

Title Appeal No.46 of 2024  
Present: Biswarup Bandyopadhyay (WB01133), Chief Judge  
Order No. 18/dated 19.01.2026:

Appellant as well as the respondents file their respective haziras through their Ld. Counsels.

The application for stay is taken up for hearing.

I have heard the submissions made by the Ld. Counsel appearing for the appellant/defendant as well as the Ld. Counsel for the respondent/plaintiff. I have also considered the contentions made in the application for stay as well as the written objection submitted thereto.

It is not in dispute that the Trial Court by judgment and decree dated 18.07.2024 directed the defendant/appellant to quit and vacate the suit premises within a period of two months therefrom, in default the plaintiff shall be at liberty to file execution case. The defendant/appellant challenged the judgment and decree citing the grounds of objections in the Memo of Appeal.

Now, considering the question of facts and law involved in the present appeal, I am of the view that the appeal needs to be heard on merit giving both sides opportunity of being heard. As a result the operation of the judgement and decree deserved to be stayed pending hearing of the appeal, surely subject to payment of occupation charge to the Decree holder for occupation of the premises by the tenant after the order of eviction. Now the question needs to be considered is what would be the appropriate occupation charge of the suit premises.

It is the contention of the Ld. Counsel for the appellant that his client is occupying an area of one shop room measuring about 35 sq.ft situated on the ground floor at Premises No.151A, A.P.C. Road, Kolkata-700 006 under Burtolla P.S and the appellant has been paying Rs.500/- per month for occupying the suit premises used as commercial purpose. With reference to actual area of the premises and mode of user, the Ld. Counsel refers to the Commissioner Report which was filed before the Trial Court in course of trial. It is contended that the occupation charge of the suit shop room should not exceed Rs.1,000/- per month given the location and are of the premises.

Countering such submission of the Ld. Counsel for the appellant, Ld. Counsel appearing for the respondent placed on record one query report obtained from Directorate of Registration & Stamp Revenue, Government of West Bengal, according to which market value of the suit

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shop room is Rs.20,00,000/- and emphasized on the point that the occupation charge of the suit premises should be at least Rs.40 000/- per month considering the market value, location and mode of user of the premises.

In reply Ld. Counsel for the appellant states that the query report relied upon by the respondent would reveal that it was generated on the basis of the set forth value as desired by the respondent. The Ld. Counsel submits that such a report cannot be considered having no legal sanctity. The Ld. Counsel placed on record a separate query report in respect of market value which the Ld. Counsel claims to have been generated based on actual inputs. According to such report the market value of the premises stands at Rs.3,49,217/-.

Now, the query lips submitted on behalf of both sides reveal that the market value specified therein is based on the setforth value given by appellant as well as the respondent themselves. Accordingly, such reports do not reflect the actual market value of the premises. However, it is not disputed position that the area of the premises is around 35 sq.ft and its location is A.P.C. Road, Kolkata-700 006 under Burtolla P.S near Bangiya Sahitya Parishad. The materials further reveal that the suit premises is being used for non-residential purpose.

Having considered the totality of the circumstances, transpiring from the rival contentions made in the stay application as well as the written objection and the available materials on record with reference to the area, nature, location and mode of user of the suit shop room, I am of the considered view that Rs. 75/- per square feet per month would be justified as current occupation charge of the suit premises. Accordingly the occupation charge of the suit premises is (35 sq.ft x Rs.75/- = Rs.2,625/-), rounded off to Rs.2,500/- to compensate the Decree Holder for stay of operation of the impugned judgment and decree dated 18.07.2024.

Accordingly, the operation of the impugned judgment and decree dated 18.07.2024 passed by the Ld. Judge, Bench-II, Presidency Small Causes Court, Calcutta in connection with Ejectment Suit No.146 of 2019 shall remain stayed till disposal of the appeal, subject to payment of occupation charges of Rs.2,500/- per month with effect from the date of order and judgment as discussed herein above.

The arrear calculated amount of occupation charges is to be paid from the month of August, 2024 to December, 2025 which comes to

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Rs.42,500/- (Rs.2,500/- x 17 months). Such arrear occupational charges is required to be paid within two equal installments, which comes to Rs.21,250/- per installment by way of demand draft in favour of the respondent. The first of such installments has to be paid by 31.01.2026 and the second installment by 20.02.2026. The appellants shall go on paying the current occupational charges for the subsequent months within 15th of next consecutive English calender month by way of demand draft drawn in favour of the Respondent.

It is made clear that if the appellant fails to make payment of the arrear occupational charges as calculated by this court within the time mentioned herein before, the stay of the order and judgment that is being granted shall stand automatically vacated.

T.C.R. has already tagged.

Let a copy of this order be handed over to the Ld. Counsel for the appellant counter signed by the Bench Clerk for compliance.

Let a copy of this order also be sent to the Trial Court for information.

The matter shall appear on 20.02.2026 for further order upon receipts of the payment vouchers of occupation charge from the appellant/for hearing of appeal/awaiting T.C.R.

Dictated and corrected by me,

Chief Judge,

Chief judge,

City Civil Court, Calcutta