

02.02.2023
Item No.22
Ct. No.7
CHC
(disposed of)

C.O. 2262 of 2022

**Sree Sree Shyam Sundar Jew, the family deity
lying and situated Sree Sree Shyam Sundar Jew
Thakur Bari & ors.
Vs.
Sanat Kumar Bera**

Mrs. Sabita Mukherjee Roy Choudhury,
Ms. Rajasree Paul
...for the petitioners

Mr. Abhijit Ray,
Mr. Shubham Gupta
...for the opposite party

Mrs. Mukherjee Roy Choudhury, learned advocate representing petitioners-decreeholders, while assailing the impugned order dated 5th April, 2022, passed by learned Judge, 4th Bench, Presidency Small Causes Court, at Calcutta, in Misc. Case no.186 of 2018, submits that occupational charges has been granted with an erroneous approach giving effect from the date of filing the stay petition, what should have been given effect from the date of decree granted by the trial court.

Mr. Abhijit Ray, learned advocate representing opposite party submits that an *ex parte* decree has been obtained by the petitioners, which has been assailed by the opposite party upon filing an

application under Order 9 Rule 13 C.P.C. along with Section 5 application for condonation of delay, registered as Misc. Case no.186 of 2018, and it is for the unnecessary resistance of the petitioners, the Order 9 Rule 13 C.P.C. could not be proceeded to the desired extent.

Mr. Ray, learned advocate for the opposite party submits that pending Misc. Case under Order 9 Rule 13 C.P.C. as mentioned hereinabove needs to be disposed of with utmost expedition.

As regards the date of giving effect to the occupational charges granted by the trial court, it is submitted by Mr. Ray, learned advocate appearing for the opposite party, that there has been no prayer proposed before the court below disputing with the date of giving effect to the occupational charges granted by the court below.

Be that as it may, whenever occupational charges has been granted, the proposition of law is quite clear that the occupational charges ordinarily dates back to the date of the decree, granted by the trial court. No further elaboration is felt necessary.

The revisional application stands disposed of upon modification of the relevant portion of the impugned order granting occupational charges to the effect mentioned hereinbelow. The occupational charges at

the rate of Rs.2,000/- per month is to be paid from the date of the decree being granted by the trial court, instead of the date of filing the petition i.e. on 23rd February, 2021. The other portion of the order will however, remain unchanged.

The impugned order is thus modified to the extent mentioned hereinabove. Since the fight between the parties in the court below is targeted towards assailing an *ex parte* decree granted by the court below in aid of Order 9 Rule 13 C.P.C., the pending Misc. Case relatable to Order 9 Rule 13 C.P.C. as such, may be disposed of expeditiously as possible, subject to the suitability and convenience of the court below, providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournment, unless it is extremely unavoidable, preferably before the end of July, 2023.

With this observation/direction, the revisional application stands disposed of.

Parties are directed to make communication of this order to the learned court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)