

Item No. 9
06.10.2023
Court. No. 19
GB

C.O. 2705 of 2023

Joga Singh
Vs.
Smt. Shashi Bala Sinha

*Mr. Siddhartha Sharma,
Mr. Rishav Dutta*

...for the Petitioner.

*Mr. Sudeshna Basu Thakur,
Ms. Banani Bhattacharya*

...for the Opposite Party.

Affidavit-of-service filed in Court today, be kept with the record.

The order dated June 16, 2023 passed by the learned District Judge-in-Charge, Alipore in Title Appeal No.168 of 2019 is under challenge.

By the order impugned, the Ejectment Execution Case No.58 of 2019 was stayed provided the judgment debtor paid Rs.30,000/- per month as occupational charges. Such occupational charges were directed to be paid within 10th of each succeeding month. In the event of default in payment of the occupational charges for two consecutive months, the learned court directed that the stay would be vacated.

It appears from the order impugned that there are some defects:-

- a) The parameters or the basis on which the court came to a finding that Rs.30,000/- should be the quantum of occupational charges, is not available from the order impugned.

b) The date from which the occupational charges should be paid, has also not been mentioned.

The law is that occupational charges should be paid from the date of the decree.

The petitioner/judgment debtor suffered a decree of ejectment on June 29, 2019. It appears that the first appeal arising out of the judgment and decree is pending.

Under such circumstances, this Court is of the view that justice would be sub served if the application for stay is heard afresh by the learned lower appellate court by allowing the parties to file documentary evidence in the form of affidavits with regard to the current rent a similarly situated premises in the locality would fetch. The schedule of the plaint is quoted below:-

“SCHEDULE

ALL THAT piece and parcel of three rooms, One Kitchen, One Toilet, One Verandah (Ground Floor) situated at Premises No.2, Turf Road, P.S. Kalighat, Kolkata – 700 025, District South 24-Parganas.”

It appears that the suit premises consists of three rooms, one kitchen, one toilet and one verandah on the ground floor situated at Premises No.2, Turf Road, P.S. Kalighat, Kolkata – 700 025, District South 24-Parganas. The said area is in an expensive locality in Kolkata and in the heart of the city.

Considering the location, this Court is of the view that an an ad hoc basis, Rs.10,000/- per month as occupational charges shall be deposited in the learned executing court by the petitioner, till the disposal of the application for stay.

Rs.10,000/- per month shall be paid on and from October 2023 within 10th of November 2023 and thereafter month by month every month within 10th of the succeeding month. Towards arrears, an ad hoc amount of Rs.60,000/- shall be deposited within December 1, 2023.

The learned court below shall dispose of the stay application within three months from the next date fixed in the appeal. In default of payment as directed hereinabove, the stay application need not be heard and the execution will proceed.

Accordingly, the revisional application is disposed of.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)