

26.02.2024
Sl. No.22(DL)
srm

C.O. No. 2691 of 2023

Sri Anandi Sharma

Versus

Shyam Sundar Shaw

Mr. Shyamal Chakraborty,
Mr. Jayanta Dhar,
Ms. Anjana Das,
Mr. Chandra Bhanu Sinha,
Mrs. Kajal Chattopadhyay,
Ms. Anjali Mishra

...for the Petitioner.

Mr. Subrata Das

...for the Opposite Party.

1. Affidavit-of-service is taken on record.
2. The revisional application arises out of the an order dated June 23, 2023 passed by the learned Civil Judge (Junior Division), 1st Court at Sealdah, in Misc. Case No.8 of 2021. Misc. Case No.8 of 2021 arose out of Title Suit No.209 of 2014. The suit was decreed *ex parte*. The petitioner filed an application for setting aside the ex parte decree by filing an application under Order IX Rule 13 of the Code of Civil Procedure. The same was registered as Misc. Case No.8 of 2021. During the pendency of the misc. case,

the petitioner also prayed for stay of the execution proceeding.

3. The learned court was of the view that the decree-holder was not being able to reap the benefits of the decree as the tenant continued to be in possession of the property without paying a single farthing. As the decree for eviction had been passed against the petitioner, the learned court, upon applying the principles settled by the Hon'ble Apex Court in the matter of *Atma Ram (P) Ltd. Vs. Federal Motors (P) Ltd.* reported in (2005) 1 SCC 705 directed payment of Rs.3,000/- per month as occupational charges on and from the date of the decree.
4. Mr. Chakraborty, learned Advocate appearing on behalf of the petitioner submits that the occupational charges were exorbitant. The court did not come to a specific finding as to why Rs.3,000/- as occupational charges should be imposed upon the tenant, when admittedly monthly rent was Rs.18/-. A tile shed room measuring 100 sq.ft. would not fetch Rs.3,000/- as the market rent.
5. The learned Advocate for the landlord submits that since 1991, not a single farthing has been paid.

Learned Advocate further submits that although the suit property is a tile shed room measuring about 100 sq.ft., the same is situated near the Belgachia Metro Station, which is an expensive locality. The current rent of the property would be around Rs.3,000/- per month or more. Hence, the learned court did not err in passing the order impugned.

6. Having considered the rival contentions of the parties, this Court finds that the reason assigned by the learned court for payment of occupational charges at a higher rate than the rent, was that the property was near Shyambazar area and likely to fetch around Rs.2,000/- per month as rent. However, in the ordering portion, Rs.3,000/- per month as occupational charges had been directed. In my view, when the learned court had applied its mind as to the measurement of the property and the location of the property and found that Rs.2,000/- per month as rent, would be the market rent, the direction to pay Rs.3,000/- per month is arbitrary and without reasons. Such quantum was not fixed on any parameters and was contrary to the findings of the court.

7. Accordingly, the order impugned is modified to the extent that the tenant shall pay Rs.2,000/- per month as occupational charges on and from the date of the passing of the decree. The current occupational charges for February, 2024 shall be paid within March 10, 2024 and thereafter, the current occupational charges shall be paid month by month, every month, within 10th of each succeeding month.
8. The arrears, i.e. the occupational charges at the rate of Rs.2,000/- per month on and from the date of the decree till January, 2024, shall be deposited in instalments. First of such instalment, amounting to Rs.2,00,000/- shall be deposited in the learned court within March 31, 2024. Thereafter, the remaining amount shall be deposited in ten equal monthly instalments along with monthly charges, till the entire amount is liquidated. In case of default, in payment of either the monthly occupational charges or the instalments towards arrears, will result in continuation of the execution proceedings.
9. The learned court shall dispose of the application under Order IX Rule 13 of the Code of Civil Procedure, within a year from the next date fixed.

10. The prayer for withdrawal of the occupational charges is not considered in this proceeding. The opposite party may approach the learned court for necessary orders, if permissible in law.
11. The revisional application is, thus, disposed of.
12. There shall be no order as to costs.
13. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)