

29.08.2023
Court No. 19
Items 16 & 17
CP

C.O. No. 830 of 2023
Narayan Kumar Khaitan

Versus

Sri S. C. Bagri

With

C.O. NO. 434 of 2023

Sri S. C. Bagri

Versus

Narayan Kumar Khaitan

Mr. Partha Pratim Roy
Mr. Shuvanil Chakraborty

....for the petitioner
in C.O. No. 830 of 2023.

Mr. Amal Krishna Saha
Mr. Tanmoy Mukherjee
Mr. Biswajit Choudhury
Mr. Souvik Das
Mr. K. R. Ahmed
Mr. Rudranil Das
Mr. Soumava Santra

.....for the petitioner
in C.O. NO. 434 of 2023.

Both these revisional applications arise out of the same order. Similar questions of fact and law are involved. Mr. Saha, learned Advocate for the tenant, i.e., the petitioner in C.O. NO. 434 of 2023, prays for reduction of the amount of occupational charges awarded by the learned court below.

Mr. Roy, learned advocate for the landlord and petitioner in C.O. No. 830 of 2023, submits that the

amount of Rs.20,000/-, as awarded, was way below the market rent.

The sole issue is whether the principles laid down by the Hon'ble Apex Court with regard to the quantum of occupational charges payable by a tenant who had suffered a decree of eviction, but seeks stay of execution during pendency of the appeal, had been applied in this case.

The order impugned dated January 11, 2023 is set aside on the following grounds:

- a) The order does not record any reason as to how the learned court below came to the conclusion that Rs.20,000/- per month, would be a reasonable amount.
- b) The order impugned does not discuss any parameters which weighed upon the court while deciding such quantum.
- c) Neither party had produced any documents in support of their claim i.e. the rent which the property was likely to fetch, considering the location, measurements date of construction and the date of the tenancy.

Thus, this court is of the view that the application for stay filed in Ejectment Appeal No. 2 of 2023, arising out of Ejectment Suit No. 3 of 2017, should be heard afresh, on the point of quantification of the amount of occupational charges.

However, the fact that the petitioner in C.O. NO. 434 of 2023 has suffered a decree of eviction but is continuing to enjoy the property till the rights are decided in the appeal, an ad hoc amount of Rs.1,00,000/- shall be deposited in the learned court below, within September 26, 2023. Such payment shall be without prejudice to the rights and contentions of the parties and shall be adjusted after the final decision is given by the learned lower appellate court.

The parties will be at liberty to file further written versions along with documents, in support of their rival claims, in the form of affidavits.

The operation of judgment and decree shall remain stayed unconditionally upto 26, 2023 and shall continue till the application is disposed of by the learned lower appellate court, if the deposit is made within September 26, 2023.

In case of default, the execution will proceed.

The application for stay shall be disposed of by the learned court below within November 30, 2023, upon deciding the quantum of occupational charges and upon considering the objections and documents to be filed by the parties in support of their claims. This court has not made any observations on the merits.

The revisional applications are accordingly disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)