

Order No.07, Dated 29.08.2025.

Today is fixed for hearing of the application for stay.

Both parties file hazira.

Thereafter, petition dated 31.07.25 is taken up for hearing, as filed by the appellant.

Respondent files Written Objection.

Heard both sides at length.

Appellant has submitted that the respondents have already filed Ejectment Execution Case no.12 of 2025 to execute the impugned Judgment and Decree which is under challenge in this appeal and if stay on further proceedings of the said execution case is not allowed, the appellant will suffer irreparable loss and injury.

Record reveals that the appellant has preferred this appeal against the decree of eviction dated 21.02.2025 passed by Ld. Civil Judge (Jr. Divn.), 1<sup>st</sup> Court, Sealdah in Ejectment Suit No.3 of 2017.

Per contra, the respondents have submitted in their written objection stating inter alia that as Ld. Trial Court has passed a Decree for Eviction in respect of the suit property, the appellant has no right to occupy the same and has stated that the respondent being the Decree Holder as every right proceed with the Ejectment Execution Case no.12 of 2025. The respondent has alternatively claim for occupational charge to the tune of Rs.25,000/- if the prayer of stay as prayed by the appellant is allowed, considering the prime location of the suit property which is situated in the heart of Kolkata and all the essential amenities like road, railway station, banks, hospital, colleges, market place etc. are nearby and proximate to the suit premises.

Considering the materials on record, I am of the opinion that if the appellant is evicted from the suit property pursuant to execution of the impugned Judgment and Decree, the appellant will suffer irreparable loss and injury and the cause of preferring this appeal will be infructuous and frustrated. In such a situation, it appears to me that in view of the decision of the Hon'ble Supreme Court in the case of **Attma Ram (P) Ltd. Vs. M/s. Federal Motors Pvt. Ltd. reported in (2005) 1 RCR 1 and the Hon'ble Calcutta High Court in the case of Bratindra Nath Mukherjee Vs. M/s. Adore welding Ltd. Reported in 2017(2)ICC 632(Cal)**, if an order of stay is to be granted in favour of the appellant, the same has to be conditional to the payment of reasonable charges for use and occupation of the suit premises.

Ld. Advocate on behalf of the appellant has also relied upon a reported decision as cited in **2021(1) ICC 1071(Cal.)**

It is found that the suit premises is situated within the jurisdiction of Beliaghata P.S. It is also found that the decree for eviction has been passed against the appellant. In view of the locational advantage, the ground on which the decree for eviction has been passed, long pendency of the dispute, absence of any material in the record that the quantum of monthly rent is assessed to be fair rent and the tentative hike in occupational

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charges over this long period, I am of the opinion that a sum of Rs.7,000/- per mensem would be just and proper as occupational charges for the suit premises. It is pertinent to point out that the cited decision as referred by Ld. Advocate on behalf of the appellant and reported in **2020(1) ICC 350 (Cal.) (Debabrata Biswas Vs. Dr. Sudhangsu Sekhar Mitra)** is also reiterated the parent and celebrated Judgment of **Hon'ble Apex Court in Atma Ram's** case, whereby it has been observed by Hon'ble Court in the said decision that occupational rent can be awarded under prevalent rate of rent in locality.

Hence, it is,

**Ordered**

that the stay application filed by the appellant is hereby allowed on contest but without any order as to costs. Let there be an order of stay on further proceedings of Ejectment Execution Case no.12 of 2025 pending before the Ld. Civil Judge (Jr. Divn.), Additional Court, Sealdah till the disposal of this appeal subject to the condition that the appellant shall deposit in court Rs.7,000/- *per mensem* towards occupational charges of the suit premises from the date of the decree in question till disposal of this appeal. The payment for every month shall be made within 10<sup>th</sup> day of the said month for which the same falls due in accordance to the English calender month. The arrear amount of occupational charges shall be paid within 10.11.25. In default of payment of the monthly occupational charges and arrear, the order of stay shall stand vacated without any further reference.

To date ie 10.11.2025 for appeal hearing.

D/c by me,

ADJ, FTC-II, Sealdah.

ADJ, FTC-II, Sealdah.