

08.03.2024
Item No.16
Ct. No.7
KS

C.O. 3226 of 2023
Smt. Bhabani Giri
Vs.
Smt. Minati Nayek

Mr. Koushik Bhattacharya
Mr. Kounish Chakraborty

.....for the Petitioner

Mr. Gautam Das
Mr. P. Das

.....for the Opposite Party

1. By order No.3 dated 25th August, 2023, the learned Additional District Judge, 1st Court, Sealdah in Miscellaneous Appeal No.52 of 2023 directed the petitioner herein, who was the appellant in the miscellaneous appeal to pay arrear occupational charges in five equal monthly installments.
2. The learned advocate appearing for the petitioner submits that the learned Court of Appeal below without giving any opportunity to the petitioner to produce documents in support of the occupation charges fixed the rate of Rs.5,000/- per month.
3. Heard Mr. Das, learned advocate for the opposite party on such submission.
4. After going through the order impugned, this Court finds that the learned Court of Appeal below rightly noted that the appellant/petitioner herein is enjoying the suit premises even after decree for eviction was passed without paying

any occupation charges. The learned Court of Appeal below rightly applied that proposition of law laid down by the Hon'ble Supreme Court in the case of *M/s. Atma Ram Properties (P) Ltd. Vs. M/s. Federal Motors Pvt. Ltd.* reported in **2005 (1) SCC 705** and the decision in the case of *State of Maharashtra & Anr. Vs. M/s. Super Max International Pvt. Ltd. & Ors.* reported at **(2009) 9 SCC 772** and determined the quantum of occupational charges at Rs.5,000/- per month.

5. The learned Court of Appeal below in exercise of its discretion fixed the occupation charges at Rs.5,000/- per month by taking into consideration the nature of the suit property, the extent of the same as well as the location of the property and, therefore, this Court in exercise of its jurisdiction under Article 227 of the Constitution of India is not inclined to interfere with such fixation of the occupation charges by the learned Court of Appeal below.
6. For such reason, this Court is not inclined to interfere with the order impugned.
7. Accordingly, C.O. 3226 of 2023 stands dismissed.
8. There shall be, however, no order as to costs.
9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)