

P P Appeal-25 of 2017

Order No.45
dated 29.03.2025

Today is date fixed for passing order.
Both parties file hazira.
Order is not ready.
To 21.04.2025 for order.
D/C by me

Additional District Judge
3rd Court, Alipore

Additional District Judge
3rd Court, Alipore

Order No.46
dated 21.04.2025

Today is the date fixed passing order.
Both parties file hazira.
P.O is on leave.
To 14.05.2025 for order
D/C by me

Additional District Judge
3rd Court, Alipore

Additional District Judge
3rd Court, Alipore

Order No.47
dated 14.05.2025

Today is the date fixed passing order.
Both parties file hazira.
Heard Ld. Advocates for both sides.
Perused the petition, written objection as well as the case record.
Considered.

The case record is taken up for passing order of the application for restoration of stay u/s 151 of C.P.Code, 1908 filed by the appellant / petitioner.

Ld. Advocate for the appellant / petitioner has submitted that order of stay was granted by this Court on 07.11.2017 in favour of the petitioner against the operation of the impugned order dated 29.06.2017 passed by Estate Officer, Kolkata Port Trust in P.P Proceeding No. 1456 of 2014. The petitioner has abided by the order of this Court and has been regularly staying monthly occupational charges of Rs. 2,50,000/- in favour of respondent no.1. Ld. Advocate for the petitioner owing to his ill health could not search the case record of appeal for a prolonged period of time. The newly appointed Ld. Advocate for the petitioner came to know that the stay of operation of the impugned order had been vacated vide order dated 13.03.2024. The petitioner / appellant has continuously paid monthly occupational charges to respondent no.1 for the period of September, 2023 to November, 2024. But since the stay order is not subsisting taking advantage of that situation Kolkata Port Trust is trying to get possession of the suit property. Hence this petition has been filed praying for restoration of the order of stay by this Court on 07.11.2017.

Ld. Advocate for the respondent raised objection. He has submitted that vide order no. 03 dated 20.09.2023 stay order passed by this court has already been vacated. There is no chance to restore the order of stay and this petition is liable to

be rejected.

On perusal of the case record it appears that this appeal has been preferred by the appellant being aggrieved by the order dated 29.06.2017 passed by Estate Officer, Kolkata Port Trust under relevant provision of public premises (Eviction of Un-Authorized Occupants) Act 1971 being P.P Proceeding No. 1456 of 2014.

It also appears from the case record that vide order no.06 dated 07.11.2017 an order has been passed by this Court staying of operation of impugned order till disposal of the appeal on condition that appellant must deposit Rs.22 lakhs as part payment of the damages as assessed by Ld. Estate Officer and also to deposit Rs.2,50,000/- (Rs. Two Lakhs fifty thousand) per month as occupational charge within first seven days of following month regularly and in default of payment of occupation charge for any month the stay will be vacated automatically. It appears from the case record as well as it is admitted by both parties that Rs.22,00,000/- has already been paid by the appellant. Vide order no.37 dated 20.09.2023 the stay order was vacated due to non-taking steps by the appellant on that date. From the documents filed by the appellant it appears that they have deposited Rs.2,50,000/- on 07.09.2023. It does not reflect in the case record that on 20.09.2023 respondent has admitted that they have already received the occupational charges from the appellant. In spite of vacating the order due to mistake the order of stay was extended and as per the submission of the respondent that order has been rectified by this Court. On that date also the respondent did not submit that they have received the occupational charges of Rs.2,50,000/- (Rupees Two lakhs fifty thousand) only regularly from the appellant. It appears from the receipt filed by the appellant that they have paid the occupational charges to the respondent on 04.10.2023. They have paid Rs.7,50,000/- (Rupees Seven lakhs fifty thousand) only towards occupational charges for the month of November, 2023 including the month of May, 2023 and December, 2021. From the receipts filed by the appellant it appears that they have paid occupational charges regularly till 11th December, 2024. Surprisingly the respondent has received those occupational charges after issuing receipts but they are silent about receiving of occupational charges.

It appears that the appellant has paid the occupational charges to the respondent even after vacating the stay order and the respondent did not deny to accept this.

Considering this, in my view the stay order dated 07.11.2017 should be restored.

Hence, it is

ordered

that the petition for restoration of stay filed by the appellant dated 13.01.2025 is hereby allowed.

The stay of operation of the impugned order is extended till next date.

The appellant is directed to deposit all the arrear amount of the occupational charges within next date.

Fix **01.09.2025** for hearing.

D/C by me

Additional District Judge
3rd Court, Alipore

Additional District Judge
3rd Court, Alipore