

S/L 16
06.09.2023
Court. No. 29
Suwayan

CO 2916 of 2022

**Sujala Samanta
Vs.
Swapan Kumar Roy & Ors.**

*Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Abhirup Halder*

...for the petitioner.

Mr. Sandip Das

...for the opposite party no. 1.

1. Heard learned Advocate for the petitioner and learned Advocate for the opposite parties at length.
2. In this revisional application as filed under Article 227 of the Constitution of India the revisionist/defendant/judgment debtor has impugned the Order No. 3 dated 05.08.2022 as passed by learned Additional District Judge, Fast Track Court – II, Diamond Harbour, District – 24 Parganas (South) in Title Appeal No. 18 of 2022 whereby and whereunder the said Court in the aforesaid appeal as preferred by the present revisionist/judgment debtor has been pleased to stay all further proceedings in connection of the judgment and decree dated 21.05.2022 as passed in Title Suit No. 45 of 2017 by the learned Civil Judge (Junior Division), 3rd Court, Diamond Harbour, District – 24 Parganas (South) subject to condition that the present revisionist shall have to pay an amount of Rs. 7,000/- to the plaintiff/opposite party No. 1 herein towards occupational charges during the pendency of the said appeal.

3. The appellant of Title Appeal No. 18 of 2022 felt aggrieved with the quantum of occupational charge and, thus, preferred the instant revisional application.

4. In support of the instant revisional application Mr. Bhattacharya, learned Advocate for the revisionist/appellant/judgment debtor at the very outset draws attention of this Court to the certified copy of the impugned decree dated 21.05.2022 especially its schedule. It is contended that considering the extent of the decreetal property and also considering the fact that such decreetal property is situated in a remote area in the State of West Bengal, the quantum of occupational charge at the rate of Rs. 7,000/- per month is excessively on higher side and the same may be reduced.

5. Mr. Das, learned Advocate for the plaintiff/respondent/opposite party No. 1 also places his reliance upon the certified copy of the impugned decree dated 21.05.2022. It is contended that even after passing of the judgment and decree of eviction dated 21.05.2022 against the present revisionist, the present revisionist is still in occupation of the decreetal property which consists of six rooms and a pond and thereby depriving the present opposite party No. 1/plaintiff from the usufructs of the said decree. It is, thus, contended that the quantum of occupational charge as fixed by the learned Trial Court is perfectly justified.

6. On perusal of the entire materials as placed before this Court; especially the extent of the decreetal property as involved in Title Suit No. 45 of 2017 and as decreed by

learned Civil Judge (Junior Division), 3rd Court, Diamond Harbour, this Court is of considered view that by the said judgment and decree the present revisionist was found by the learned Trial Court to be a licensee in respect of the decreetal property which not only consists of six rooms but the same includes a pond also, that too in a Sub-divisional Town in the District of South 24 Parganas which is not at a far distance from the city of Kolkata.

7. Such being the position, this Court finds no justification to interfere with order impugned and this Court further considers that learned first appellate court's assessment with regard to the quantum of occupational charge to be paid by the present revisionist is also reasonable and, thus, needs no interference from this Court.

8. The instant revisional application is, thus, devoid of any merit and is hereby dismissed.

9. Consequently, the impugned Order No. 3 dated 05.08.2022 as passed by learned Additional District Judge, Fast Track Court – II, Diamond Harbour, District – 24 Parganas (South) is hereby affirmed. The present revisionist being appellant in Title Appeal No. 18 of 2022 is hereby directed to pay occupational charge of the decreetal property at the rate of Rs. 7,000/- per month to the opposite party No. 1/plaintiff, Swapan Kumar Roy with effect from 21.05.2022 and first such occupational charge for the month of September, 2023 shall have to be paid by 7th day of succeeding month and thereafter so on till disposal of Title Appeal No. 18 of 2022.

10. The arrears of the occupational charges after making adjustment of the amount already paid shall have to be paid in four equal installments and first such installment shall have to be paid by the last day of October, 2023, the second such installment shall have to be paid by the last day of December, 2023 and third and fourth of installments shall have to be paid by the end of January and February, 2024 respectively.

11. It is also made clear that in the event the present appellant succeeds in the appeal, the entire occupational charge as would be paid by the present revisionist to the opposite party No. 1 shall have to be returned within the time as fixed by the learned first appellate court.

12. Considering the age and the pendency of the lis learned Additional District Judge, Fast Track Court – II, Diamond Harbour, South 24 Parganas is hereby requested to expedite the appeal and to dispose of the same preferably by the end of March, 2024.

13. Accordingly, the instant revisional application being CO 2916 of 2022 is disposed of.

14. Parties to act on the server copies of this order.

15. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)