

D/L19
17.07.2025
Rohit
ct.no.6

CO 2527 of 2025

**Samir Kumar Ghosh
Versus
Santa Mukherjee**

Mr. Tarak Nath Halder
...for the Petitioner

Ms. S. Datta
Mr. Sagnik Bhattacharjya
...for the O.P

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated April 23, 2025 passed by the learned Additional District Judge, 3rd Court, Barrackpore, North 24 Parganas in Title Appeal No. 03 of 2025. By the order impugned the learned Additional District Judge passed an order of stay of operation of the judgment and decree subject to payment of occupation charges of Rs.4,500/- per month payable by the petitioner herein to the opposite party from the date of the decree till the disposal of the appeal.

Mr. Halder, learned Counsel appearing for the petitioner submits that the petitioner is in occupation of a shop room measuring about 80 sq.ft. He further submits that the market rate of rent of a

similar premises in the same locality is not more than Rs.1,000/- per month. Mr. Halder, learned advocate appearing for the petitioner draws the attention of the Court to some of the agreements which have been annexed to this civil revision application in support of his claim that the market rate of rent for similar premises is not more than Rs. 1,000/-.

Heard the learned advocate for the opposite party on such submission.

The opposite party herein filed a suit for eviction being Ejectment Suit No. 17 of 2016 against the petitioner herein. The said suit was decreed by a judgment and decree dated November 30, 2024. The suit property is one pakka shop room measuring about 80 sq.ft on the ground floor of a premises situated within the limits of Kamarhati Municipality. It is not in dispute that the petitioner herein did not produce any materials before the learned Judge of the First Appellate Court at the time when the prayer for stay was considered in support of his claim that the market rate of rent of the premises in question cannot be more than Rs.1,000/-.

The learned Judge of the Appellate Court after taking note of the decision of the Hon'ble Supreme Court in the case ***M/s Atmaram Properties (P) Ltd. Vs. M/s Federal Motors Pvt. Ltd.*** reported at

2005 (1) SCC 705 as well as other decisions directed the petitioner to pay occupation charges as a condition for grant of an order of stay. After considering the fact that the petitioner is in possession of a shop-room and is exploiting the same for commercial purpose, this Court is of the considered view that the learned Judge of the First Appellate Court was right in fixing the occupation charges of Rs. 4,500/- per month to be paid by the petitioner to the opposite party from the date of the decree till the disposal of the appeal. For such reasons, this Court is not inclined to interfere with the order impugned. Accordingly, CO 2527 of 2025 stands dismissed. There shall be, however, no order as to costs.

Urgent certified website copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)