

32.
11-06-2025
(Ct. no.06)
debajyoti
(Bench ID
265719)

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
APPELLATE SIDE**

CO 1929 of 2025

**Sri Barun Nandy
Vs.
Tapan Kumar Ghosh & Ors.**

Mr. Partha Pratim Roy,
Mr. Anirban Das,
Mr. Samrat Chakraborty
... For the Petitioner.

1. This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated March 10, 2025 passed by the learned Additional District Judge, Nabadwip, Nadia in Title Appeal No.01 of 2024.
2. Mr. Roy, learned advocate, appearing for the petitioner, submits that by the order 23rd September, 2024, the learned Judge of the First Appellate Court passed an order of stay of the judgment and decree subject to payment of occupation charge at the rate of Rs.300/- per month. He further submits that the learned Judge of the First Appellate Court enhanced the amount of occupational charge to Rs.500/- in spite of the fact that the earlier application filed by the plaintiff-respondent for payment of occupational charges stood rejected.
3. It appears from the record that the petitioner moved an application under Order 41 rule 5 of the Code of Civil Procedure on 23rd of September, 2024 and the learned Judge of the First Appellate Court passed an order directing the appellant/petitioner herein, to serve a copy of the stay application upon the respondents and the operation of the judgment and decree was stayed subject

to payment of occupation charge at the rate of Rs.300/- per month. Thereafter, the opposite party no.1 had entered appearance in the said appeal and filed an application for payment of occupational charges. Since the occupational charges was already fixed by an order dated 23rd of September, 2024, the learned Judge of the First Appellate Court rejected such application holding the same to be maintainable. Subsequently, a fresh application was filed praying for enhancement of the occupational charges. It is well-settled that on account of change of circumstances, a fresh application can be filed. The learned Judge of the First Appellate Court, after taking note of the changed circumstances, enhanced the occupational charges from Rs.300/- to 500/-.

4. This Court is not inclined to interfere with the assessment of enhancement of occupational charges made by the learned Judge of the First Appellate Court sitting under Article 227 of the Constitution of India. Accordingly, CO 1929 of 2025 stands dismissed.

5. Parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

6. Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Hiranmay Bhattacharyya, J.)