

05.12.2025

Sl. No.637.

Mithun

Ct.No.29.

CO 3757 of 2024

Subhanjit Das

Vs.

Gautam Ram & Ors.

Mr. Debdipto Banerjee,
Mr. Soumen Banerjee

...for the petitioner

Mr. Susenjit Banik,
Mr. Soumyajit Bhatta,
Mr. Sutapa Das,
Mr. Mrinal Saha

...for opposite party no.1 to 6.

The plaintiff/petitioner has challenged the order No.7 dated 11.09.2024 passed in Title Appeal No.18 of 2024.

The petitioner's contention is that predecessor of the petitioner and proforma opposite parties as plaintiff/landlord had instituted a suit for eviction being Title Suit No.147 of 1992 against the predecessor of the opposite parties as defendant/tenant, under the provisions of the West Bengal Premises Tenancy Act, 1956 which has been decreed on contest by the learned Civil Judge, Junior Division, 2nd Court, Barrackpore vide judgment and decree dated 28.02.2024.

Being aggrieved by the aforesaid judgment and decree, the opposite parties/tenants have preferred appeal before the Court below being Title Appeal No.18 of 2024. In the said appeal, the opposite parties herein being appellant filed an application for stay of the execution of judgment and decree passed by the Trial Court.

Learned Appellate Court while admitting the appeal granted stay of the impugned judgment and decree passed in aforesaid Title Suit No.147 of 1992 on condition that the opposite party herein/tenant shall go on paying occupational charges @ Rs.1,500/- per month payable from the date of decree till disposal of the appeal.

Being aggrieved by the aforesaid quantum of occupational charges, learned Counsel for the petitioner submits that he has filed supplementary affidavit wherein he has annexed one tenancy agreement in between one landlord and tenant in a nearby locality, wherefrom it can be said that the minimum occupational charges in the said locality should be 8,000/- to 10,000/- per month. However, the quantum fixed by the Court below is extremely low compared to the size and amenities available at the decretal property and the locational advantages of the same. Learned Court below while awarding the occupational charges did not consider the materials on record on its proper perspective and accordingly the order impugned is required to be interfered by this Court invoking jurisdiction under Article 227 of the Constitution of India.

Learned Counsel appearing on behalf of the opposite parties raised objection contending that the schedule of the property as depicted in the plaint shows that it is tile shaded dilapidated building and the miserable condition of the tenanted portion has also been corroborated with the local inspection commissioner's report and, as such, the quantum

of occupational charges as awarded by the Court below is sufficient and does not call for any interference by this Court.

As held by Apex Court in ***Atma Ram Property (P) Ltd VS. Federal Motors (P) Ltd AIRONLINE 2004 SC-597/(2005) 1 SCC 705*** once a decree for eviction has been passed, in the event of execution, Court should order such reasonable terms, as would be in the opinion of the Appellate Court reasonably compensate the decree holder for loss occasioned by delay in execution of the decree by the grant of stay. While considering the quantum of occupational charges Court is to consider the location/area of the premises, the age/nature of construction of the building premises, the facilities in the premises and outside the premises, advantages and disadvantages, market value and rental value of the premises, other instance of the rent of similarly situated premises along with other considerations.

However, while determining the quantum of occupational charges, Court also needs to consider the occupational charge as awarded as condition precedent should not be oppressive or unreasonable. Here though petitioner has annexed one tenancy agreement with the supplementary affidavit but it does not specify nature and condition of the concerned building.

Having considered submissions made on behalf of both the parties and also considering the fact that the order has been passed as an interim measure, I find that what is more important is that the Trial Court should make best possible endeavour to dispose of the appeal at the earliest. Therefore,

I inclined to make direction upon the Court below to make expeditious hearing of the appeal and to conclude the same preferably within a period of six months from the next date of hearing.

Having considered submission made by the parties and on perusal of available documents, it is ordered that the appellant/opposite party herein shall go on paying occupational charges @ Rs.3,000/- per month from the date of the decree till the disposal of the appeal.

C.O. 3757 of 2024 is accordingly disposed of.

Parties to act on the server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

(Dr. Ajoy Kumar Mukherjee, J.)