

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.5159 of 2022
Ramnarayan S/O Ramchandra Mishra
Vs
Vijay S/O Shankarrao Talewar

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P.K. Mishra, Advocate for the Petitioner/s
Shri A.M. Quazi, Advocate for the respondent-sole

CORAM : ANIL S. KILOR, J.
DATED : 28.06.2023

1. Heard.
2. The order below Exh.5 dated 26.04.2021 passed by the Special Judge, Special Court for differently Abled Persons, Senior Citizens and Marginalized Section of Society, Nagpur in Regular Civil Appeal No.39 of 2019, allowing the application and thereby, staying the effect and operation of the judgment and decree dated 24.08.2018 passed by the Civil Judge Senior Division, Nagpur in Special Civil Suit No.8 of 2004 and further granting Rs.5,000/- per month towards occupational charges of the suit property, is under challenge.
3. The challenge is raised on two grounds. Firstly, the suit property is situated in a posh locality of Nagpur i.e. Ramdaspath and though the respondent is in possession of 5,000 sq. feet area, the learned Appellate Court has granted a meager amount of

Rs.5,000/- as occupational charges i.e. Rs.1/- per sq. feet, which is highly unreasonable.

4. The second challenge is that, the learned Appellate Court has referred to the judgments cited by the petitioner, namely *South Eastern Coalfields Ltd... vs... State of M.P. and others, (2003) 8 SCC 648* and *Atma Ram Properties (P) Ltd... vs... Federal Motors Pvt. Ltd. 2005(3) Bom.C.R. 274*, however, no discussion has been made or dealt with it.

5. The learned counsel for the respondent opposes the present petition and submits that the impugned order was rightly passed by the learned Appellate Court and no interference is required. However, the learned counsel for the respondent is not disputing that the suit property is situated at Ramdaspath, but he disputes the area as 5,000/- sq. feet.

6. On a bare perusal of the impugned order, it leaves no element of doubt that in paragraph 12, though the Court has referred to two judgments cited by the petitioner, there is no reasons recorded for discarding the same. Further there is no discussion to arrive at the amount of Rs.5,000/- as occupational charges.

7. In absence of such discussion, granting occupational charges Rs.5,000/- is erroneous. In the circumstances, I am of the opinion that the matter needs to be remanded back to the learned Appellate Court, Nagpur for deciding the same afresh, after hearing both the parties and considering the observations made in this order. Accordingly, I pass the following order:

- (i) The writ petition is partly **allowed**.
- (ii) The impugned order below Exh.5 dated 26.04.2021 passed by the Special Judge, Special Court for differently Abled Persons, Senior Citizens and Marginalized Section of Society, Nagpur in Regular Civil Appeal No.39 of 2019, is hereby quashed and set aside.
- (iii) The matter is remanded back to the learned Appellate Court to decide the same afresh, after hearing both the parties.
- (iv) The learned First Appellate Court shall decide the matter expeditiously, not beyond six months, till then clause (ii) of the operative part of the impugned order shall remain in force.

[ANIL S. KILOR, J.]