

**Title Appeal 29/2022****Order no. 11****09.08.2023**

Today is fixed for passing order in respect of petition for stay.

Parties file respective haziras.

The Ld. Civil Judge(Junior Division),1st. Court,Sealdah has been pleased to pronounce judgment and decree in the suit being Title suit No. 779 of 2018 on contest in favour of the present respondent/ plaintiff vide Judgment and decree dated 20.06.2022 .

And this appeal has been preferred by the appellant/defendant being aggrieved by and dissatisfied with the Judgement and decree passed by the Ld Additional Civil Judge, (Jr. Div.), 1<sup>st</sup>. Court,Sealdah, both dated 20.06.2022, in Title Suit no. 779 of 2018 by which the appellant/defendant has been directed to quit,vacate and surrender the vacant peaceful khas possession of the suit property in favour of the respondent/plaintiff within 30 days from the date of order, failing which the respondent/plaintiff would be at liberty to set the law in motion.

It was contended by the appeallant/ defendant that the respondent/plaintiff has filed the Title Execution case being No. 23 of 2022 for the purpose of execution of decree passed in his favour and if the possession of the suit property is delivered to him through court bailiff by observance of due process of law in above referred execution case, the same will cost arm and leg to the appellant/ defendant consequence thereof he would suffer irreparable loss and injury and the purpose of filing this appeal would be frustrated in toto.

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 Title Execution case no. 23 of 2022 pending before the Ld Civil Judge, (Jr. Div.), 1<sup>st</sup>. Court,Sealdah. The Ld Advocate for the appellant/defendant brought to the notice of this court with regard to monthly rent, payable by him per mensem,as Rs. 1300/-.

Ld Advocate for the respondent/plaintiff, in reply, submits that the suit property is situated in posh area and if the same is let out, the property would fetch rent not less than 10,000/- (rupees ten thousands) only per mensem. This fact has also been highlight in the written objection filed against the petition for stay.The Ld Advocate for the respondent/plaintiff prays for grant of occupational charge @ of Rs.

10,000/- (Rupees ten thousand) only per mensem from the date of the decree.

Perused the petition for stay, the written objection filed against it and the case record including the certified copies of Judgement and decree appealed against and the decision of the Hon'ble Apex Court passed in **Atmaram Properties Pvt. Ltd. vs Federal Motors Pvt. Ltd.** reported in 2005(1) RCR.

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 rooms situated in ground floor of premises No. 48/1 Anath Nath Deb Lane, P.S. Tala, Kol 37.

Considering the submissions made by Ld representatives for the parties and after taking into account 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 reasonable and just to direct the appellant to deposit the sum of Rs. 4,000/- (rupees four thousand) only per mensem in the Court towards occupational charge from 20.06.2022, the date of Judgement and decree passed by the Ld Civil Judge, (Jr. Div.) 1<sup>st</sup>. Court, Sealdah in Title Suit no. 779 of 2018.

Hence.

it is,

**ORDERED**

that the prayer of the appellant for stay as contained in his petition dated 13.06.2023, is considered and allowed in the following manner- The appellant is directed to deposit Rs. 4,000/- (rupees four thousand) only per mensem in the Court towards occupational charge from the 20.06.2022 till July, 2023 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 7<sup>th</sup> day of each succeeding month according to the English calendar. Subject to payment of such arrear sum within the time permitted 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 Title Execution case no. 23 of 2022 pending

before the Court of Ld Civil Judge, (Jr. Div.) 1<sup>st</sup>. 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 permitted 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 without further notice to the adversary.

Let a copy of this Order be sent to the Court of Ld Civil Judge (Jr. Div.) 1<sup>st</sup>. Court Sealdah for her information and further necessary action.

The requisition, if not sent earlier, be sent to the Ld. Trial court for transmission of original record in question to this court at the earliest opportunity.

To 05.10.2023 for receiving LCR.

Bikash Lama  
J.O. Code WB00935  
ADJ, F.T.C-I  
Sealdah, 24PGS(S).