

18.08.2023
Sl. No.7(DL)
srm

C.O. No. 3345 of 2022

Smt. Pratima Roy

Versus

Sri Palash Ghosh

Mr. Kushal Chatterjee,
Mr. Debrup Choudhury,
Mr. Shibjit Mitra

...for the Petitioner.

Mr. Koushik Roy

...for the Opposite Party.

This revisional application has been filed challenging an order dated September 3, 2022 passed by the learned Civil Judge (Junior Division), 2nd Court at Barrackpore, North 24-Pargtanas, in Ejectment Execution Case No.04 of 2022 arising out of Ejectment Suit No.183 of 2018.

Mr. Chatterjee, learned Advocate appearing on behalf of the landlord submits that the learned executing court should not have passed an order of stay of the execution proceeding on the ground of pendency of an application under IX Rule 13 of the Code of Civil Procedure without directing the tenant, who has suffered a decree of eviction, to pay occupational charges at the market rate which the property would fetch if let out at the present moment.

Mr. Roy, learned Advocate appearing on behalf of the opposite party submits that the learned court below had directed payment of cost of Rs.5000/- and thus, further occupational charges was not required to be paid.

Having heard learned Counsel for the respective parties, this Court is of the view that the principles set out in the case of Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd. reported in (2005)6 SCC 498, will be squarely applicable in this case. When a tenant has suffered a decree for eviction and is proceeding before another court challenging such decree, the decree-holder is deprived of using her own property.

Thus, occupational charges for use and occupation of the premises in respect of which an eviction decree had been passed is mandatorily payable on the principles laid down in Atma Rama's case (supra).

Under such circumstances, considering the area of the tenanted premises and the prime location near Rahara station, this Court directs that Rs.6,000/-, as occupational charges, should be paid month by month every month within 7th of the succeeding month by the opposite party, to the petitioner. Such payment shall commence from the month of August, 2023. The occupational charges for the month of August, 2023 shall be paid by September 7, 2023 and thereby month by month every month. The arrear of rent from the date of the

decree, i.e., September, 2021 to July, 2023 shall be paid at the same rate per month in 12 equal monthly instalments. First of such instalment shall be paid with the current occupational charges for the month of August, 2023. Fraction, if any, be added to the last instalment. Such arrangement shall continue till the disposal of the application under Order IX Rule 13 of the Code of Civil Procedure or until further orders in the pending Misc Case, whichever is earlier.

In case of default, the execution case will continue.

The merits on the point of maintainability of the application under Order IX Rule 13 of the Code of Civil Procedure, has not been gone into.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)