

13.05.2024
Sl. No.22(DL)
srm

C.O. No. 726 of 2024

Shankar Shaw & Ors.

Versus

**Satya Narayan Shaw, since deceased being represented by
Navin Shaw & Ors.**

Mr. Rishabh Ahmed Khan

...for the Petitioners.

Mr. Arnab Dutt,
Mr. Indran Prasad Mullick,
Mrs. Labani Dey

...for the Opposite Parties.

1. The revisional application has been filed by the judgment-debtors challenging the orders dated February 16, 2024 and February 20, 2024, passed by the learned Chief Judge, City Civil Court at Calcutta in Title Appeal No. 28 of 2023.
2. By the first order, the learned court stayed the judgment and decree, subject to payment of Rs.33,000/- per month as occupational charges. Arrears were directed to be paid in instalments. The learned court was of the view that the query report furnished by the opposite parties/decreed holders indicated that the market value of the property was Rs.26,16,170/- and the suit property was described as

a flat on the mezzanine floor which was used as a shop room. The area was found to be 268 sq. ft. The court also recorded that no query report could be filed by the judgment debtors.

3. The judgment debtors failed to pay the occupational charges as directed. The order of stay of the judgment and decree dated December 20, 2022 was vacated by the order dated February 20, 2024. The decree holders were allowed to proceed with the execution of the judgment and decree.

4. Such order has been assailed by the judgment debtors on the following grounds:-

(a) The measurement of the area of the property was in dispute.

(b) The trade licence indicated that 100 sq. ft. was being used as a shop.

(c) The market value was wrongly taken into consideration, but the rent which the property at present would fetch, should have been the basis.

5. This Court, as an interim arrangement, had directed Rs.20,000/- to be paid as occupational charges every month on and from March, 2024 within 10th of each succeeding month. Towards arrears, an *ad hoc* amount of

Rs.1,00,000/- was directed to be paid. The order has been complied with.

6. Upon consideration of the order by which the amount of Rs.33,000/- was imposed, I find that the said amount was based on a query report as to the market value of the property. It appears that the query report indicated the market value of the property as Rs.26,16,170/-.
7. The law is well settled. Occupational charges to be paid by a defendant, cannot be oppressive. The market value of the property or the circle rate should not be the guiding factor. Equities have to be balanced. The reasonable rent the property would fetch is an important consideration.
8. The order of the learned Chief Judge has not supplied the reasons justifying award of Rs.33,000/- per month, as occupational charges. Thus, the application for stay will be heard afresh and the parties will be entitled to adduce documentary evidence in support of their claim and counterclaim as to what would be a reasonable amount as occupational charges. The factors to be taken into consideration will be the locality, measurement of the area in occupation of the petitioners, the condition of the premise and the prevailing rent of similar premises.

Thus, the orders impugned are set aside. The execution case shall not proceed till adjudication of the stay application.

9. The application for stay shall be heard afresh and disposed of within July 31, 2024 upon fixing the quantum of occupational charges. The parameters which have been discussed in this order shall be the guiding factor. Till such disposal, a sum of Rs.20,000/- per month shall be deposited in the executing court month by month within 10th of each succeeding month. All payments and acceptance will be without prejudice to the parties and will abide by the final decision of the learned court. Failure to comply with this order will entitle the decree-holder to proceed for execution of the decree.
10. After disposal of the application for stay, the learned court shall proceed with the disposal of the title appeal.
11. The revisional application is, thus, disposed of.
12. There shall be no order as to costs.
13. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)