

IN THE COURT OF DISTRICT JUDGE,
SOUTH 24-PARGANAS AT ALIPORE

Ejectment Appeal No. 38 of 2025

Present : Sri Himanil Bhattacharjee (WB01082) District Judge-in-charge,

Sri Prosenjit Neogy

... Appellant

Vs.

Dr. Madan Mohan Chattopadhyay & Ors.

... Respondents

Order No. 06, dated 01.09.2025

The date is fixed admission hearing and hearing of stay application.

Appellant files hazira.

Respondent nos. 1 and 2 have filed W.O. against the stay application.

Record is taken up for hearing.

Heard the submissions made on behalf of both sides.

Perused the record.

Considered.

The appeal is admitted.

Ld. Advocate appearing for the appellant has argued that at no point of time, the plaintiffs/respondent nos. 1 and 2 prayed for any occupational charge during the pendency of the suit and their prayer of mesne profits was rejected.

Therefore, the stay may be granted without any direction to pay occupational charge.

On the other hand, the Ld. Advocate appearing for the respondent nos. 1 and 2 has submitted that payment of occupational charge at the time of granting stay in a suit for ejection is now a matter of precedence and he relies upon the judgment of the Hon'ble Apex Court reported in **AIR 1999 SC 882**.

I am of the view that the appeal may get infructuous if an order of stay is not granted at this stage and, therefore, I am inclined to allow the prayer for stay of execution of the impugned Decree. So far as payment of occupational charge is concerned, I am of the view that when decree of eviction has already been passed, whether mesne profit has been granted or not, the appellant is definitely liable to pay occupational charge in respect of the decretal property if he wants to enjoy the order of stay of the execution of the decree. In this regard, the judgment of the Hon'ble Apex Court in **M/s Atra Ram Properties Pvt. Ltd. Vs. M/s. Federal Motors Pvt. Ltd. (AIR Online 2004 SC 597)** may be relied upon.

Considering the fact that the decretal property is a residential unit measuring 250 sq. ft. at a prime location on Fern Road, Kolkata 700019, I am of the view that **Rs. 3,000/- (Rupees Three Thousand)** per month would be just amount as occupational charge with effect from the date of passing of Judgment.

Accordingly, the prayer for stay of operation of the impugned decree is allowed on contest, without any costs.

Let the operation of the impugned decree be stayed till disposal of the appeal subject to payment of monthly occupational charges to the tune of **Rs. 3,000/- (Rupees Three Thousand)** per month within 10 days of each succeeding English calendar month, in default of which the order of stay shall stand automatically vacated.

The appellant is, hereby, directed to deposit arrears of occupational charge, if any, @ **Rs. 3,000/- (Rupees Three Thousand Only)**.

The appellant is further directed to deposit the payment of occupational charges and arrears, if any, in favour of the respondents before the Ld. Trial Court.

Requisites to be filed in respect of respondent no. 3.

Issue notice in respect of respondent no. 3

To date **(27.11.2025)** for S/R and A/D of respondent no. 3.

Let a copy of this order be sent to the Ld. Trial Court for information.

Dictated & corrected by me

Sd/- Sri Himanil Bhattacharjee

District Judge I/c

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