

S/L
Item No. 01
07.05.2025
KOLE

CO 2801 of 2023

Dinesh Kumar Goyel
-Vs.-
Biswanath Ghosh & Ors.

Mr. Pratyush Patwari,

...for the petitioner.

Mr. Loknath Chatterjee,
Mr. A. Dhar,

...for the opposite party.

The present petition has been filed challenging the order dated 25th July, 2023, whereby the application filed by the opposite party no. 4/petitioner under Section 151 CPC for the occupational charges was dismissed by the learned Civil Judge, 2nd Court at Barasat. Briefly stated, the petitioner is successor-in-interest of opposite party nos. 4 and 5 who filed a Title Suit No. 1277 of 2015 against the opposite party nos. 1 to 3 in respect of Plot No. 363, Block-BE, Sector I, Salt Lake City (Bidhan Nagar), Kolkata-700064. That suit was decreed *ex parte* vide order/judgment dated 7th March, 2017. Pursuant to that the execution proceedings being Title Execution No. 15 of 2018 was initiated. In the execution proceedings a writ was issued for delivery of possession.

Being aggrieved of this, the opposite party no. 1 filed Misc. Case No. 34 of 2019 under Order 9 Rule 13 CPC and opposite party nos. 2 and 3 filed a separate application under Order 9 Rule 13, bearing Misc. No. 24 of 2019. The opposite parties had prayed for stay of execution proceedings which was rejected by the learned Trial Court.

Pursuant to this, the opposite party no. 1 had filed CO No. 1190 of 2019 and the opposite party nos. 2 and 3 filed CO No. 1189 of 201. CO 1190 of 2019 filed by the opposite party no. 1 was dismissed as withdrawn on June 19, 2019.

Learned Counsel for the petitioner submits that while revision petition No. CO 1189 of 2019 was pending disposal, the opposite party nos. 4 and 5 executed deed of assignment in favour of the petitioner. This led to the petitioner to move an application being CAN 9339 of 2019. The Coordinate Bench of this Court vide order dated March 22, 2023 allowed the application.

Learned Counsel submits that by virtue of the same order, liberty was given to the petitioner to pray for occupational charges before the learned Trial Court in Misc Case No. 24 of 2019 after at all if he is made a party in the same case by the learned Trial Court. Learned Counsel for the petitioner submits that the petitioner was impleaded as a party in Misc. Case No. 24 of 2019 and Misc. Case No. 34 of 2019 vide order dated June 21, 2023.

While, the matter is rested thus, in Misc Case No. 24 of 2019 the application for occupational charges was dismissed by the Learned Trial Court vide order dated July 25, 2023 and the same was challenged before this Court in CO 2670 of 2023 titled as **Dinesh Kumar Goyel-vs.-Kanakendra Mohan Chowdhury and others**. Learned Counsel submits that the coordinate Bench of this Court vide order dated April 4, 2024 after relying upon the landmark judgment of the Hon'ble Apex Court in the case of **Atma Ram Properties (P) Ltd.-vs.-**

Federal Motors (P) Ltd., reported in **(2005) 1 SCC 705**, set aside the impugned order and remanded the matter back to the learned Trial Court for a decision on the application for occupational charges afresh on its own merits. Learned Counsel submits that pursuant to this order, the petitioner moved an application for occupational charges in Misc. Case No. 24 of 2019. However, the learned Trial Court vide order dated 29th March, 2025 dismissed the application predominantly on the ground that the petitioner failed to bring any cogent evidence in respect of occupational charges. Learned Counsel submits that this order dated March 29, 2025 has been challenged in CO No. 1346 of 2025.

The perusal of the chronology makes it clear that the petitioner has already been impleaded as a party in Misc. Case No. 24 of 2019 and Misc. Case No. 34 of 2019 being successor-in-interest of the opposite party nos. 4 and 5.

This Court while speaking through a Coordinate Bench in CO 2670 of 2023 vide order dated 4th April, 2024 has, *inter alia*, held that the court does not need a specific provision under which prayer for occupational charges can be made and the court should have invoked inherent power in order to decide the application. It is also pertinent to mention here that procedure is handmaid of justice and has to be used for facilitating the same and not for frustrating the same. It is also the settled position that a person in occupation is bound to pay the occupational charges.

Learned Counsel for the opposite party submits that this matter may be heard along with CO 1364 of 2025.

The plea as has been taken by the opposite party during the course of submission that in fact they are the owners and the petitioner has no locus is to be decided finally by the learned Trial Court and this court cannot enter into that arena as it would firstly enlarge the scope of the present writ petition and secondly the same will amount to usurping the jurisdiction of the learned Trial Court. The endeavour of every court is to ensure that there should be expeditious disposal of the matters. This Court also considers that there is no impediment in hearing this petition merely because CO 1364 of 2025 is pending consideration before Co-ordinate Bench. Thus, taking into account the entire sequence of facts and the order passed by this Court from time to time, the present writ petition is disposed of with the following directions:-

- (i) The petitioner shall move a fresh application for user and occupational charges in Misc. Case NO. 34 of 2019 and the learned Trial Court shall take up the same for hearing after giving opportunity to the opposite party to file the reply;
- (ii) The opposite party shall be at liberty to take all objections regarding the quantum and right of the petitioner. It is made clear that all the contentions have been kept open;
- (iii) Learned Trial Court shall afford opportunity to the parties to lead the evidence, if any, for the assessment of user and occupation charges of the subject matter ; and

- (iv) Learned Trial Court shall dispose of the Misc. Case NO. 34 of 2019 as well expeditiously in accordance with law and preferably within six months without being influenced by this order.

In view of the above observations, CO No. 2801 of 2023 is disposed of. However, it is made clear that this court has not gone into the merits of the case and no expression made herein shall tantamount to be an expression on the merits of the case.

The order dated 25th July, 2023 is set aside.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Dinesh Kumar Sharma, J.)