

AD-8
Ct No.16
07.02.2025
(SSS)

CO 2650 of 2024

Sri Mahesh Ram
Vs.
Halima Mansoor and Anr.

Mr. Dhananjay Mukherjee,
Mr. Dhananjay Nayak,
Ms. Aparupa Ghosal ,
....For the Petitioner.

1. Affidavit of service filed today be kept on record.
2. Heard learned Counsel for the parties.
3. The present challenge has been preferred by the applicant in a proceeding under Order XXI Rule 101 of the Code of Civil Procedure against an order whereby occupation charge of Rs.5,000/- per month was imposed as a condition for grant of stay of the execution case. Learned Counsel for the petitioner points out that the learned executing court did not advert to any material before enhancing the occupation charges to Rs.5,000/- per month from the last-paid rent of Rs.75/- per month.
4. Learned Counsel appearing for the decree holders/Opposite Parties opposes such contentions and submits that the amount granted is commensurate with the market rent in the area.

5. However, I find from the impugned order that not a single line has been attributed by way of reason for coming to the conclusion as to the occupation charges being fixed at Rs.5,000/- per month. Moreover, I also do not find that the learned executing court adverted to any material before coming to such conclusion.

6. Accordingly, CO 2650 of 2024 is allowed on contest, thereby setting aside the impugned order dated June 18, 2024 to the limited extent of imposition of occupation charges. The stay of execution case granted by the impugned order shall continue until further orders being passed by the learned executing court.

7. The matter is remanded to the learned executing court for the limited purpose of reassessing the occupation charges upon giving an opportunity to both the parties to furnish documents to substantiate their contentions as to the current market rent which can be fetched by the decretal property contemporaneously.

8. It is expected that such exercise shall be concluded by the learned executing court as expeditiously as possible, positively within one month from the date of communication of this order to the executing court.

9. Upon such opportunity being given, the executing court shall fix the occupation charges payable by the present petitioner by way of condition of the stay order obtained by the petitioners.

10. No order as to costs.

11. The parties and all concerned shall act on the server copy of this order without insisting upon prior production of any certified copy for the purpose of compliance.

(Sabyasachi Bhattacharyya, J.)