

Title Appeal No.148 of 2018

Order No. 25

13.04.2023

Both parties are present by filing hazira.

Heard both sides in respect of the petition of occupational charges filed by the respondent on 18.01.2022.

Considered.

Perused the petition as well as written objection for occupational charges.

It is a contention of the Ld. Advocate for the appellant that he is regularly paying the monthly rent in the Court as per the order of the Court and there is no due to be paid.

It is also stated that the appellant resides only in the area 500 sq.ft at Bhawanipur and the amount claimed by the respondent as occupational charges should not be Rs. 30,000/- p.m. It is also stated the appellant is a poor lady and has no source of income. Therefore, considering the facts, the necessary order may be passed.

Ld. Advocate for the respondent submits that the decree for eviction has been passed on 15.09.2018 by the Ld. Trial court in connection with T.S. No. 292 of 1993. The appellant has filed the stay application for operation of the impugned judgment and decree. The appellant has not vacated the premises in spite of the order and decree of the Ld. Trial Court and as such for illegal occupation of the premises, the respondent is liable to pay for occupational charges.

It is also stated that “**property in question**” is situated in the locality of Bhawanipur, Kolkata and the property is 3BHK flat and the rent of the said premises should not be less than 30,000/- per month.

It is further stated that the actual appellants are not residing in the suit premises but they have sublet the suit premises to one Nilesh Maheta and the said person is enjoying the suit property. Therefore, prays for passing necessary order from the date of filing of the petition.

It is also stated that the respondent have no alternative accommodation for residence and considering the situation prays for passing necessary order.

Hearing both the parties, I have gone through the petition as well as the written objection filed by both the parties. It is seen that admittedly the appellant is in possession of the suit premises and rate of rent was Rs. 565/- as per the statement of the appellant. It is also seen from the written objection that the appellants have paid the said rent till December, 2021 and as such the appellant are not in unlawful occupation. It is also the statement of the appellant that the respondent has not produced any document to show that the cost of the said premises shall be Rs. 30,000/- per month in the said area.

It is seen that the suit premises is in occupation of the appellant, inspite of the judgment and order passed by the Learned Trial Court, though the appellant has preferred the appeal in such circumstances it can be said that the appeal is a continuation of the suit. Though the decree has already been passed in favour of the respondent, in such a situation, it can be said that the occupation charges of the premises is required to be paid by the appellant in favour of the respondent. With regard to the quantum of occupational charges, it is seen from the record that the residence in question is situated in the area of Bhowanipur the heart of the City and it contains three bed rooms with other amenities and in my opinion that the occupational charges of the said premises should not be less than 15,000/-. Therefore, I am of the view that the occupation charge of the said premises be fixed at Rs. 15,000/- per month.

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In the result the petition is allowed on contest without order as to cost.

The appellant is directed to pay the occupation charge @ of Rs. 15,000/- per month within 10th day of English Calender Month the premises till disposal of this appeal or further order whichever is earlier from the date of filing of the petition i.e. on 18.01.2022.

To **28.06.2023** for hearing of appeal.

D/Corrected by me.

Additional District Judge

Additional District Judge
3rd Court, Alipore