

14.09.2023
Court No. 19
Item no.05
CP/GB

C.O. No. 2638 of 2023

Aniruddha Ghose
Vs.
Swapan Kumar Bhadra

Mr. Sourav Sen
Mr. Debnath Mahata

.....for the petitioner.

Mr. Sanjay Mukherjee
Mr. Debangshu Ghatak
Mr. Bodhisattwa Chattterjee
Mr. A. Das

....for the opposite party.

This revisional application arises out of an order dated July 18, 2023, passed by the learned Additional District Judge, 5th Court at Alipore in Ejectment Appeal No. 17 of 2023. The Ejectment Appeal arose out of a judgment and decree dated January 25, 2023, passed by the learned Civil Judge (Junior Division), 4th Court at Alipore in Ejectment Suit No. 207 of 2010.

The petitioner instituted the suit for eviction against the opposite party. The opposite party suffered eviction decree and preferred the Ejectment Appeal No. 17 of 2023. The judgment debtor prayed for stay of operation of the judgment and decree. The petitioner filed an objection to the same.

It was specifically contended that the judgment debtor only to grab the property, had filed the appeal

as a pressure device to force the landlord/plaintiff to sell the property to him.

The learned lower appellate court upon hearing the parties passed a conditional stay directing payment of occupational charges of Rs.5000 per month payable within 10th day of each month.

Mr. Sen, learned advocate appearing on behalf of the petitioner, has submitted that the order impugned suffers from the following irregularities:

- a) The learned court below fixed Rs.5000 per month as the cancellation charges without any basis. The present rate of rent of the property would be Rs.21 per square feet.
- b) Going by the above calculation, the reasonable amount of occupational charges should be Rs.15,000/- at least. He relies on a valuation statement of a professional valuer.
- c) The learned lower appellate court failed to consider that the occupational charges should be paid from the date of the judgment and decree and, as such, a direction for payment of occupational charges with the arrears ought to have been passed accordingly.

Mr. Mukherjee, learned advocate appearing on behalf of the tenant opposes such prayer of Mr. Sen and submits as follows:-

- a) Occupational charges are awarded by courts in situations where a tenant who had suffered a decree of eviction, continues to enjoy the property in denial of the right already accrued in favour of the landlord. Hence, the property should be in a usable condition.
- b) The water connection had been cut off since long and such fact would be evident from the series of orders which have been passed during the trial.
- c) The tenant continues to use the property as his chamber, but the property could not be put to further use as the same is in a dilapidated condition and completely unusable.
- d) Under such circumstances, Rs.5,000/- was a reasonable amount.

Mr. Mukherjee further submits that a valuer's report had been prepared by the tenant which would indicate the damaged and dilapidated condition of the property.

Having heard the learned advocate for the respective parties, this Court finds that there are certain factual disputes which are required to be addressed by the learned lower appellate court. First and foremost, the question as to whether the property was in a usable condition, would have to be

decided in order to fix the rate of rent. The condition of the premises, the condition of the building are relevant factors. The learned court ought to have also considered the rent which similar flats in the locality would fetch. Moreover occupation charges should be paid from the date of the decree. These aspects are required to be gone into and a fresh order has to be passed, upon hearing the application for stay. This Court finds that the amount was fixed without discussing the reasonableness of it. The basic factors which led the Court to award the amount is unavailable.

Under such circumstances, the revisional application is disposed of with the following directions:-

- i) The order impugned is set aside.
- ii) The matter is remanded to the learned lower appellate court for a fresh decision on the application for stay.
- iii) Parties are at liberty to file their respective affidavits with the valuation report and other reports which they have obtained from their respective valuers.
- iv) Parties are also at liberty to file additional documents in order to bring on record the market rent which similarly situated flats in the locality fetch.

- v) Upon adjudication of all the above issues, a fresh order shall be passed.

It is made clear that the learned lower appellate court, upon adjudication of the dispute and upon fixation of the quantum, shall direct payment of the same from the date of the judgment and decree.

In the meantime, the tenant shall continue to deposit Rs.5,000/- as occupational charges, month by month within 10th of every month till the disposal of the stay application by the learned lower appellate court. The arrears from the date of the decree calculated at Rs.5,000/- shall be deposited in the learned executing court within a month. All payments and acceptance will be without prejudice to the rights and contentions of the parties. The payment so made, shall be adjusted with the final decision.

Accordingly, the revisional application is disposed of.

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

(Shampa Sarkar, J.)