

January 3, 2024
Sl. No.37
Court No.19
s.biswas

CO 2364 of 2023

Smt. Sanhita Roy
vs.
Smt. Indrani Basak

Mr. Rajdeep Bhattacharjee

... for the petitioner

Dr. B. P. Dutta

Mr. Dilip Kr. Mandal

... for the opposite party

Affidavit-in-opposition filed by the opposite party is taken on record.

The revisional application has been filed challenging an order dated April 19, 2023 passed by the learned Civil Judge (Senior Division), 2nd Court, Barasat, District North 24 Parganas in Title Suit No.873 of 2018.

By the order impugned, the learned court rejected an application under Section 151 of the Code of Civil Procedure filed by the plaintiff on September 25, 2019. By the said application, the plaintiff prayed for a direction upon the defendant to pay occupational charges of Rs.19,000/- per month along with arrears and interest, since September 30, 2013, till the present date.

Written objection was filed by the defendant denying such right of the plaintiff to claim occupational charges during pendency of the suit for eviction. The suit is for eviction of a licensee, upon expiry of licence.

Mr. Bhattacharya, learned advocate appearing for the petitioner/owner relies on the decision of this court in the matter of **Green Band Apartments Private Limited and others vs. The Mint Matrix and others** reported in 2021 SCC Online Cal 428 / (2021)2 ICC 269.

It is submitted that this court had held that the occupier of the premises was liable to pay the agreed monthly rent, at the last paid rate with arrears, which could be adjusted against the mesne profits in case the suit is decreed or against rent, if the suit fails and the occupant continues to occupy the premises either as a licensee or as a tenant.

Mr. Bhattacharya submits that the decision of the Division Bench in **K.K. Saha & Co. Pvt. Ltd. s. Ashok Agarwal** reported in 2018(1) CHN (Cal), would not be applicable in this case as the written statement would indicate the admission of the defendant that she was a licensee and she was inducted in the premises as a licensee by the petitioner. The contractual rent was fixed at Rs.19,000/- per month. The reported decision of this court in **Green Band** (supra) would be squarely applicable.

Mr. Bhattacharya further submits that the learned court was also wrong in holding that Section 151 of the Code of Civil Procedure could not be

pressed into service by the owner in making such prayer for occupational charges.

Learned advocate for the opposite party/tenant, submits that the payment of occupational charges is the final relief claimed in the suit. The court, at the interim stage, cannot direct payment of such charges, until the suit is decided. That the decision in **Kanak Projects Limited v. Oil and Natural Gas Corporation Ltd.** reported in **2014 (2) CHN (Cal) 405** was not good law and the same has been answered by the Division Bench in **K. K. Saha** (supra).

It is further contended that if the plaintiff succeeds in the suit, the arrear rents would be paid to the plaintiff as per the decision of the court and the decree passed therein. In the meantime, when the licence had expired, the licensee was under no obligation to pay any charges for using the premises, in respect of which they had been inducted.

Reliance has also been placed on the counterclaim filed by the defendant, claiming a declaration of the tenancy in respect of the suit property.

Heard the learned advocates for the respective parties. In my opinion, Section 151 of the Code of Civil Procedure confers inherent power to the court. In exercise of such power, the court can pass orders

for the ends of justice. The owner can apply before the learned court for a direction upon the defendant to pay the occupational charge or the charges for using the premises during the pendency of the suit as per the admitted/contractual rent, based on the agreement between the parties.

The Civil Procedure Code does not provide for any other mechanism by which such application could have been made. Secondly, the observation of the learned court that without a valuer having valued the property and the property in the surrounding locality, the determination of the occupational charges could not be made, is also erroneous. The plaintiff had claimed occupation charges at the rate of the original licence fees as per the leave and licence agreement entered into between the owner and the licensee. The question of appointment of a valuer to assess the market value would not arise. The plaintiff claims contractual licence fees. There is no decision in the suit as yet. Finally, in the written statement, the defendant has accepted and admitted that she was inducted as a tenant in respect of the premises in question by the plaintiff and the monthly licence fee was fixed at Rs.19,000/-, which she had paid.

Paragraph 11 of the written statement and paragraph 2 of the written objection record the

admission of the defendant of being inducted as licensee in respect of the premises by the petitioner and payment of rent/licence fee at the rate of Rs.19,000/- per month. The written statement also records that the licence fees were not paid on and from February, 2013. Irrespective of whether the defendant was a tenant or a trespasser after the expiry of the licence, the last paid rent should be the charges payable either on account of rent or licence fee or damages for the occupation of the premises in question. The defendant cannot enjoy the premises from the date of expiry of the licence, without payment of a single farthing, when the defendant admits to have been inducted as licensee and to have continued residing in the said premises without payment of the licence fee. It is an admitted position that the licence fee was last paid sometime in February, 2013. It has been categorically specified in the written statement that the licence fee was fixed at Rs.19,000/- per month. The relationship has not been challenged. This payment shall be towards charges payable by the defendant, for using the premises. It is not a mandatory injunction upon the defendant to pay the money, even before passing of the decree for mesne profits.

The court is conscious that the court cannot direct the tenant to pay the occupational charges,

damages, mesne profits, etc. at the prevailing market rate, in excess of the contractual rent. The trial judge proceeded on the basis that the claim for the contracted licence fee of Rs.19,000/- was in the nature of claim for occupational charges, post a decree for eviction and that is why the learned court erred in holding that without a valuer and determination of the market value of the property, the quantum of the occupational charges could not be fixed. The plaintiff prayed for the last agreed licence fees which is admitted in the written statement. This was not appreciated by the learned court.

The decision in the **K. K. Saha** (supra) was rendered when a question was referred as to whether, during the pendency of the suit, occupational charges at the market rate of rent which the property would fetch, could be directed to be paid, during pendency of the suit. In answer to such reference, it was directed that no direction for deposit of monthly rent at the market rate, as a condition for staying in the property, could be directed, during the pendency of the suit.

The Hon'ble Apex Court in the matter of **Karam Kapahi & Ors. vs. Lal Chand Public Charitable Trust & Ors.** reported in (2010) 4 SCC 753, allowed payment of rent during the pendency of the suit as

the defendant had admitted in the written statement that the plaintiff was a lessor and the defendant had not paid the lease rent. The quantum of last paid rent was also admitted. The Hon'ble Apex Court was of the view that the defendant could not approbate and reprobate.

Under such circumstances, this court is of the view that when it is admitted case of the defendant that the defendant was inducted as a licensee in respect of the premises in question, by the petitioner, and the licence fee was fixed at Rs.19,000/- per month and when the defendant continues to occupy the premises in question, the defendant is liable to pay the last agreed amount of Rs.19,000/- for occupation of the premises in question, from the date of filing the application under Section 151 of the Code of Civil Procedure, till the disposal of the suit. If the suit succeeds, the said amount shall be adjusted against the mesne profits and damages, which have been claimed by the plaintiff. If the suit fails and the defendant continues as a licensee or a tenant, subject to the final decision and counterclaim in the suit, the amount shall be adjusted against the rent payable by the defendant.

Under such circumstances, the revisional application is allowed. The order impugned is set aside. Rs.19,000/- per month, shall be paid month

by month within 10th of every succeeding month. Such payment shall commence from January 2024, as per the direction of this court. The payment for January 2024, shall be paid within February 10, 2024. The arrears on and from the date of the application till December, 2024 shall be liquidated in 12 equal monthly instalment. Fraction if any, shall be added to the last instalment.

The revisional application is accordingly disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)