

Title Appeal No. 32 of 2023
Aloka Sarkar & Anr. vs. Soma Nag & Ors.
Arising out of Title Suit No.299 of 2020 by Ld. Civil Judge, Jr. Divn,
Additional Court, Sealdah.

Order No. 13 dated 07.02.2025

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

W.O previously filed by the respondents. 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. 299 of 2020. That decree holder / respondents had subsequently filed an execution proceeding being Title Ex. being no.16 of 2023. That unless stay is granted, the very purpose of preferring this appeal will stand frustrated.

It was further submitted that 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 total area of the suit premises is approximately 140-180 sq.ft. or less and the two rooms are quite small. That suit property will not attract high rental and that the occupational charge should be such that it is not a penalty upon the appellant. It was further submitted that appellant is totally dependant upon the meager family pension which she is receiving after the death of her husband.

On behalf of the respondent / landlord it was argued that in the year 1993 the property attracted rent of Rs.500 per month and the said amount cannot be an yardstick for deciding the occupational charge. That the suit property comprises of 2 rooms and measures more than 415 Sft. That property is right beside Satchasipara Road which is a 12ft wide and links the main road called Kashinath Dutta Road and that BT Road is within 600 whereas Cossipore Road is within 3 minutes walking distance. The amenities like bank, market, departmental store, hospital, school, ferry ghat, metro station , Airport, University are situated within a short radius of 1 to 4kms. Lastly, it was submitted that present market rate is hovering around Rs.25/- to Rs.30/- per Sft. Reliance was placed upon the cases reported in **(2005)1 SCC 705&2014(4) CHN(Cal) 103 and two unreported decisions delivered by Supreme Court of India in Civil Appeal Nos.4646-47/2022 & delivered by Hon'ble High Court Calcutta in CO No.2922/2022.**

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.** The ratio laid down in Atma Ram Properties case has been consistently followed by the Apex Court in subsequent decisions which were referred by the respondents. In **Atma Ram Properties(P) Ltd.** 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 2 rooms and one bath and privy in the ground floor of premises no. 6/1T, Satchasipara Road within the limits of police Station Cossipore, Kolkata - 700002.

No documents of comparable market rent of nearby property has been placed on record nor any valuation report thereof has been filed. It was stated in the written objection that tenanted premises is 380 sq.ft. It was orally contended by the appellant that it measures around 140-180 Sft. None of the parties had placed on record cogent materials or photographs of the tenancy to facilitate proper appreciation of the same. However, monthly rental which the tenant was paying earlier 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.

Apparently the 2 rooms are situated on the ground floor. Premises is situated quite near to market place, station, bus stop, bank, hospital, education establishment etc. The place is clearly lucrative and valuable. The rooms will attract a rental demand.

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.5000/-(Rupees Five thousand) per month would be reasonable as the occupational charges during pendency of the instant Appeal. Further the occupational charges of Rs.5,000/-(Rupees Five 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.5,000/-(Rupees Five Thousand) per month only from the date of decree drawn by the Ld. Civil Judge (Junior Division), Additional Court, Sealdah in Title Suit no. 299 of 2020.

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

On payment of the amount as per schedule indicated the further proceeding of Title Execution case being no.16 of 2023 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 instant order is passed without prejudice to the rights and contention of the parties and the occupational charges which will be deposited by the appellant would be decided with the fate of the appeal.

Office to issue letter calling for the LCR at once.

Fix **17.04.2025** for hearing of the appeal and LCR.

Addl. Dist. & Sess. Judge, 2nd Court,
Sealdah.

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