

21.05.2024
Sl. No.23&24(DL)
srm

C.O. No.1714 of 2024
With
C.O. No.1715 of 2024
Naznin Aslam & Ors.
Versus
Sri Ajoy Kumar Sinha

Mr. Ranjan Kali,
Mr. S. Pathak,
Mr. Riaz Abedin

...for the Petitioners.

Mr. Abhijit Ray,
Mr. Nayeemuddin Munshi,
Ms. Aishwarya P. Ganguly

...for the Opposite Party.

1. Both the revisional applications being C.O. No.1714 of 2024 and C.O. No.1715 of 2024 are taken up together with the consent of the parties. The facts and law are similar and the parties are the same.
2. C.O. No.1715 of 2024 has been filed challenging an order dated February 27, 2024 passed by the learned Chief Judge, City Civil Court at Calcutta, in Title Appeal No.25 of 2022.
3. By the order impugned, the learned court rejected an application for modification of the order dated February

10, 2023. By order dated February 10, 2023, the learned court had directed payment of Rs.30,000/- per month from the date of the judgment and decree, i.e., June 23, 2022 as occupational charges as a condition for stay of the execution proceeding. The said order was sought to be modified on various grounds including the unemployment of the some of the judgment-debtors. It was also contended that the occupational charges could not be calculated on the basis of the market rate of the property, but on the basis of the rent which the landlord would have earned, had the property been let out, after effecting eviction.

4. Mr. Kali, learned Advocate appearing on behalf of the judgment-debtors submits that the learned court did not assign any reason while rejecting the application for modification. It is submitted that the present market value of the property and its per square feet rate, could not have been taken as the base for awarding Rs.30,000/- per month as occupational charges. The learned court wrongly held that the property in possession of the judgment-debtors measured about 625 sq.ft. Actually 125 sq.ft. thereof, was in a dilapidated condition.

5. Mr. Kali further submits that taking advantage of the dismissal of the application for modification, the decree-holder continued with the execution and the application for police help was also allowed.
6. Mr. Ray, learned Advocate appearing on behalf of the decree-holder submits that not a single farthing had been paid from the date of the decree. Without paying any amount towards occupational charges, the defendants/judgment debtors contested the proceeding before the learned executing court and upon contest, orders were passed. The police cost had also been deposited.
7. C.O. No.1714 of 2024 has been filed challenging the order of the learned Judge-in-Charge, 2nd Bench, Presidency Small Causes Court, Calcutta in Misc. Case No.165 of 2022 arising out of Ejectment Execution Case No.81 of 2022 directing grant of police help for execution of the decree.
8. I find that the learned court calculated the market valuation of the property and imposed the occupational charges. Occupational charges should be based on certain parameters namely, location, condition of the premises, reasonable rent the property would fetch etc. The learned

court failed to take into consideration such factors.

Moreover, a reasonable amount must be directed to be paid, which cannot be either punitive or oppressive.

9. Having heard the rival contentions of the parties, this Court is of the view that the order of grant of police help and the steps taken by the decree-holder pursuant to such order which is subject matter of challenge in C.O. No.1714 shall be kept in abeyance till the learned appellate court decides the appeal and the execution case shall also remain stayed, provided the petitioners comply with the following directions:-

(a) A sum of Rs.15,000/- per month, as occupational charges, on and from the date of the decree till May, 2024 shall be deposited in the learned executing court in four equal monthly instalments.

(b) The occupational charges from the month of June, 2024 shall be deposited within July 10, 2024 and thereafter month by month within 10th of each succeeding month.

(c) First of such instalment towards arrear shall be deposited within June 10, 2024 and the remaining instalments shall be deposited on July 10, 2024, August 10, 2024 and September 10, 2024.

(d) In case of default in payment of the monthly occupational charges or any of the instalments, as directed hereinabove, the order of grant of

police help shall revive and the learned executing court shall proceed with the execution.

10. Upon recording compliance of this order, the learned appellate court shall dispose of the appeal within the next five months.

11. The prayer of Mr. Ray for withdrawal of the occupational charges is not entertained by this Court. The decree-holder may proceed in accordance with law.

12. Both the revisional applications are, thus, disposed of.

13. There shall be no order as to costs.

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

(Shampa Sarkar, J.)