

28.03.2025

Sl no. 27
Ct no. 237
P.M.

C.O. 3748 OF 2024

Make Life Construction Pvt. Ltd.

- Vs -

M/s. Amrit Foods Pvt. Ltd.

Mr. Shaunak Ghosh,
Ms. Shreyashi Maity

.... for the petitioner.

Mr. Sankarsan Sarkar,
Ms. Patrali Ganguly

... for the opposite party.

Supplementary affidavit filed on behalf of the opposite party and copy of which has already been served upon the petitioner is taken on record.

Being aggrieved by and dissatisfied with the order No. 11 dated 31st July, 2024 passed in Ejectment Appeal No. 15 of 2024, present application has been preferred by the petitioner herein. Before the Appellate Court below the decree for eviction of premises tenant passed in favour of the petitioner herein, is under challenge.

The petitioner herein as decree holder before the Executing Court put the decree in execution. Thereafter the defendant/ opposite party herein preferred the aforesaid appeal against the Ejectment decree wherein the appellant/opposite party herein has also prayed for stay of the execution of the said decree by the Executing Court.

The appellate Court below by the impugned order granted Stay in favour of the appellant/opposite party herein on condition of depositing Rs. 10,000/- per month as occupational charges, with the learned Trial Court within first seven days of the following month regularly, in default the order of stay would be liable to be vacated.

Being aggrieved by that order the petitioner/respondent submits that the court below has erred in not appreciating that the fair rent in connection with the suit property as has been calculated by the empanelled valuer is Rs. 64,270/- per month but the Court below has fixed the occupational charge as Rs. 10,000/- per month which is shocking low and also perverse inasmuch as the impugned order is not a reasoned order.

He further submits that the Trial Court did not consider that the tenancy is commercial in nature and the suit shop room situates in one of the poshest places in Kolkata. Accordingly he prayed for Rs. 64,270/- per month towards occupational charges as assessed by the empanelled valuer.

In this context, he relied upon judgement of **Atma Ram Properties Private Limited Vs. Federal**

Motors reported in **(2005) 1 SCC 705** and **State of Maharashtra & Anr. Vs. Futor Max International Private Limited & Anr.** reported in **(2009) 9 SCC 772.**

Mr. Sarkar, learned counsel appearing on behalf of the opposite party raised strong objection and contended that from the tenancy agreement as annexed with the supplementary affidavit, it clearly discloses that the tenanted area is measuring only about 320 sq. ft. and in terms of paragraph 7 of the Agreement the tenant has kept the landlord an amount of Rs. 40,00,000/- as interest free refundable deposit, from the date of the execution of the tenancy agreement. He also annexed photocopy of a cheque and submits that his instruction is that the said cheque has already been encashed by the landlord/petitioner herein.

In such view of the matter he submits that the petitioner herein is not at all entitled to get any amount towards occupational charges as he is enjoying huge amount towards interest and as such the petition is liable to be rejected in limini.

I have considered the submission made by both the parties, which merely pertains to a dispute about quantum of occupational charges.

On perusal of the order impugned it appears that the Court below has noted that the valuer valued gross monthly rent in respect of the said area of 320 sq. ft. as Rs. 64,270/- and he further recorded that no separate calculation or document has been submitted by the appellant and he further recorded that the value of the real estate and rent have been skyrocketed since 2012 and that the premises is situated in the prime commercial locality in the heart of Calcutta but ultimately decided the occupational charge as Rs. 10,000/- without mentioning in the order as to what is the basis of such calculation for determination of quantum. Furthermore, it also appears that the tenancy agreement and the case of interest free refundable deposit of Rs. 40,00,000/- to the petitioner/landlord by the opposite party/tenant, perhaps has not been brought to the notice of the Trial Court while he assessed the occupational charges at the time of passing the impugned order.

In such view of the matter the order impugned dated 31.07.2024 is hereby set aside.

The Trial Court is directed to rehear the appellant's application for stay and to pass a reasoned order without being influenced by any observations made herein preferably within a period

of one month from the date of communication of this order. Till then the execution of the judgement and decree dated 11.01.2024 passed in Ejectment Suit No. 182 of 2018 passed by learned Civil Judge, Junior Division, 4th Court at Alipore shall be stayed on condition that the opposite party / appellant / judgement debtor shall go on paying Rs. 10,000/- per month as occupational charges with learned Trial Court within first seven days of the following month. Liberty is given to both the parties to place their respective documents in support of their respective contentions before the Court below at the time of hearing.

On the basis of prayer made on behalf of both the parties, Court below is further directed to make every endeavour for expeditious disposal of the appeal, preferably within a period of six months from the date of communication of this order.

C.O. 3748 of 2024 thus stands disposed of.

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

(Dr. Ajoy Kumar Mukherjee, J.)