

17.07.2023
Sl. No.25(DL)
srm

C.O. No. 2688 of 2022

**S.M. Iqbal @ Shaikh Mohammed Eqbal
Versus
Kamrunnisa**

Mr. Tarique Quasimuddin,
Mr. Nasir Quasimuddin,
Ms. Sanchita Chaudhuri

...for the Petitioner.

Mr. Arif Ali

...for the Opposite Party.

This revisional application has been filed by the judgment-debtor challenging an order dated March 11, 2022 passed by the learned Civil Judge (Junior Division), 5th Court at Alipore, District-South 24-Parganas.

By the order impugned, the learned court below allowed the application for stay of the Ejectment Execution No.05 of 2021 arising out of Ejectment Suit No.02 of 2017 upon condition that occupational charges of Rs.3,500/- per month shall be paid by the petitioner month by month to the decree-holder. The petitioner is aggrieved by such order.

Order XXI Rule 26 of the Code of Civil Procedure empowers the executing court, upon sufficient cause been

shown, to stay the execution case for reasonable time, by imposition of certain conditions.

Moreover, Hon'ble Apex Court in the matter of *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.* reported in (2005) 1 SCC 705, had laid down the principle that if the judgment-debtor continues to enjoy a property after having suffered a decree of eviction, thereby, depriving the decree-holder from enjoying the fruits of the decree, the occupational charges at the market value shall be paid.

Under such circumstances, this Court does not find any defect in the order impugned. The amount of Rs.3,500/- per month as occupational charges, in the area where the tenanted property is situated and noting the measurement of the property, the amount is reasonable and proper.

The revisional application is, thus, dismissed.

There shall be no order as to costs.

However, the learned court below shall expeditiously dispose of the application under Order IX Rule 13 of the Code of Civil Procedure preferably within a period of three months from the next date fixed.

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

(Shampa Sarkar, J.)