

01.09.2023.  
Item No. 29.  
Court No. 13  
pk

**F.M.A. No. 599 of 2023**  
**With**  
**I.A. No. CAN 1 of 2023**

**Md. Ibrahim**  
**Versus**  
**Ahmed Reza & Ors.**

Mr. Siddhartha Lahiri,  
Mr. Debraj Dutta.

...For the appellant.

Mr. Subir Banerjee,  
Mr. Tanweer Ahmed Khan

... For the respondents.

1. The appeal is directed against interlocutory order dated 1<sup>st</sup> June, 2023 passed by the learned Judge, Bench-XI, City Civil Court, Calcutta in Title Suit No. 624 of 2013.
2. By the impugned order while rejecting an application of the plaintiffs/respondents for appointment of Receiver, the Court directed the appellant/sub lessee to pay sum of Rs.10,000/- per month towards occupational charges of the suit premises. Admittedly, the suit has been filed by the plaintiffs/respondents for eviction of the appellant for non-payment of lease rent.
3. Notice under Section 111G of the Transfer of Property Act, 1882 was issued to the appellant. The suit for eviction was thereafter filed.
4. Counsel for the appellant/lessee relies upon a decision of the Division Bench of this Court in the case

of **K. K. Saha & Co. Pvt. Ltd. Vs. Ashok Agarwal reported in (2018) 1 CHN (Cal) 497**. The Division Bench answered a reference from a Single Bench order disagreeing with the views of another Single Bench in the case of **Kanak Projects Limited Vs. Oil and Natural Gas Corporation Ltd. reported in (2014) 2 CHN (Cal) 405** and approved the view taken by the Single Judge in the order dated 6<sup>th</sup> October, 2016 in K. K. Saha & Co. Pvt. Ltd. Vs. Ashok Agarwal in C. O. 3777 of 2016.

5. The Co-ordinate Bench took the view that during the pendency of eviction proceeding a Court cannot order the tenant to pay occupational charges other than what was the contractual charges being paid by him. Appropriate reasoning has been addressed.

6. The case is under the Transfer of Property Act 1882 and has also been considered. The power of an Appellate Court in the case of an appeal by a tenant who has suffered a decree for eviction has been indicated as an exception where the Appellate Court exercises power under Order 41 Rule 5 and can impose condition thereunder for stay of the eviction decree.

7. In the instant case, it is seen that the suit is pending adjudication. The appellant has filed written statement. The suit is fixed for peremptory hearing on 14<sup>th</sup> September, 2023.

8. In the backdrop of the above, this Court is unable to apply a decision of the Hon'ble Supreme Court in the case of **Atma Ram Properties (P) Ltd. Versus Federal Motors (P) Ltd.** reported in **(2005) 1 SCC 705**, relied upon by the respondent plaintiff. In the said decision the Hon'ble Supreme Court was dealing with the case where an eviction decree was already passed against the lessee/tenant.

9. This Court is therefore of the view that the impugned order directing the occupational charges of Rs.10,000/- to be paid against a contractual lease rent of Rs.1,200/- apart from being exorbitant is erroneous in law.

10. For the reasons stated, the appeal is allowed. The impugned order dated 1<sup>st</sup> June, 2023, to the extent that it directs the appellant to pay occupational charges at 10,000/- shall stand set aside.

11. Since the appellant submits that entire occupational charges for the period of lease has already been paid to the predecessor-in-interest of the plaintiffs/respondents, there is no need for any direction for occupational charges at this stage. Counsel for the respondents disputes such payment by the appellant.

12. The issue may be decided in the court below. The suit is fixed on 14<sup>th</sup> September, 2023 for peremptory hearing.

13. It is directed that the suit itself be disposed of in accordance with law within a period of five months from 14<sup>th</sup> September, 2023.

14. In view of the above, F. M. A. 599 of 2023 is allowed and disposed of. CAN 1 of 2023 is also therefore disposed of.

15. There will be no order as to costs.

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

***(Rajasekhar Mantha, J.)***

***(Supratim Bhattacharya, J.)***