

CNR No: WBSP01-000483-2016

Title Appeal No: 10 of 2016

Present: Subhra Som Ghosal

J.O Code: WB00984

**Order No. 47, dated: 31-01-2024.**

Both parties to this proceeding are present by filing their respective haziras through their Ld. Advocates.

As stipulated by the previous order today is fixed for passing of order in respect of the petition filed by the appellant praying for stay of impugned judgment.

On the date of hearing the Ld. Advocates for both the parties were heard at length on the merit of the petition. The Ld. Advocate for the appellants submitted that the judgment and decree of the Learned Trial Court has been assailed before this Court and if such decree is executed before this appeal is decided, in that event the filing of this appeal and its outcome will be reduced to a fiasco, which the law prohibits. Pinning reliance on this score; the Ld. Advocate for the appellants prayed for allowing the petition for stay of operation of the decree challenged in this appeal.

Per contra; the Ld. Advocate for the respondent has contended that stay cannot be granted mechanically and unconditionally. It was thus submitted by Ld. Advocate for the respondent that unqualified stay order if granted, would cause decree holder/respondent to face undue hardship, and the execution of the decree may be delayed for no fault of the respondent/decree-holder. Inviting my attention to the objection filed by the respondent, it was submitted by the Ld. Advocate for the respondent that occupational charges needs to be granted in favour of the respondent if this courts decides to pass any order of stay. In all his fairness the Ld. Advocate for the respondent left the quantum of occupational charges to the discretion this court though Rs.5000/- has been prayed for in the petition of objection.

I have considered the submissions of the Ld. Advocates appearing for the respective parties and the records of this case in order to aptly adjudicate the prayers of the parties as mooted before me. According to me, the appellants cannot dispute that they have suffered the decree for eviction. It is also true that if pending this appeal the appellants are evicted from the suit premises then their vested right of appeal which is a substantive right will be defeated. Not only this militates against the settled tenets of law but at the same time draw complications and add to multiplicity of proceedings. Hence the prayer for stay has the legs to carry if forward to the desired podium.

Be that as it may, when the appellants are praying for stay of operation of the impugned judgment and decree passed by the Ld. Trial Court in favour of the respondent/plaintiff, in consonance of settled principles of law with regard to the provisions contained in Order 41 Rule 5 of the Code of Civil Procedure, more particularly in view of the decision of the Supreme Court in the case of *Atma Ram Properties(P) Ltd. vs. Federal Motors Pvt. Ltd., reported in (2005) 1 SCC 705* and various other subsequent decisions of the Hon'ble Supreme Court, if the appellants claims stay of operation of the eviction decree passed by the Ld. Trial Court against them, then they are required to deposit monthly occupation charges at the market rate in respect of the suit property with effect from the date

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of the decree till the disposal of this appeal.

So far as the rate at which the appellants should deposit the occupation charges, the Ld. Advocates were at loggerheads. At present the monthly rent of the suit premises is Rs.30/-. However, considering the fact that the suit property which under the possession of the appellants is the entire premises situated at 63A/1S, Bosepukur Road, under Kasba police station, which is a prime area situated in the heart of the southern part of the city of Kolkata, I think it will be appropriate to direct the appellant to pay a sum of Rs. 2,000 per month, with effect from January, 2016 on account of occupation charges of the suit property. For the period from January, 2016 till December, 2023 a sum of Rs.1,92,000 [12 x 8 x 2000] becomes payable by the appellants on account of arrears of occupation charges of the suit property. The appellants shall pay the said sum of Rs. 1,92,000/- [one lakh ninety two thousand] by three equal monthly installments within April, 2024. Apart from the payment of the said monthly installments, the appellants shall also continue to deposit the monthly occupation charges, in respect of the suit property at the rate of Rs.2,000 per month from January, 2024 till the disposal of this appeal within the fifteenth day of each month. The payment of the occupation charges by the appellant shall be without prejudice to the rights and contentions of both the parties in this appeal.

In the event the appellants deposits the amount of Rs. 1,92,000 by three installments within the period mentioned above and continues to deposit the monthly occupation charges of Rs.2,000 per month, then there shall be a stay of operation of the impugned judgment and decree passed by the Ld. Trial Court till disposal of this appeal or until further order, whichever is earlier. It is made clear that in the event the appellant fails to pay any of the aforesaid three installments within the stipulated period or fails to pay the monthly occupation charges as directed, the interim order of stay of operation of the impugned judgment and decree shall stand automatically vacated without any further reference.

With the aforesaid directions both the applications as were pending for adjudication stand disposed of.

Let a copy of this order be sent to the Ld. Civil Judge (Jr. Div.), 01<sup>st</sup> Additional Court, Alipore, South 24 parganas.

To 26-02-2024 for hearing of the appeal.

Typed to the dictation directly;  
corrected on the system.

Additional District and Sessions Judge,  
01<sup>st</sup> Court, Alipore, South 24 parganas.

Additional District and Sessions Judge,  
01<sup>st</sup> Court, Alipore, South 24 parganas.