

10.10.2023
Item No.23
gd/ssd

CO 3166 OF 2023
MD. NASIR AHMED
VS
MUNSI MD. ALI AKBAR

Mr. Abhijit Roy,
Md. Salahuddin
..for the Petitioner.

Mr. Krishna Das Poddar
..for the O.P.

The order dated 25th August, 2023 passed by the learned Chief Judge, City Civil Court at Calcutta in Title Appeal No.54 of 2023 is under challenge at the instance of the defendant in a suit for eviction under the provisions of West Bengal Premises Tenancy Act, 1997. The eviction suit was decreed on April 19, 2023.

The petitioner preferred an appeal being Title Appeal No.54 of 2023. In connection with the said Title Appeal, the petitioner filed an application for stay of operation of the judgment and decree passed by the learned Trial Judge.

The learned court of appeal below, by the order impugned, while passing an order of stay of operation of the judgment and decree passed by the learned trial judge directed the appellant to pay occupation charge at the rate of Rs.5,000/- per

month with effect from the date of the passing of the decree by the learned trial judge.

Mr. Roy, learned Advocate appearing for the petitioner submits that the occupation charge fixed by the learned Court of Appeal below is without any basis. He further submits that the same is an exorbitant one.

The learned Advocate appearing for the O.P. submits that the petitioner is exploiting the decretal property for commercial purpose and, therefore, the occupation charge fixed by the learned Court of Appeal below is perfectly justified.

It appears from the materials on record that the learned Court of Appeal below directed a joint inspection to be conducted by the learned Advocates of the respective parties.

The said Advocates after holding inspection submitted a report before the Court.

The learned Court of Appeal below after taking into consideration the extent of the area under occupation by the appellant and the locality in which the suit property is situated, fixed Rs.5,000/- on account of occupation charges.

This Court is of the considered view that the learned Court of Appeal below fixed such occupation charges on the basis of materials that were available before the Court and, therefore, this Court is not

inclined to interfere with the occupation charges fixed by the learned Court of Appeal below sitting under Article 227 of the Constitution of India.

Accordingly, CO 3166 of 2023 stands disposed of without, however, any order as to costs.

In the event the petitioner complies with the direction passed by the learned Court of Appeal below with regard to the payment of occupation charges, the learned Court of Appeal below shall dispose of the appeal as expeditiously as possible but preferably within a period of six weeks from the date of compliance of the direction with regard to the payment of occupation charges without granting any unnecessary adjournments to either of the parties.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)