

**Title Appeal No. 123 of 2018**  
**CIS No.123/18**  
**CNR No.WBSP010137062018**  
**JO CODE WB00580**

**Order no. 34 dated 06.09.2022**

The record is placed before me for passing order in respect of the petition filed by the Appellant/defendant/tenant dt.18.09.2019.

At the time of hearing, it has been submitted that being aggrieved and dissatisfied with the judgment & decree dt.17.03.2017 passed by the 4th Civil Judge (Jr. Div.), Alipore in TS No.51 of 1989, this Appeal has been preferred. The Ld. Court below vide its impugned judgment & decree, directed the defendant/Appellant to deliver vacant possession of the suit property to the plaintiffs/Respondents within 6 months from the date of passing judgment i.e. 17.03.2017. As there is sufficient grounds to challenge the order, the Appeal was preferred and Ld. District Judge after hearing both sides was pleased to admit the Appeal on condition to pay cost of Rs.1000/- only by the Appellant to the Respondents and transferred the Appeal to this court for hearing and disposal. In compliance of the order of Ld.District Judge dt.19.02.2019, the Appellant has tried to pay cost to the Ld. Advocate for the Respondent but on refusal of the same, Appellant deposited the cost to the Court via challan. The Respondents being decree holders have already filed Title Execution Case being No.13/2018 before the Ld. 4th Civil Judge (Sr. Div.), Alipore and that execution case is pending till date before the Ld. Court. It has been further submitted that Appellant Corporation has been operating a petrol pump in the suit property and there is no petrol pump in the vicinity and the pump is running for the past 64 years. By filing this petition, it has been prayed for staying of all further proceedings till disposal of the Title Execution Case being No13 of 2018 pending before Ld. 4th Civil Judge (Sr. Div.), Alipore.

It has been argued that at the time of consideration, the Law prevalent as on this day, Appellant may continue his possession of the suit property till disposal of the Appeal by paying occupational charges which has to be assessed by this Court. In support of the contention of the stay application, Ld. Counsel submits that such occupational charges should be according to market rate.

On the other hand, Ld.Counsel appearing on behalf of Respondents/Landlords has submitted that at the time of determination of the occupational charges, the court must look into the location of the suit property and also the nature of business which has been carried on by the tenant/Appellant, the measurement of the area which is 12 cottahs, 3 chittacks and 21 Sft (8796 Sft.) of land with structure situated at the heart of the city of Kolkata at Bhowanipore. The monthly fair rent in that area/locality is Rs.100/- per Sq. ft. in Bhowanipore area and so, the monthly fair rent of the suit property will be Rs.8796/- Sq.ft. x 100/- = Rs.8,79,600/- per month. Considering the area of the locality, fair rent according to his submission, occupational charges should be near about Rs.8,79,600/- per month.

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Initially, at the time of hearing, none of the parties placed any document/copy of Assessment Report for assessing the market value of the property in question. As directed by the Court after completion of hearing, documents filed by the Ld. Advocate for the Appellant through firisti for considering the market value as prevailing in the locality at present which has been downloaded from the website of Directorate of Registration & Stamp Revenue. Besides that, no document has been produced before this Court for assessing occupational charges.

Admittedly, no proceeding for assessment of mesne profit is pending. It is also admitted fact that the suit has been filed for eviction at the instance of landlords/Respondents which was decreed by the Ld. Court below vide his impugned judgement and order dt.17.03.2017. It is not disputed that present Appellant is in occupation of the suit property since 64 years where the rent was nominal one like Rs.2500/- per month from 01.04.1968 to 31.03.1978 and 3000/- per month from 01.04.1978 to 31.03.1989. It is also admitted that the Appellant/tenant is now paying nothing for their occupation of the suit property to the landlords/Respondents. It has been submitted by the Ld. Advocate for the Appellant that they are willing and agree to pay Rs.30,000/- per month as occupational charge but that has been totally unaccepted by the landlords/Respondents.

Considering the submission of both the parties and on perusal of the document as furnished by the Respondents with regard to the market rate prevailing in the area, I am of opinion that there is a need for imposing a reasonable occupational charge while granting the stay of execution of impugned judgement and decree of the Ld. Trial Court.

The purpose of imposing occupational charge is to compensate the landlords/Respondents during the pendency of Appeal in the spirit by which the landlord is supposed to get rent as per prevalent marked rate, if he/she can get opportunity to induct another tenant by evicting the tenant/Judgement debtor from the suit property on the strength of the impugned decree but at the same time, considering the long continuation of possession by the tenant/Appellant in the suit property and since the judgement of the Ld. Trial Court is the subject matter for consideration of this Court, assessment of occupational charge must be in commensurate with the locality/area where the suit property is situated.

Fact is that suit property is situated in posh area of Bhawanipore which atleast needs a reasonable charge for occupation of the same per month. It is the case of the Respondents that the predecessor of the Appellant were agreed to pay Rs.3000/- per month from 01.04.1968 to 31.03.1989 and it is also admitted fact that at present they are paying nothing towards the occupational charges. Now, the market rate is much higher than that of market rate prevailing in the year 1989. As such, the Respondents have been incurring recurring financial losses continuously. It is fact that nowadays, Rs.3000/- per month or Rs.30,000/- per month as occupational charge of an area measuring 8796 Sq.ft. at Bhawanipore in Kolkata is unthinkable and unimaginable. Though Ld. Advocate for the Appellant files a

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downloaded copy for assessing the market value but that can not be accepted as sacrosant. No document is produced from the side of Respondents showing the market value prevailing in the locality. Hence, a reasonable amount as occupational charges should be granted provisionally as condition for stay of execution of the decree of the suit so that by virtue of stay, no one should be continued to be a gainer and other side be continued to be a loser. In a judgement Dilip Kumar Gooptu & Others Vs Hindustan Petroleum Corporation of our Hon'ble High Court (passed on 28.01.2015), while assessing mesne profit, it has been observed that rate of Rs.50/- per Sq.ft. was prevailing for the period 2013-2014 of a property situated at Camac Street. It is true that the market value is increasing day by day and considering the entire aspect, I am of opinion that Rs.60/- per Sq.ft. i.e. 8796 Sq. ft. x Rs.60/- totalling to Rs.5,27,760/- be awarded as occupational charge, it will be just and proper.

Hence,

**ORDERED**

that the petition dt.18.09.2019 praying for stay of all further proceeding of Title Execution being No.13/2018 pending before the Ld. Civil Judge (Sr. Div), 4th Court, Alipore till disposal of this appeal is allowed. Let all further proceedings pending before the Ld. 4th Civil Judge (Sr. Div.), Alipore be stayed subject to the condition that Appellant shall pay Rs.5,27,760/- per month to the landlords/Respondents and go on paying Rs.5,27,760/- per month, month by month by 7th day of each succeeding English calender month corresponding to its immediate preceeding month as occupational charges in respect of suit property to the Respondents/landlords from the date of filing of this Appeal till disposal of the instant Appeal in default, the order shall automatically stand vacated.

To 21.12.2022 for report of compliance and for further order.

Dictated & corrected by me

ADJ, 1<sup>st</sup> Court, Alipore

Additional District Judge,

1st Court, Alipore  
06.09.2022