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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 1563 of 2024

Shibu Mondal
Versus
Somnath Das & Ors.

Mr. Siva Prasad Ghose
... For the petitioner.

Mr. Prantick Ghosh
.... For the opposite parties.

1. Challenging the determination of occupational charges by the learned Additional District Judge, Fast Track Court-II, Barrackpore in Miscellaneous Appeal No. 121 of 2023, arising out of order dated 18th November, 2023, passed by the learned Civil Judge (Junior Division) Bidhannagar, North 24-Parganas, in connection with Miscellaneous Case No. 12 of 2019 dismissing the petitioner's application under Order IX Rule 13 of the Code of Civil Procedure, 1908, the instant revisional application has been filed.
2. Mr. Ghose, learned advocate appearing in support of the aforesaid revisional application would submit that although the appeal has been admitted, the learned District Judge by one line order without taking note of the fact that the schedule of the suit property comprises of only one room measuring 90 sq. ft. of covered area, being part of the premises no. 27/2, Ram Krishna Ghosh Road, Kolkata – 700 050, had directed

the petitioner to make payment of occupational charges at the rate of 10,000/- per month. He would submit that there is no basis for the determination made.

3. On the other hand, Mr. Ghosh, learned advocate representing the opposite parties would submit that the opposite parties had duly filed all relevant documents to highlight the valuation of the suit property and the current occupational charges payable in the said area. He would submit that the learned Judge has decided the occupational charges based on the materials on record. No case for interference has been made out and the revisional application should be dismissed.
4. Having heard the learned advocates appearing for the respective parties and considering the materials on record including the order dated 20th January, 2024, it appears that although the learned Judge had directed the petitioner to make payment of Rs.10,000/- per month towards occupational charges till disposal of the appeal, however, there is neither any basis nor there is any finding as to why Rs.10,000/- has been decided towards occupational charges. The order impugned would demonstrate that the learned Judge also did not take into consideration the schedule of the suit property.

5. Having regard thereto, I am of the view that the aforesaid order dated 20th January, 2024 is required to be revisited by the learned Judge.
6. The parties shall be at liberty to rely on the relevant documents to aid the Court in coming to a conclusion as regards the current occupational charges payable in and around the said locality.
7. The learned Judge, on the basis of the materials on record and after due regard to the schedule of the suit property must decide the occupational charges payable by the petitioner.
8. Accordingly, the order dated 20th January, 2024, passed in Miscellaneous Appeal No. 121 of 2023 stands varied by directing the learned Judge to revisit the decision of determination of occupational charges.
9. At the sametime, one cannot lose sight of the fact that a decree has already been passed and the petitioner is obliged to make payment of the occupational charges. This Court considers that the petitioner should be directed to make payment of occupational charges at the rate of Rs.2500/- per month on *ad hoc* basis, subject to the final determination to be made by the learned Judge in mode and manner directed above.
10. The occupational charges must be paid on/or before

15th of each succeeding English calendar month. The petitioner shall also be required to make payment insofar as arrears are concerned. The petitioner shall clear such arrears from the date of the order passed by the learned appellate Court i.e. on 20th January, 2024.

11. Let such arrears calculated upto 30th November, 2024 be paid in two equal instalments and should be cleared on/or before 28th February, 2025. Insofar as the occupational charges of December 2024 is concerned which falls due in January 2025 be paid on or before 31st January, 2025.

12. In default of payment of any one instalment on account of arrears and or in default of payment of any two current months' occupational charges as determined, the opposite party shall be at liberty to execute the decree.

13. With the above observations and directions the revisional application stands disposed of.

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

(Raja Basu Chowdhury, J.)