

21.03.2024
Ct. No. 19
Sl. No.05
Cp/Gb

C.O. No. 1844 of 2023

Supriya Chattopadhyay & anr.
Vs.
Kabra Marbles Corporation & ors.

Mr. Aniruddha Chatterjee
Mr. Iftekar Munshi

.....for the petitioners.

Mr. Haradhan Banerjee
Mr. Amitava Paine
Ms. Manideepa (Paul) Roy
Mr. Nilmoni Das

.....for the opposite parties.

1. By the order dated April 11, 2023, the learned Civil Judge (Senior Division) 1st Court, Alipore, rejected an application filed by the plaintiffs for a direction upon the defendants to prove payment and/or deposit of occupational charges by producing the challans from May, 2018 to August, 2021. Such application was filed seeking compliance of the order passed by this court in C.O. 2960 of 2018. When the suit was decreed ex parte, an application for setting aside of such ex parte decree was filed. During the pendency of the said application, the plaintiffs put the decree into execution. The defendants filed an application for stay of the execution. The learned Executing Court directed payment of occupational charges of Rs.15,000/- per month as a condition precedent for grant of stay of the execution proceeding. Such order was challenged by

the plaintiffs in C.O. 2960 of 2018. A coordinate Bench, upon assessing the entire facts and the market rent which the property would fetch, awarded a sum of Rs.1,00,000/- per month as occupational charges. C.O. 2960 of 2018 was disposed of accordingly. The application under Order 9 Rule 13 was dismissed for default. An application for restoration was filed under Order 9 Rule 9. The said application was dismissed on merits. The said order was challenged before the Division Bench of this court in FMAT No. 1321 of 2019. FMAT 1321 of 2019 was allowed with a direction upon the defendants to pay cost of Rs.5,00,000/- and the learned court was directed to dispose of the application under Order 9 Rule 13 of the Code of Civil Procedure. The application under Order 9 Rule 13 of the Code being Misc. Case No.119 of 2017 was allowed and the ex parte decree was set aside.

2. Again the suit proceeded, and ultimately the defence of the tenant was struck off for non-compliance of Section 7 of the West Bengal Premises Tenancy Act. An application was filed before this Court alleging that although the defence had been struck off, the learned court was postponing the date to trace out the written statement. It was urged before the court that once the defence was struck off, there was no requirement for the court to rely on the written statement. The

revisional application was allowed by this Court directing expeditious disposal of the eviction suit with the observation that the ratio of Modula India versus Kamakshya Singh Deo reported in (1988) 4 Supreme Court Cases 619, would be applicable, that is the defendants would only get a right to cross-examine the plaintiffs on the plaint case and advance arguments to demolish the plaint case. The tenants would not be entitled to set up their own defence.

3. At this juncture, this revisional application has come up for a decision as the application filed by Mr. Aniruddha Chatterjee's client before the learned trial judge calling upon the defendants to produce the challans showing compliance of the order of the coordinate Bench in C.O.2675 of 2022, was rejected.
4. Mr. Chatterjee urges this Court to set aside the order of the learned Trial Judge on the following grounds:-
 - a) A stay was enjoyed by the defendants although the condition imposed by the High Court was not complied with. Non-compliance of the court's order has its own consequences.
 - b) Payment of the amount of Rs.1,00,000/- per month as directed by His Lordship upto the date when the Order 9 Rule 13 of the Code of Civil Procedure was allowed, should be directed to be paid, as the occupational charges was in

the nature of a compensation payable to a landlord who was successful in getting a decree of eviction but was deprived of his right to enjoy his property only because a proceeding by a tenant was pending in a different forum.

- c) It is a condition imposed on the tenant to compensate the landlord who is deprived of the fruits of his decree.

5. Mr. Chatterjee submits that even assuming that the order of the coordinate Bench had lost its force after the ex parte decree had been set aside, and there was no decree in the eye of law, the period between the decree being set aside and the direction of the court, should fetch the occupational charges which had accrued. The learned court erred in holding that it was the duty of the plaintiffs to approach the learned executing court and pray for continuation of the execution on the ground of non-compliance of the order of the High Court.

6. Mr. Banerjee, learned advocate appearing on behalf of the defendants submits that payment of occupational charges was a conditional order, to enable the defendants to have their application under Order 9 Rule 13 of the Code of Civil Procedure adjudicated. A conditional stay was given in the execution case. If the execution proceeded, the application under Order 9

Rule 13 of the Code would be rendered infructuous. The moment the Order 9 Rule 13 application was dismissed, the condition imposed had lapsed. The condition was that the stay of the execution would continue upon payment of Rs.1,00,000/- per month till disposal of the misc. case. With the dismissal of the misc. case, such condition lapsed. There was neither any stay nor any condition for payment after such dismissal of the misc. case. The plaintiffs could proceed with the execution, but they did not do so.

7. Mr. Bannerjee further submits that in the objection to the application filed by the plaintiffs, a specific point was raised that occupational charges as directed by the learned executing court at the rate of Rs.15,000/- had been deposited. The defendants were not in the financial condition to deposit Rs.1,00,000/-. Hence, the same was not deposited. Mr. Banerjee further contends that this is a suit for eviction guided by the West Bengal Premises Tenancy Act, 1997. For non-payment of rent, the defence has been struck off in terms of Section 7(3) of the said Act. Under the particular statute, the tenant was not required to pay occupational charges at the stage when there was no stay of execution in the eye of law. The only effect of non-payment of rent was the defence could be struck off. The defence has already been stuck off. Now, the

tenant cannot be compelled to pay any money towards either rent or occupational charges and the payment for the period when the tenant was occupying the premises without payment of any rent, will be adjudicated in the proceeding for mesne profits, which is a part of the reliefs in the plaint, if at all the suit succeeds.

8. Having heard the learned advocates for the respective parties, I do not find any reason to interfere with the order impugned. The payment of occupational charges was a condition precedent for stay of the execution case. The defence has been struck off for non-payment of rent in terms of Section 7 of the said Act. This is not the procedure by which recovery of the alleged occupational charges can be done. However, if it is the contention of the plaintiffs that they are entitled to the arrear occupational charges during the period when the stay was operating, the plaintiffs may proceed in any proceeding, if permissible in law.
9. This order shall not be construed as any observation of the Court on the petitioner's right to claim such arrear occupational charges at this juncture.
10. The revisional application is accordingly disposed of.

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

(Shampa Sarkar, J.)