

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

Order No. - 32  
Dt. 17.02.2023

Today is fixed for hearing of petition dated 10.01.2023 filed by the petitioner under Section 151 of the CPC.

Both sides file hazira.

Ld. Advocate for the O.P./ decree holder is filed written objection along with Xerox copy of some documents.

Now the case record is taken up for passing necessary order.

Heard Ld. Advocate for the petitioner who submitted before this court that the instant Misc. Case was filed by the present petitioner under Order 21 Rule 97 read with Rule 101 read with Section 151 of the CPC and also prayed for stay of all further proceedings of Ejectment Execution Case No. 85 of 2021 till disposal of the aforesaid Misc. Case and the said stay application has been disposed of in favour of the petitioner directing them to pay the occupational charges of Rs. 10,000/- per month with effect from the date of the decree and also directed to deposit the arrear occupational charges within one month from the date of that order.

He further submitted that the present petitioner is a bond fide tenant under the opposite party no. 1 whose status is required to be decided by this Court and the petitioner is a businessman who is carrying on business of tailoring and his family depends upon the income of the said tailoring business and the petitioner is unable to pay the huge occupational charges and as such prayed before this Court to recall the said order no. 26 dated 11.11.2022 by reducing the occupational charges from Rs. 10,000/- to Rs. 2,000/- per month and hence prayed for passing necessary order.

Heard Ld. Advocate for the opposite party no. 1 who submitted that the instant application is not maintainable and this Court has passed the order after contesting both sides which is in final form and this Court has no jurisdiction to recall its own order and the instant application has been filed only to delay the execution proceeding and the suit premises is in the possession of an un-notified and illegal sub-tenant who is running his business from the suit premises and the suit premises is situated in the centre of Kolkata and the locality of the suit premises is a business area and the present rental market value of the suit premises could not be less than 16,000/- per month and he further submitted that if the petitioner is not satisfied with the said order, he

should assail the same before any Higher Forum and the present petitioner is running on business over the suit premises and hence prayed for rejection of the instant petition.

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

On perusal of the same, it appears that on the basis of the said application filed by the petitioner, this court has allowed the said stay application and all further proceedings of the Ejectment Execution Case No. 85 of 2021 has been stayed by this Court after depositing occupational charges of Rs. 10,000/- per month and the said stay application has been fully disposed off by this Court after hearing both sides and this Court has no jurisdiction to recall its own order which is in final form and the contention averred by the petitioner is not acceptable and if a third party obstruct a person to get the fruits of the decree passed in favour of the decree holder then he should pay the charges which is incurred by the decree holder without getting possession of the decretal premises.

Considering the above made observations, I do not find sufficient ground to recall the order no. 26 dated 11.11.2022.

Accordingly the instant petition dated 10.01.2023 filed by the petitioner is hereby rejected on contest.

To 06.04.2023 for hearing of the Misc. Case.

Parties are directed to be ready for hearing.

**[ Dictated and corrected by me ]**

Sd/-

(Manabendra Nath Ghosh)  
Judge, Bench – II,  
Presidency Small Cause Court,  
Calcutta.

Sd/-

(Manabendra Nath Ghosh)  
Judge, Bench – II,  
Presidency Small Cause Court,  
Calcutta.