

Ejectment Appeal 02/2024**Reg. No. 04/2024****Order no.04****22.04.2024**

The case record is taken up by put up petition filed by the appellants.

Appellants also file one petition praying for stay of all further proceedings in respect of Ejectment Execution case 10 of 2024 arising out of Judgment and decree dated 11.10.2023.

As per report from the office of Ld. Additional District & Sessions Judge, 1st Court, Sealdah no caveat has been filed in connection with this case till 22.04.2024.

The appeal has been preferred against the Judgment and decree passed by the Ld. Civil Judge (Jr. Div.), 2nd Court, Sealdah in Ejectment Suit no. 284 of 2007. The Ld. Civil Judge (Jr. Div.), 2nd Court, Sealdah has been pleased to pronounce judgment and decree in the suit being Ejectment suit No. 284 of 2007 on contest in favour of the present respondents/ plaintiffs vide Judgment and decree dated 11.10.2023.

By the Judgment and decree passed by the Ld Civil Judge, (Jr. Div.), 2nd Court, Sealdah, both dated 11.10.2023, in Ejectment Suit no. 284 of 2007 by which the appellant/defendant has been directed to hand over khas possession of the suit property within 90 days from the passing of the order in default the plaintiff will be at liberty to put the decree into execution.

It was contended by the appeallant/defendant that the suit property is a residential flat and the respondent/plaintiff have filed the Ejectment Execution case being No. 10/2024 before the executing court for the purpose of execution of decree passed in their favour and writ has been issued by the executing Court to execute the decree by braking the padlock on and before 30.04.2024. If the possession of the suit property is delivered to them through court bailiff the appellant will suffer irreparable loss and injury and the purpose of filing this appeal will be frustrated.

The Ld Advocate further submits that the appellant/defendant has a fair chance to get the taste of success in present appeal on merit.

Accordingly, the appellant/defendant prays for stay of all further proceedings of the Ejectment Execution case no. 10 of 2024 pending before the Ld Civil Judge, (Jr. Div.), 2nd Court, Sealdah.

Perused the petition as well as case record and certified copies of Judgment and decree appealed against as well as the decision of Hon'ble Apex Court.

In view of the observation passed by Hon'ble Apex Court in **Atmaram Properties Pvt. Ltd. vs Federal Motors Pvt. Ltd.** reported in 2005(1) RCR and also Considering the nature and ambit of the instant appeal, the materials available on record as well as the provisions of law it may be presumed that after passing the Judgement and decree appealed against, the appellant cannot claim or be treated as tenant in respect of the suit premises, as claimed by him. Accordingly, in case, he prays for stay of execution of the decree passed in the Title Suit, he is absolutely liable to pay occupational charge in terms of the principles laid down in the dictum of the Hon'ble Apex Court, mentioned above. The property consists of two bed rooms, one dining space, one kitchen, one bath and one privy and a verandha and which is situated on the ground floor of the premises no. P-116, CIT Road, now renumbered as P-116B, Nani Gopal Roychowdhury Avenue, PS-Entally, Kolkata-14.

Considering the submissions made by Ld Advocate for the appellant and also considering the locality in which the property situated, its nature, as reflected from the materials on record, this Court is of view that it would be just and proper to direct the appellant to deposit the sum of Rs. 6,000/- (Rupees six thousand) only per mensem in the Court towards occupational charge from 11.10.2023, the date of Judgement and decree passed by the Ld Civil Judge, (Jr. Div.) 2nd Court, Sealdah in Ejectment Suit no. 284 of 2007.

Hence it is,

ORDERED

that this petition is allowed on ex parte.

The appellant/defendant is directed to deposit Rs. 6,000/- (Rupees six thousand) only per mensem in the Court towards occupational charge from 11.10.2023 till April, 2024 within 2 (two) months from the date of this order and to make further deposits of the occupational charge on and from the current month by depositing the amount within 7th day of each succeeding month according to the English calendar. Subject to

payment of such arrear sum within the time stipulated and on depositing the occupational charge for the current and subsequent months, as directed, operation of the Judgement and decree appealed against and further proceedings of the Ejectment Execution case no. 10

of 2024 pending before the Court of Ld Civil Judge, (Jr. Div.) 2nd Court Sealdah, shall remain stayed till disposal of the instant appeal.

However, it is hereby made clear that in default of payment of arrear of occupational charge within the time specified or in default of payment of occupational charge for the current and subsequent months, as aforesaid, for 2 (two) consecutive months, the stay shall stand vacated automatically without further notice to the adversary.

Let a copy of this Order be transmitted to the Court of Ld Civil Judge (Jr. Div.) 2nd Court Sealdah for her information and further necessary action.

Let the original record be called from the Ld Civil Judge (Jr. Div.) 2nd Court Sealdah at the earliest opportunity.

To date (01.08.2024) for receiving LCR and SR, AD.

D/C

ADJ, F.T.C-I
Sealdah, 24PGS(S).