeeds.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)