

EJ-4/24

3.12.2024

Today is fixed for passing order in respect of the petition dtd 6.9.24 filed by appellant praying for an order of stay of further proceeding of the Ejectment Execution Case No.5/24 pending before Ld. Civil Judge(Jr. Divn), 4th Court, Alipore till disposal of the appeal.

Both the parties file their respective haziras through their ld. Advocates.

The petition along with the written objection is taken up for passing necessary order.

Ld. Advocate for appellant, in course of hearing submits that respondents as plaintiff filed a suit bearing No. Ejectment Suit No-113/18 for eviction against the appellants/defendants which was decreed on contest on 13.10.23 by ld. Trial court. It is further submitted by Ld. Advocate for appellant that for execution of the said decree, respondent/plaintiff filed an Ejectment Execution Case bearing No-5/24 before ld. Trial court wherein an order of issuance of writ of delivery of possession was passed in respect of the suit property. Now in the aforesaid facts & circumstances appellant by filing the instant petition has prayed for an order of stay of further proceeding of Ejectment Execution Case-5/24.

Ld. Advocate for respondent by filing written objection submits that the suit property is a two storied building consisting of one room, one kitchen, one bath, one privy, a passage along with a stair case in the ground floor and two rooms with a passage on the first floor in premises No. 3H, Kundu Rd now known as Akhilbandhu Ghosh Sarani, Kol-25 within P.S Kalighat and the appellant/defendant was inducted as a tenant in the said suit property long time back at a monthly rental of Rs.70.50/- and moreover the said monthly rent was last paid in the month of March 2000. Ld. Advocate for respondent further submits that the suit property is situated in a very posh locality with all amenities and moreover the value of the suit property has been now increased immensely due to its prime location in the heart of Kolkata city. Ld. Advocate further submits that the respondents are being prevented from enjoying the fruits of the decree obtained by them in view of pendency of this appeal and as such the respondent should be properly compensated by awarding sufficient amount of money to be paid by appellants in favour of the respondents month by month as occupational charges as a condition precedent of the order of stay. Ld. Advocate in this context refers a decision of Hon'ble Apex Court reported in 2005(1) SCC 705 (M/s. Atma Ram Properties (P) Ltd V/s M/s Federal Motors Pvt. Ltd.

Ld. Advocate for appellant during hearing fairly submits that a reasonable amount of occupational charge may be awarded as a condition precedent of the order of stay.

After scrutiny of the entire materials on record this court finds that respondent as plaintiff filed a suit for eviction against the defendants/appellant in the year 2018 in respect of a property consisting of one room, one kitchen, one bath, one privy, a passage along with a stair case in the ground floor and two rooms with a passage on the first floor in premises No. 3H, Kundu Rd now known as Akhilbandhu Ghosh Sarani, Kol-25 and the suit was decreed on 13.10.2023 by Ld. Trial court. Challenging the judgment and decree of the ld. Trial court the instant Ejectment Appeal has been filed. It further appears that after filing of the instant appeal a petition praying for stay of operation of further proceedings of Ejectment Execution Case No-5/24 was filed.

In this particular case, the suit property consisting of one room, one kitchen, one bath, one privy, a passage along with a stair case in the ground floor and two rooms with a passage on the first floor is situated at 3H, Kundu Rd now known as Akhilbandhu Ghosh Sarani, Kol-25 within P.S Kalighat which is a prime location of city of Kolkata and it has also to be borne in mind that the tenant has been paying Rs.70.50/- per month as rent of the suit premises. It is also to be noted that the value of the Real Estate as well as rent rates have skyrocketed .

Ld. Advocate for respondents in course of hearing also draws attention of this court to a photo copy of a leave and license agreement dtd 1.8.2021 executed between on Utpal Mukherjee and Smt Amala Chatterjee in respect of a property consisting of two bedrooms, one kitchen, one toilet situated at 2A, Kundu Road within P.S Bhowanipore at a license fee @ Ra.12,127/- p.m to show the recent market price of the suit property.

Moreso, I have also gone through the above referred judgment of Hon'ble Apex Court passed in 2005(1) SCC 705 (M/s. Atma Ram Properties (P) Ltd V/s M/s Federal Motors Pvt. Ltd) wherefrom it is found that Hon'ble Apex Court was pleased to observed as follows :-

“That apart, it is to be noted hat the appellate court while exercising jurisdiction under order 41 Rule 5 of the Code did have power to put the appellant tenant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the Appellant court. While ordering stay the Appellate Court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order of eviction. There is every justification for the Appellate court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In Marshall Sons & Co. (I) Ltd.v.Sahi Oretrans (P) Ltd, this court has held that once a decree for possession has been passed and execution is delayed depriving the judgment- creditor of the fruits of decree, it is necessary for the Court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property”.

In such existing facts & situation specially considering the location of the suit property and also keeping in mind the spirit of the judgment of Hon'ble Apex Court as stated above, this court is of view that awarding occupational charge @ Rs.15,000/- p.m will be just and proper.

Accordingly, it is, ordered that further proceedings of Ejectment Execution Case No-5/24 pending before Ld. Civil Judge (Jr. Divn),4th Court, Alipore is hereby stayed till disposal of the instant appeal.

It is further ordered that appellants shall deposit an amount @ Rs.15,000/- p.m towards occupational charge in trial court month by month before 15th of each succeeding month till disposal of the instant appeal. In default of any single deposit the order of stay, shall stand vacated and Ld. Trial court shall proceed with the Ejectment execution case No-5/24 without making any further reference to this court.

The stay petition dtd 6.9.2024 filed by appellant stands disposed of accordingly on contest.

Fix 27.1.2025 for hearing of the appeal.

Prayer for extension of order of stay filed today by appellant being redundant stands disposed of.

D/corr by me,

4th ADJ, Alipore.

(J.O.Code-WB00705).