

JPD. 22.
August 1, 2025.
MNS.

CALCUTTA HIGH COURT
In The Circuit Bench at Jalpaiguri
Appellate Side

CO No. 151 of 2025

Suraj Buildcon Private Limited
Vs.
Shri Dhanilal Roy and another

Mr. Shaktinath Mukhopadhyay, Ld. Snr. Adv.,
Mr. Debasish Mukhopadhyay,
Mr. Rajat Das,
Ms. Srijana Thapa

... for the petitioner.

Mr. Shashi Kanodia

...for the opposite party no. 1.

1. By the impugned order in the present revision, the learned First Appellate Court granted an stay in connection with an eviction decree passed in favour of the revisionist petitioner under Order XII Rule 6 of the Code of Civil Procedure.
2. The suit was filed on the premise that the opposite party no. 1, being a caretaker, is a licensee of the premises.
3. In the written statement, the opposite party no. 1 admitted that he is a caretaker and

accordingly, a judgment was passed in the eviction suit on admission.

4. Subsequently, an appeal was preferred against the said decree, where the opposite party prayed for an order of stay. Such stay was granted by the impugned order without imposition of occupation charges.
5. Learned senior counsel appearing for the petitioner submits that it is a well-settled position of law since long that for grant of stay in connection with an eviction decree, a necessary precondition is imposition of occupation charges at the current market rates.
6. As such, the impugned order, it is submitted, is vitiated on such score, it granted stay without imposing any condition of payment of occupation charges.
7. Learned senior counsel seeks an expeditious hearing of the appeal, since, according to the petitioner, the petitioner has started construction of a seven-storied building on the suit property, which will be utilized for operating a hospital which will be for public utility.
8. Learned counsel for the contesting opposite party no. 1 submits that there is a pending application under Order VI Rule 17 of the Code

of Civil Procedure for amendment of the written statement, filed in connection with the appeal by the opposite party no. 1.

9. That apart, it is submitted that the opposite party no. 1 is of meager financial condition and is not in a position to pay occupation charges.

10. Be that as it may, it is well-settled that occupation charges are a necessary precondition of grant of stay of an eviction decree.

11. Thus, the learned Appellate Judge acted without jurisdiction in granting stay of an eviction decree without imposition of occupation charges, upon assessing the prevalent market rates, as a condition.

12. Accordingly, CO No. 151 of 2025 is allowed against the opposite party no. 1 and *ex parte* against proforma opposite party no. 2, thereby setting aside the impugned order, bearing order no. 41, dated May 16, 2025 passed by the learned Additional District Judge (Second Fast Track Court) at Jalpaiguri in title Appeal No. 13 of 2022, and remanding the stay application to the appellate court. The appellate Judge shall now re-hear the stay application on the question

of occupation charges to be imposed as condition for grant of stay.

13. There shall be an unconditional stay of the eviction decree for a limited period of six weeks.

The First Appellate Court shall dispose of the stay application, imposing payment of occupation charges at current market rates as a precondition if stay is granted, upon hearing both parties, within three weeks from the date of communication of this order to the appellate court.

14. The First Appellate Court shall, immediately thereafter, dispose of the application under Order VI Rule 17 of the Code of Civil Procedure pending at the behest of the opposite party no. 1 in connection with the appeal, upon granting adequate opportunity to both parties to exchange their pleadings on the stay application and on hearing both parties.

15. Such disposal of the application under Order VI Rule 17 shall be completed expeditiously, preferably within three weeks from the date of disposal of the stay application.

16. It is further expected that the learned Appellate Judge shall dispose of the appeal itself as soon as possible, preferably within four weeks from

the date of disposal of the application under Order VI rule 17 of the Code.

17. It is made clear that this Court has not entered into the question of quantum of occupation charges and it is left open to the First Appellate Court to decide all the issues, including the question of occupation charges, independently and in accordance with law.

18. All parties as well as the learned First Appellate Court shall act on the basis of the server copy of this order, without insisting upon prior production of certified copy, for the purpose of compliance of the same.

19. There will be no order as to costs.

20. Urgent certified copy of this order, if applied for, be supplied to the parties on their usual undertaking.

(Sabyasachi Bhattacharyya, J.)