

**Title Appeal No. 02 of 2025 (R-02/25)**

**Tapan Das vs. Sri Kartick Chandra Das & Anr.**  
**Arising out of Title Suit No. 534 of 2022 decreed by Ld. Civil Judge, Jr. Divn,**  
**1st Court, Sealdah.**

**Order No. 4 dated 12.03.2025**

Today is fixed for hearing of the petition seeking stay of execution proceeding.

W.O. filed by the respondent. Copy served.

Case record is taken up for hearing the petition for stay.

Heard both sides.

On behalf of the appellants it was submitted that they had suffered eviction in **Title Suit No. 534 of 2022**. That decree holder / respondent had subsequently filed an execution proceeding being Title Execution. being no.8 of 2025.

It was further submitted that present appeal be admitted and stay be granted in consonance with the decision rendered in **Atma Ram Properties(P) Ltd. vs Federal Motors(P) Ltd.** It was further stated that suit premises is situated in a bustee area with tile and asbestos roofing with common bath and privy. The property is situated at quite a distance from the nearest metro station or the railway station. That the occupational charge should be such that it is not a penalty upon the appellant.

On behalf of the respondent / landlord it was argued that suit property is situated in the business area of Kankurgachi. It is a posh locality and a short distance from the Phool Bagan Metro Station and Bidhan Nagar Railway Station. The property will attract occupational charges upwards of Rs.6,000/- . It was also pointed out that previous rent cannot be a yardstick.

Power to grant stay is discretionary but equitable in nature therefore an applicant for order of stay must do equity for seeking equity as decided in the case of **Atma Ram Properties(P) Ltd. vs Federal Motors(P) Ltd. reported in (2005)1 SCC 705.**

In the said decision, it was observed by the Hon'ble Court that the appellant cannot escape from providing occupational charges.

**In the case reported in State of Maharashtra vs. Supermax Pvt. Ltd.2009(9)SCC 772 and also in Gautam Dey v Pareshnath Kar & ors reported in (2016) 1 CLT 354 (HC) it was *inter alia* observed that though appellate court is within the powers to direct payment of occupational charges but the same should exercise restraint and would not fix any excessive, fanciful or punitive amount.**

From the schedule of property as noted in the decree, it appears that appellant was tenant in the suit property property comprising of one tile and asbestos shed room within the limits of police Station Phool Bagan, Kolkata – 700054.

No documents of comparable market rent of nearby property has been placed on record nor any valuation report thereof has been filed. Though it was stated that tenanted premises measures 200 sq.ft.or more . But no cogent materials or photographs of the tenancy was placed before the court to facilitate proper appreciation of the However, monthly rental which the tenant was paying earlier

**Title Appeal No. 02 of 2025 (R-02/25)**

is not a yardstick for assessing occupational charge.

In the case of **Gautam Dey v Pareshnath Kar & ors reported in (2016) 1 CLT 354 (HC)** Hon'ble Court observed that appellate court "**can apply robust common sense, the common knowledge of human affairs and events gained by the judicial experience and judicially noticeable facts.**"

In such circumstance, the court has to resort to common knowledge and a bit of guesswork for assessing the occupational charge.

Location appears to be situated in a prominent commercial hub . The place is clearly lucrative and valuable. The room will attract a rental demand but the rents will not be on the higher side given the tile and asbestos roofing with common bath and privy.

Keeping in view of all parameters and the guideline of the Hon'ble Apex Court, I am of the view that a sum of Rs.3,000/-(Rupees Three thousand ) per month would be reasonable as the occupational charges during pendency of the instant Appeal. Further the occupational charges of Rs.3,000/-(Rupees Three thousand ) per month is quite fair and not excessive or punitive.

Again in the decision reported in **2009(9) SCC 772 and 2011(7) SCC 755** it was consistently held that tenancy would remain terminated from the date of the decree of eviction passed by the trial court and the tenant is liable to pay occupation charges from the date of decree of eviction.

Hence, the appellant is directed to deposit in court the said sum of Rs.3,000/-(Rupees Three thousand ) per month only from the date of decree drawn by the Ld. Civil Judge (Junior Division), 1<sup>st</sup> Court, Sealdah in Title Suit no. 534 of 2022.

The occupational charges for March 2025 to be paid by 25<sup>th</sup> day of March, 2025 and occupational charges thereafter to be paid within the 10<sup>th</sup> day of every following English Calendar month. The arrears of occupational charges from the date of decree till the month of February, 2025 should be cleared by May, 2025.

On payment of the amount as per schedule indicated the further proceeding of Title Execution case being no.8 of 2025 will remain stayed pending hearing of the appeal.

It is made clear that if the appellant fails to pay or deposit the aforesaid occupational charges as aforesaid for two consecutive months or defaults in clearing the arrears as stated the order of stay shall stand vacated automatically.

It is mentioned that occupational charges which will be deposited by the appellant would be decided with the fate of the appeal.

Respondent will be at liberty to supply his bank details where he likes to receive the occupational charge. Further order for payment directly into the bank will be issued after submitting the bank details.

Office to issue letter calling for the LCR at once.

Fix **15.05.2025** for hearing of the appeal and LCR.

**Addl. Dist. & Sess. Judge, 2<sup>nd</sup> Court,**  
**Sealdah.**

**Addl. Dist. & Sess. Judge, 2<sup>nd</sup> Court,**  
**Sealdah.**