

**MISC. CASE :- 28 OF 2022**  
**(CNR No. WBPS01-000139-2022)**  
**(JO CODE No. WB01229)**

Order no. - 26  
Dt. 11.11.2022

Today is fixed for order.

Both parties file hazira.

The case record is taken up for passing necessary order in respect of the petition dated 19.04.2022 filed under Section 151 of the CPC.

Heard Ld. Advocate for the petitioner who submitted that one exparte decree was passed in original Ejectment Suit No. 107 of 2020 and the petitioner being the lawful tenant over the suit premises after getting knowledge of the said exparte decree filed the instant Misc. Case under Order 21 Rule 97, Rule 101 of CPC and also prayed for stay of the execution filed by the decree holder/ opposite party no. 1 being Ejectment Execution No. 85 of 2021.

Heard Ld. Advocate for the opposite party no. 1 who submitted that the opposite party no. 1 has got decree against the Jdr./ opposite party no. 2 and the present petitioner is a third party being an un-notified sub-tenant and is bound by the said decree and he has no authority to resist such execution of the decree and hence prayed for rejection of the same.

Considered. Perused the instant petition, written objection and other materials on record.

On perusal of the same, it appears that the opposite party no. 1 has got exparte decree in ejectment suit no. 107 of 2020 and the present petitioner claimed that he is the bonafide tenant over the suit premises and filed the instant Misc. Case under 101 of CPC for determination of his right.

Considering all aspects, it is justifiable to stay of further proceeding of the Ejectment Execution No. 85 of 2021 subject to payment of occupational charges.

Accordingly, the instant petition under Section 151 of CPC filed by the petitioner is hereby allowed.

On further proceeding of the Ejectment Execution No. 85 of 2021 is hereby stay till disposal of the instant Misc. Case.

The petitioner is hereby directed to pay the occupational charges Rs. 10,000/- per month with effect from the date of decree.

The petitioner is directed to deposit the arrears of occupational charges within one month from the date of this order and thereafter month by month before this court.

To 10.01.2023 for hearing of the Misc. Case.

D/C by me:

Sd/-

Judge, Bench – II,  
Presidency Small Cause Court,  
Calcutta.

Sd/-

Judge, Bench – II,  
Presidency Small Cause Court,  
Calcutta.