

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

C.O. 1310 of 2024
Paramjit Kaur & Ors.
Vs.
Nilima Roy

With

C.O. 1437 of 2024
Nilima Roy
Vs.
Paramjit Kaur & Ors.

For the petitioner in CO 1437 of 2024 and for the opposite party in CO 1310 of 2024/ decree-holder	: Mr. Saptansu Basu, Senior Adv. Mr. Sagar Bandyopadhyay, Ms. Soma Kar Ghosh, Mr. Arabinda Pathak
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For the petitioners in CO 1310 of 2024 and the opposite parties in CO 1437 of 2024/ judgment debtors	: Mr. Tanmoy Mukherjee, Mr. Souvik Das, Mr. K. Raihan Ahmed, Mr. Rudranil Das, Mr. Soumava Santra, Mr. Tapas Chatterjee
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Hearing concluded on: 02.05.2024
Judgment on: 22.05.2024

Shampa Sarkar, J.:-

1. Both the revisional applications arise out of the order dated April, 3, 2024, passed by the learned Additional District Judge 9th Court, Alipore in Title Appeal No.5 of 2024. The applications were heard together.

2. By the order impugned, the application dated February 5, 2024 filed by the judgment debtors, for stay of the execution of the judgment and decree dated October 9, 2023 passed in Title Suit No. 5 of 2016 was disposed of along with an application dated February 27, 2024 for payment of occupational charges filed by the decree holder. The petitioners in C.O. 1310 of 2024 are the judgment debtors and the petitioner in C.O. 1437 of 2024, is the decree holder.

3. By the order impugned, Execution Case No. 4 of 2024 was stayed till disposal of the appeal, subject to the judgment debtors depositing a sum of Rs.85,000/- per month as occupational charges with effect from the date of the decree, within 10th of each succeeding month. First of such deposit was to be made within April 10, 2024 and the arrear occupational charges from October 2023 till March 2024 was directed to be deposited in the same manner within two months from the date of the order. It was further provided in the order that if the judgement debtors failed to deposit the current occupational charges or the arrear occupational charges, the order would stand automatically vacated. The hearing of the appeal was fixed and the LCR was called for.

4. Mr. Saptansu Basu, learned Senior Advocate appearing for the decree-holder/petitioner in CO 1437 of 2024 submitted that the direction for payment of occupational charges at the rate of Rs.85,000 per month was way below the market rent which the property would fetch. The suit property comprised of an area of 5 cotthas 5 chittaks and 21 sq. ft., inclusive of land and a two storeyed building.

5. According to the plaint case, the plaintiff/decreed holder became the owner of the said property by virtue of a registered deed of sale dated April 25, 2007. The suit for eviction and recovery of khas possession was filed against the judgement debtors/defendants after they failed to deliver vacant possession of the premises, upon expiry of one month from the date of service of notice to quit. The suit was filed under Section 2(g) of the West Bengal Premises Tenancy Act, 1997, after expiry of the five years from the death of the original tenant. The plaintiff/decreed holder contended that one Ram Singh was the original tenant under the erstwhile owner Ms. Enakshi Ghosh. The tenant died intestate on December 20, 2006. The widow of the original tenant also died in 2009. The opposite parties had lost their right to reside in the tenanted premises and they were liable to be evicted from the property. They were trespassers since December 20, 2012.

6. The judgement debtors/defendants contested the suit by filing their written statement. During the pendency of the suit one Gurmel Singh expired and substitution was effected. The judgment debtors contended that the petitioner was not the owner of the suit property. According to the defence case, the grandfather of the defendants was the original tenant. After the demise of their grandfather, Enakshi Ghosh received rent from the defendants.

7. The suit was decreed and the defendants were directed to quit and vacate the suit premises within 60 days from the date of the judgment and decree. As the premises were not handed over, Title Execution Case No. 4 of was filed before the learned Civil Judge (Junior Division) 3rd Court at Alipore.

8. Aggrieved by the judgment and decree dated October 9, 2023, the defendants/judgment debtors preferred Title Appeal No.5, 2024 and they also prayed for stay of the execution case. The decree holder filed a written objection to the stay application thereby, controverting the allegations. In the Title Appeal, the decree holder also filed an application for a direction upon the judgment debtors to pay occupational charges. It was the specific contention of the decree holder that the judgment debtors did not pay a single farthing to the plaintiff/decreed holder, since the date of her acquisition of the property. That the vacant land of the suit property comprised of an area of 1500 sq. ft. which was being commercially let out by the judgment debtors, as parking lots for commercial cars, at a very high rate. Accordingly, the petitioner claimed a monthly occupational charges of Rs.4,17,981.65/-. Such claim was made on a valuation report prepared by a qualified engineer commissioner/valuer attached to the Alipore Judges' Court, personally engaged by the decree holder.

9. According to Mr. Basu, learned Senior Advocate, although the learned court recorded that there was nothing wrong with the valuer's report and the same had been prepared properly, the court awarded a paltry sum of Rs.85,000/- by ignoring the calculations made by the valuer. The learned court acted illegally and with material irregularity in not applying the basic parameters while quantifying the occupational charge. The suit property was located in a highly populated and economically viable area. The locality was not only a residential area, but a growing commercial area in the heart of Kolkata. Property prices very very high and even the rent that the property would fetch would be much higher.

10. Once the learned court accepted the report of the valuer as correct, an amount close to the figure mentioned in the valuer's report, should have been allowed. Reliance was placed on the decision of the Hon'ble Apex Court in the matter of ***Sumer Corporation vs. Vijay Anant Gangan and Ors.***, reported in ***2022 SCC Online SC 1548***. It was submitted that the Hon'ble Apex Court was of the view that occupational charges should not be fixed at the fair rate of return on the amount spent for purchase of the property, but on the market rent that the property would fetch at the relevant time when the decree was being stayed. On the principles of ***Atma Ram Properties (P) LTD. vs. Federal Motors (P) Ltd.*** reported in ***(2005) 1 SCC 705***, the court should have directed that the judgment debtors were liable to pay mesne profit or compensation for the use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earned rent therefrom.

11. The learned court was required to undertake the exercise and to determine the compensation at the same rate at which the landlord would have been able to let out the premises and earned rent therefrom.

12. In the case in hand, the valuer whose report had been appreciated by the learned court had calculated Rs.4,17,981.65/- to be the fair current monthly occupational charges and the decree holder was entitled to the said amount. The valuer was an expert and his report was binding on all.

13. Mr. Basu further contended that in ***Martin and Harris Pvt. Ltd. and Anr. vs. Rajendra Mehta and Ors.***, reported in ***(2022) 8 SCC 527***, the Hon'ble Apex Court held that the basis for determination of the amount of mesne profit depended on the facts and circumstances of each case.

Whether the property was situated in a village or a city or a metropolitan city and whether the property was used as a commercial or residential area, were guiding factors to quantify the amount of occupational charges.

14. Mr. Tanmoy Mukherjee, learned Advocate for the defendant/judgment-debtors, submitted that the decree was erroneously passed under Order 12 Rule 6 of the Code of Civil Procedure. The question of admission of the plaint case did not arise. On the basis of such an erroneous and perverse decree, the judgment debtor could not have been saddled with an astronomical amount of Rs.85,000/- as occupational charges. Quantum of occupational charges should not be oppressive, fanciful or punitive. The amount should be reasonable. He prayed that CO 1310 of 2024 should be allowed, by considerably reducing the quantum.

15. Mr. Mukherjee further contended that in the written statement, it had been categorically stated that the suit property continued to remain in the name of Ms. Enakshi Ghosh. M/s Goodwill property did not acquire any right, title and interest on the basis of deed of conveyance dated November 17, 1995, allegedly executed by a power of attorney holder of Ms. Enakshi Ghosh. The power of attorney was not a registered document. The ownership of the plaintiff was specifically denied by the defendant. When Goodwill could not get any right in the property in question, right, title and interest thereof could not have passed from Goodwill to Nilima Roy/deeree-holder/plaintiff. The Kolkata Municipal Corporation did not accept the deed of conveyance dated April 25, 2007, and refused to mutate the name of the plaintiff in respect of the suit property. That the defendants became tenants in respect of the suit property as heirs of Sardar Iswar Singh. The devolution

of tenancy was as per the Mitakshara School of Law. The suit was not maintainable under the provisions of Section 2(g) of the West Bengal Premises Tenancy Act, 1997. No notice to quit had been served upon the defendants. Enakshi Ghosh had accepted rents from the defendants. Relying on the purported conveyance deed of the plaintiff, Mr. Mukherjee submitted that the area conveyed was much less than what was claimed in the suit. Thus, occupational charges in respect of the entire premises, could not be claimed. Occupational charges should be levied on the consideration of the merits of the appeal.

16. Considered the rival contentions.

17. Mr. Tanmoy Mukherjee urged that as the suit was devoid of merits, the decree was liable to be set aside. The fact that Nilima Roy could not have acquired any right, title and interest from Goodwill, should have been a consideration before the direction for payment of occupational charges at Rs. 85,000/- was passed. Assessment of the merits of the appeal, should have been the guiding factor. Such contention is not accepted by this court. Even if, the judgment debtors had a good chance of success in the appeal, the law casts a duty upon the judgment debtors to pay occupational charges when execution of an eviction decree is stayed by a superior court. The appellate court had the jurisdiction to impose reasonable terms and conditions to compensate the decree-holder for the loss occasioned on account of delay in execution of the decree. Upon passing of a decree for eviction, the tenant is liable to pay mense profit or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premise and earned profits had the tenants

vacated the premises. Prayer for stay of the execution granted by the appellate court is an equitable and a discretionary relief. The tenant/judgment debtor can be asked to compensate the landlord by paying a reasonable amount.

18. In *Atmaram Property (supra)* the Hon'ble Apex Court had explained such proposition. The relevant paragraphs are quoted below:-

“18. That apart, it is to be noted that the appellate court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the appellant tenant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate court. While ordering stay the appellate court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In *Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd.* [(1999) 2 SCC 325] this Court has held that once a decree for possession has been passed and execution is delayed depriving the judgment-creditor of the fruits of decree, it is necessary for the court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property.

19. To sum up, our conclusions are:

(1) While passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and insofar as those proceedings are concerned. Such terms, needless to say, shall be reasonable.

(2) In case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (l) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have

vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.

(3) The doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a later date.”

19. The logic behind award of occupational charges to a landlord is to compensate the landlord for loss of income from the property in respect of which he had a decree for recovery of possession. It has nothing to do with the comparative merits of the suit and the appeal. Paragraph 21 of **Sumer Corporation** (*supra*) is quoted below:-

“**21.** As observed and held by this Court in the case of Atma Ram Properties (P) Ltd. (*supra*), from the date of the decree of eviction, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.”

20. Upon passing of the decree for eviction, the tenancy terminated and from the said date, the landlord was entitled to mesne profit or compensation for being deprived of the use of the premises. Thus, the contention of Mr. Mukherjee that merits of the appeal would have a direct bearing on the rate of occupational charges, is not correct. Reduction of the amount is not permissible on such ground. The learned court had noted the basic parameters to be considered while fixing the quantum, i.e., location, access to the metro, nature of the premises, commercialization of the area, size of the premise, and the reasonable rate of rent that the premises would fetch. The equities have been balanced and the sum is reasonable.

21. The decisions of the Hon'ble Apex Court on this point were taken into consideration by the learned Judge. Even though the chartered engineer/valuer quantified the occupational charges at Rs.4,17,981.65/- per month, the learned court arrived at the quantum of Rs.85,000/- per month, upon holding that such quantum would be reasonable. Relevant paragraph from ***Anderson Wright & Co. v. Amar Nath Roy***, reported in **(2005) 6 SCC 489** is quoted below:-

“5. As held by this Court in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.* [(2005) 1 SCC 705] , once a decree for eviction has been passed, in the event of execution of decree for eviction being stayed, the appellants can be put on such reasonable terms, as would in the opinion of the appellate court reasonably compensate the decree-holder for loss occasioned by delay in execution of the decree by the grant of stay in the event of the appeal being dismissed. It has also been held that with effect from the date of decree of eviction, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises on being vacated by the tenant. While determining the quantum of the amount so receivable by the landlord, the landlord is not bound by the contractual rate of rent which was prevalent prior to the date of decree.”

22. Thus, the learned court, upon considering the location of the premises, the measurement of the premises, i.e., 5 cottahs 5 chitak 21 sq. ft. along with a two storied building measuring 2000 sq. ft., awarded Rs.85,000/- as occupational charge. The court recorded that the premises was situated at the vicinity of a market and was located in the business hub of Bhawanipur. All civic amenities including the metro rail was available within a radius of 2 kms from the property.

23. The market value of the property was calculated at the government rate at Rs.6,41,61,375/- by the valuer. Upon allowing depreciation, the total

value was Rs.7,16,50,416/-. The annual income was thus calculated at over Rs.50 lakhs which made the monthly occupational charges as Rs.4,17,981.65/-. Upon recording the quantum of occupational charges which was allowed by the Hon'ble Apex Court in different cases on such point, the learned court held that Rs.85,000/- was fit and proper.

24. In *State of Maharashtra and Anr. v. Super Max International (P) Ltd. and Ors.*, reported in **(2009) 9 SCC 772**, the area occupied by the tenant was 9000 sq. ft. at Fort Mumbai, on a rental of Rs.5236.58/- plus water charges. The High Court of Mumbai directed the appellant to deposit Rs.5,40,000/- as occupational charges per month, which was affirmed by the Hon'ble Apex Court.

25. In *Atmaram Properties (supra)*, the occupational charges was fixed at Rs.15,000/- per month, when the rent was Rs.371.90/-. Such amount was allowed even after taking into account the contention of the landlord that the rent at which it could be let out was roughly Rs.3,50,000/-. The property was situated at Connaught Circus, New Delhi.

26. In *Hiralal Shaw vs. Bharati Manna and Ors.* reported in **2013 SCC Online Cal 21862**, the High Court at Calcutta had fixed the occupational charges at Rs.40,363/- considering the current market rent. The area occupied was 14,000 square feet. In the present case, the defendants/judgment-debtors had paid Rs.60/- per month for a dwelling house measuring about 2,000 square feet along with vacant land, which was located in a very populated and economically viable area. Thus, according to the learned court, Rs.85,000/-was reasonable. The principles of equity and reasonableness were finely balanced. The court exercised discretion.

27. Thus, **C.O.1310 of 2024**, is disposed of with the above observations.

28. The contention of Mr. Saptansu Basu, learned Senior Advocate that the amount should be enhanced, upon taking note of the valuer's report, is also not accepted. It appears that the valuer had considered the circle rate while arriving at the figure of Rs.6,41,61,375/- as the total valuation of the property. The relevant portion is quoted below:-

APPROACH TO CURRENT OCCUPANCY CHARGE CALCULATIONS:-

OPTION -1- Method-Annual Equivalent of Income Method-AE Method-
PREVAILING MARKET VALUATION/CIRCLE RATE OF THE SUIT FLAT
HAS BEEN DERIVED FROM THE CAPITAL VALUATION AS PER THE
WEBSITE OF DIRECTORATE OF REGISTRATION & STAMP
REVENUE-FINANCE (REVENUE) DEPARTMENT, GOVERNMENT OF
WEST BENGAL.

“After inserting the data as desired into the webpage- on 05/2/2024 between 18-25 & 18-35 hours, the valuation of only land portion of the suit property Bengal Government's website came to Rs.6,41,61,375/-”

29. This is contrary to the contention of Mr. Basu, that the circle rate should not be considered, but the rate at which a landlord could rent out the property should be the determining factor. Reference is made to paragraphs 20 to 22 of the **Sumer Corporation (supra)**, which are quoted below:-

“20. Having heard the learned Senior Advocates appearing on behalf of the respective parties and having gone through the impugned order passed by the High Court determining the monthly compensation @ Rs. 2,50,000/-, we are of the opinion that the approach adopted by the High Court is not a sound principle of law to form the basis for determining the compensation in this case. In the present case, while determining the monthly compensation, the High Court has considered the fair rate of return @ 6.5% annually on the amount for which the appellant purchased the property in the year 2008, i.e., Rs. 5.50 crores. The aforesaid could not have been the basis while determining the monthly compensation. If the approach adopted by the High Court is accepted and/or approved, in a given case, it may happen that the lessor might have purchased the property forty years

back and/or long back and if the said approach is considered and thereafter the monthly compensation is determined, the same cannot be said to be a reasonable compensation. The aforesaid would be contrary to the law laid down by this Court in the case of Atma Ram Properties (P) Ltd. (supra) and further reiterated by this Court in the case of Super Max International Private Limited, (supra).

21. As observed and held by this Court in the case of Atma Ram Properties (P) Ltd. (supra), from the date of the decree of eviction, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.

22. The decision in the case of Atma Ram Properties (P) Ltd. (supra) has been subsequently followed by this Court in the case of Super Max International Private Limited (supra). In the said decision, it is further observed and held that in fixing the amount subject to payment of which the execution of the order/decreed is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount. Therefore, in a revision/appeal preferred by the tenant, who has suffered an eviction decree, the appellate/revisional court while staying the eviction decree can direct the tenant to pay the compensation for use and occupation of the tenancy premises upon the contractual rate of rent and such compensation for use and occupation of the premises would be at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. In the present case, the High Court has not done that exercise and has determined the compensation considering the market value/value at which original respondent No. 19 acquired the rights of the suit property for a sum of Rs. 5.50 cores and thereafter, considering estimated return @ 6.5% per annum, the High Court has determined/awarded the compensation for use and occupation of the premises by the tenant @ Rs. 2,50,000/- per month. The aforesaid method adopted by the High Court while determining the compensation cannot be accepted. The High Court was required to undertake exercise and to determine the compensation at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises.”

30. It further appears that the annual return on the property was considered by the valuer on the basis of 7% interest on fixed deposits per annum. The relevant portion is quoted below:

“ACTUAL CURRENT MARKET VALUE-

As I have mentioned in the penultimate paragraph of page-3 of my report, that Government of West Bengal slashed the Circle rates of all properties within West Bengal on 8th July 2021, by 10% upon all circle rate which were prevailing as on 7th of July 2021, to counter the COVID induced economic slowdown, therefore the current Circle rate of Rs.6,41,61,375/- is actually 90% of the Government circle rate of the land, which was prevailing as on 7th of July 2021.

Hence the actual justified Current Circle rate of this Land is Rs.6,41,61,375/- + 90 and multiplied by 100 = Rs.7,12,90,041/-. Adding the depreciated building value of Rs.3.60 Lakhs, the actual market value of this property with land and building under Bastu usage is Rs.7,16,50,416/-.

Note- actually the building size is much more than 2000 sq. ft. and can be even 3000 sq. ft. and the ground floor of this property is purely commercial, but conservatively, I have considered only 2000 sq. ft. of constructed house and property as Bastu instead of commercial in my above calculations

It is a known fact that the (V) Capital value of the property = (AE) Annual equivalent of income x (YP) years of purchase. Therefore, in actual terms, the Annual Income = Valuation of the property/years of purchase, which we write as $AE = V/YP$. At present the yield from bond and fixed deposits is currently about 7.0% per annum. Since I do not know the age of the Plaintiff, I have considered 7.00% interest rate on his fixed deposits per annum. I have enclosed Annexure-5 from HDFC Bank Website of current Fixed Deposit rates as evidence. Please refer highlighted portion of page-3 of 3 of Annexure-5.

The return on gift edged securities have been unpredictable, since gold-prices have varied within Rs.58,000/- to Rs.65,000/- per 10 grams, within the last 1 year. Therefore, the yield from guilt is 20% to 30% but volatile.

Moreover, equity return has fluctuated in the last 1 year & the Sensex/Nifty is moving drastically upwards & due to present economic boom has already picked up from its high of 65,000 to 72,000 within the last 5 to 6 months due to various reasons.

In my expert opinion. I have not the taken the return on gift or equity returns into account and considered the standard safe & conservative return from debt bonds & bank fixed deposits.

Therefore, years of purchase (YP), in this case will be @ 7.00% on invested capital, as per HDFC bank website, since the plaintiff here is not considered as senior citizen.

Hence Y.P. = 1/RATE OF RETURN = 1/0.0700 =14.285. Therefore AE = Rs. 716,50,416/14.285= Rs.50,15,779.9/- per year. This can be treated as the annual income or yearly occupational charge which can be fetched from renting this property, at present.

Therefore, if the present annual occupational charge is Rs.50,15,779.90/-, then monthly occupancy charge will be Rs.50,15,779.90/12= Rs.4,17,981.65/- per month for this month of February of 2024.

This means that if the Plaintiff had kept the current value of the property in a bank fixed deposit, she could have earned Rs.50.15 Lakhs per year as interest.

Therefore from Method-1-Annual Equivalent of Income Method the Fair Current monthly occupational charge is Rs.4,17,981.65/-for the bastu suit property measuring 5 Katha 5 Chittacks 21 sq. ft. along with the 2 storeyed house.”

31. In order to arrive at the market rent, information were downloaded from the website of 99acres and Magicbricks. Such figures may not be completely reliable considering the fact that residential premises was more than 80 to 90 years old, as per the valuer’s estimate. It is also not available from the report whether similarly situated houses had been listed in those websites.

32. No reliable estimates of rental from surrounding buildings had been put forward before the court. The quantum of occupational charges should be rational and not oppressive. Rationality would entail striking a balance. In this case, the original rent was Rs.60/- which was enhanced to Rs.85,000/- per month by balancing the equities. The court could not fix a fanciful and unimaginable amount and it could never be the rate calculated by the valuer. There is nothing on record which would indicate that there was evidence that the property and the vacant land were being used for commercial purpose. The report of the valuer and the chartered engineer

was not tendered in evidence. It could, at best, be a guidance for determination by the learned trial judge, but never the sole guiding factor. In case of ***Atma Ram Properties (supra)***, it was held that “such terms, needless to say, should be reasonable”. Paragraph 77 of ***Super Max (supra)*** is also quoted below:-

“77. In the light of the discussions made above we hold that in an appeal or revision preferred by a tenant against an order or decree of an eviction passed under the Rent Act it is open to the appellate or the Revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/decreed is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.”

33. In the case of ***Niyas Ahmed Khan -Vs- Mahmood Rahmat Ullah Khan & Anr.*** reported in ***(2008 (7) SCC 539)***, it was held that fixation of the occupational charges on the basis of the prevailing market rent of the locality should not be such that the amount was either unreasonable, oppressive or *in terrorem*. Reference is made to the observation of the Hon'ble Apex Court in Paragraphs 7 to 9 of the said report which this Court feels necessary to reproduce as under:-

“7. Even assuming that the High Court has power to increase the rent, we fail to understand how in the absence of any evidence — either oral or documentary or by way of affidavit, the learned Single Judge could assess the rent as Rs 12,050 which is more than 48 times the rent of Rs 250 earlier determined. The learned Single Judge did not consider any of the relevant circumstances like the market value of the building on the date of letting, prevailing rentals in the locality as on the date of letting, the size or situation or amenities, age of construction, latest assessment of the building or other circumstances. Further, when a premises consisting of several rooms, verandahs, kitchen, terrace, bathrooms, latrines, is let out as a single unit, the question of assessing the rent with reference to each room or portion of such premises separately does not arise. The learned Judge's observation

that by taking a pragmatic approach he was assessing the rent at Rs 12,050, to say the least, is arbitrary and contrary to law.

8. The learned counsel for the respondent landlord submitted that in several cases, this Court has rejected the challenge to similar orders by refusing to grant special leave. Dismissal of a special leave petition, in limine does not preclude this Court from examining the same issue in other cases. Further, where the rent is increased reasonably, having regard to the fact that the interim direction is purely a temporary arrangement during the pendency of the writ petition, it is possible that this Court might have refused to interfere under Article 136 of the Constitution of India. Every wrong or doubtful exercise of jurisdiction does not call for grant of special leave, particularly if the order has not resulted in any injustice. In fact, in several cases, this Court has set aside the similar interim directions for payment of excessive rents.

9. We should however note the distinction between cases where a writ petition is filed by the tenant challenging the order of eviction and seeking stay of execution thereof, and cases where a writ petition is filed by the landlord challenging the rejection of a petition for eviction. What we have stated above is with reference to writ petitions filed by landlords. In writ petitions filed by tenants, while granting stay of execution of the order of eviction pending disposal of writ petition, the High Court has the discretion to impose reasonable conditions to safeguard the interests of the landlord. But even in such cases the High Court cannot obviously impose conditions which are ex facie arbitrary and oppressive thereby making the order of stay illusory. When a tenant files a writ petition challenging the order of eviction, the High Court may reject the writ petition if it finds no merit in the case of the tenant; or in some cases, the High Court may admit the writ petition but refuse to grant stay of execution, in which event, the tenant may be evicted, but can claim restoration of possession if he ultimately succeeds in the writ petition; or in some cases, the High Court finding the case fit for admission, may grant stay of eviction, with or without conditions, so that status quo is maintained till the matter is decided. Where the High Court chooses to impose any conditions in regard to stay, such conditions should not be unreasonable or oppressive or in terrorem. Adopting some arbitrary figure as prevailing market rent without any basis and directing the tenant to pay absurdly high rent would be considered oppressive and unreasonable even when such direction is issued as a condition for stay of eviction. The High Court should desist from doing so.”

34. The quantum of occupational charges is not static, but depends upon various factors which could be reasonably ascertained from the aforesaid decisions. The appellate court was within its power and jurisdiction to direct the judgment debtor to pay the occupational charges at Rs.85,000/- per

month. The Courts should not arbitrarily fix quantum which would be too harsh. The tenants should not be compelled to vacate the premises without putting up a fight in the pending appeal.

35. Under such circumstances, this court is of the view that the learned judge, upon taking into consideration the area of the property, the original rate of rent (Rs.60/-) and upon balancing equities, had arrived at the figure of Rs.85,000/- as a reasonable amount of occupational charges.

36. The scope of interference under Article 227 of the Constitution of India is very limited. The High Court, while exercising superintending power, could only decide whether the learned subordinate court had acted within the four corners of its jurisdiction or not. This court finds that the decision of the learned court is well-reasoned, based on correct parameters and also upon consideration of various decisions of the Hon'ble Apex Court. The Court passed a discretionary order.

37. In the matter of ***K. Chinnammal (dead) Thr. Lrs. Vs. L.R. Eknath & Anr.*** reported in **2023 6 SCR 831**, the Hon'ble Apex Court held as follows:-

“31. As far as the width and amplitude of powers of the High Court under Article 227 of the Constitution is concerned, we need only take note of, in praesenti, ***Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97***, and ***Garment Craft v. Prakash Chand Goel, (2022) 4 SCC 181***. In ***Estralla Rubber (supra)***, it was stated:

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or

tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

7. This Court in Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand [(1972) 1 SCC 898 : AIR 1972 SC 1598] in AIR para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case Waryam Singh v. Amarnath [AIR 1954 SC 215 : 1954 SCR 565]. This Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarte [(1975) 1 SCC 858 : AIR 1975 SC 1297] has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order.”

32. In the more recent ***Garment Craft (supra)***, this Court put it thus:

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [Prakash Chand Goel v. Garment Craft, 2019 SCC OnLine Del 11943] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [Celina Coelho Pereira v. Ulhas Mahabaleshwar

Kholkar, (2010) 1 SCC 217 : (2010) 1 SCC (Civ) 69] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.”

38. In the matter of ***M/s. Puri Investments vs M/s. Young friends and Co. and Ors*** decided in ***Civil Appeal No. 1609 of 2022***. The Hon’ble Apex Court held as follows:-

“10..... The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are:-

- (i) Erroneous on account of non-consideration of material evidence, or
- (ii) Being conclusions which are contrary to the evidence, or
- (iii) Based on inferences that are impermissible in law.”

39. In the matter of ***Ibrat Faizan vs Omaxe Buildhome Private Ltd.*** decided in ***Civil Appeal No. 3072 of 2022***, the Hon’ble Apex Court held as follows:-

“**14.1** The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of ***Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97***, which has been consistently followed by this Court (see the recent decision of this Court in the case of ***Garment Craft v. Prakash Chand Goel, 2022 SCC Online SC 29***). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the

parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India.”

40. The order impugned is not interfered with. The judgment-debtors are directed to deposit in the executing court a sum of Rs.85,000/- per month on and from June 2024, month by month, every month, within the 10th of the succeeding month, as occupational charges. The occupational charges for June, shall be deposited within July 10, 2024. The arrears at the same rate from October 2023 till May 2024, shall be deposited in five equal monthly instalments. First of such instalment shall be paid within July 10, 2024 and thereafter within 10th of each succeeding month until the entire amount is liquidated.

41. The learned court of appeal, is requested to dispose of the appeal preferably within six months from date of communication of this order. Failure to comply with this order, will result in continuation of the execution proceeding. A single default will entitle the decree holder to execute the decree.

42. The order impugned does not call for any interference on merits, but only a slight modification as indicated above has been made, by extending the period of payment.

43. The revisional applications are disposed of.

- 44.** The order of the learned trial judge is affirmed.
- 45.** There will be no order as to costs.
- 46.** Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)