

05.12.2023  
Sl. No.3(DL)  
srm

**C.O. No. 612 of 2023**

**Urmesh Suri**

**Versus**

**Nishant Jalan & Anr.**

Mr. Tarique Quasimuddin,  
Mr. Abbas Ibrahim Khan

...for the Petitioner.

Mr. Snehashis Sen

...for the Opposite Parties.

The petitioner is the owner of a property situated at 48/3, Gariahat Road, Kolkata-700019. The petitioner is aggrieved by an order dated January 24, 2023 passed by the learned Civil Judge (Senior Division), 10<sup>th</sup> Court at Alipore, in Title Suit No.1025 of 2022. By the order impugned, the learned court below rejected an application filed by the petitioner for a direction upon the defendants to pay the occupational charges.

The petitioner contends that the opposite parties have been in occupation of the property as tenants since January, 2020 and have defaulted in payment of the occupational charges on and from February, 2021.

Mr. Quasimuddin, learned Advocate for the petitioner submits that the agreed amount of rent which has been admitted by the opposite parties/defendants in their written

statement, ought to have been directed to be paid as the defendants could not continue to occupy the suit premises without paying a single farthing, until the suit is disposed of.

Reliance has been placed on a decision of this Court in the matter of Green Band Apartments Private Limited & Ors. vs. Mint Matrix & Ors. reported in 2021 SCC OnLine Cal 428.

Mr. Sen, learned Advocate appearing on behalf of the opposite parties/defendants submits that a suit for declaration of tenancy is already pending and the petitioner has also filed a similar application in that suit claiming occupational charges. Secondly, it is submitted that the defendants also have a counterclaim in the present suit and the amendment to the written statement, allowing incorporation of the counterclaim was allowed by the learned court below, which has not been challenged by the petitioner.

Mr. Quasimuddin submits that if the counterclaim is decreed, the plaintiff/petitioner will be liable to pay the decretal amount. However, that should not be a protection for the occupiers against making payment of the occupational charges, for enjoyment of the property. They were enjoying the property and had not paid any rent since February 2021.

Considering the submissions of the parties and the specific averment in the written statement, this Court finds

that in paragraph 8 of the written statement, the defendants have accepted that they were supposed to pay a sum of Rs.65,000/- as rent, payable on the 10<sup>th</sup> day of every month. It has been specifically stated that whenever the defendants wanted to pay the requisite rent the plaintiff declined and never accepted the said rent.

The relevant portion of the said paragraph is quoted below:-

“8. ....The defendants carve leave to submit all requisite documents regarding the said suit being T.S. No.653 of 2021 as well as Misc. Appeal No.116 of 2021 at the time of hearing. Moreover, it is a matter of fact that the defendants were supposed to pay a sum of Rs.65,000/- as rent, payable on the 10<sup>th</sup> day of every month. However, it is pertinent to mention herein that whenever the defendants wanted to pay the requisite rent, the plaintiff declined and/or never accepted the rent. All these clearly indicate the mala fide intention of the plaintiff to deceive and/or harass the defendants. Further, the defendants although were in receipt of the demand notice dated 01.07.2022, opted to not reply to the same as a legal proceeding was already pending between the parties in the court of law.”

In paragraph 9 of the said written statement, the defendants have stated that they were willing to pay the rent, but the plaintiff had not accepted the same.

Paragraph 9 is quoted below:

“9. That the statements made in paragraph nos.15 to 21 are completely denied and disputed except what are matters of record. it is a matter of fact that the monthly rent is Rs.65,000 which the defendants are willing to pay but the plaintiff has not accepted the same in order to

show that the defendants have defaulted in paying rents which is false and/or untrue. Therefore, the calculations shown by the plaintiff are absolutely incorrect and untruthful as this instant suit being an afterthought, the plaintiff has misconceived a lot of facts as the sole intention of the plaintiff is to somehow harass the defendants and evict them from the said suit property. The defendants have always been willing to pay the rent within the stipulated time every month, thus, the defendants are liable to pay the monthly and are shall not be paying any interest thereupon. However, the mala fide intention of the plaintiff is to squeeze out maximum sum possible from the defendants by stating false and/or untrue and the same is illegal and unjust.”

It also appears that the plaintiff has already withdrawn the application dated February 10, 2022 by which a prayer was made for payment of occupational charges in the other suit. By order dated January 7, 2023, the learned Additional District Judge, 13<sup>th</sup> Court at Alipore, had dismissed the said application, as not pressed. Thus, as of now, this is the only application filed by the owner claiming occupational charges during the pendency of the suit.

It further appears that specific contentions of the defendants were that they were liable to pay Rs.65,000/- as rent and not the interest claimed by the plaintiff. They were also willing to pay the same.

The plaint indicates that a claim of Rs.11,05,000/- and Rs.1,49,175/- have been made by the plaintiff towards mesne profit and interest, respectively. In this case, it is an admitted

position that the defendants are in occupation. They have themselves claimed to be tenants. They accepted that the petitioner as their landlord and also accepted the liability to pay the rent. When the admission in the written statement is clear and unambiguous, there is no reason why the defendants/tenants should not be directed by the court to pay occupational charges at the admitted rent or contractual rent of Rs.65,000/-.

Under such circumstances, the mesne profits which have been tentatively calculated is subject to the final determination in the suit, but the defendants cannot avoid payment of the agreed rent, but continue to enjoy the premises during the pendency of the suit when the fact that the petitioner is the owner of the suit property is admitted. Income of the owner by renting of the valuable property should not be put on hold, till the final decision in the suit. The amount of rent paid during the pendency of the suit, can always be adjusted with the mesne profits and damages, in the event, the suit succeeds. If the suit fails, the same shall be adjusted against rent payable in respect of the suit property till the occupation continues.

Thus, the opposite parties are directed to pay rent of Rs.65,000/- on and from the date of filing of the application by

the petitioner in the learned court below, month by month every month within 10<sup>th</sup> of next succeeding month. Payment of current rent shall begin from the month of December, 2023 and be paid within January 10, 2024. The arrear from the date of filing of the application for payment of occupational charges, till November 2023, shall be paid in six equal monthly instalments. The payment and acceptance shall be without prejudice and the amount paid shall be adjusted from the mesne profit, in case the suit succeeds. In case the suit fails and the defendants continue in possession, the rent shall be adjudicated.

The counterclaim shall be subject to adjudication by the learned court below and this order shall not in any way affect the right of the opposite parties with regard to their counterclaim in the suit and the said issue will be decided separately and independently.

It goes without saying, that if the counterclaim is decreed, the plaintiff will be liable to pay the amount as per the decree.

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.)**