

Title Appeal No. 6 of 2017Order No. 20 dated 17.04.2019

Ld. Advocate for respondent and appellant are present by filing haziras. Ld. Advocate for the respondent submitted the order dt. 3rd April 2019, of the Hon'ble High Court, Calcutta, in connection with C.O No 1228 of 2019.

Hon'ble High Court directed this Court to complete the reassessment of occupational charges and fix the same in compliance of the direction given in C.O. no. 1858 of 2019 within three weeks from the date of communication of the Hon'ble High Court. Today that is on 17.04.2019 the Ld Advocate of respondent submitted the copy of the order before this Court.

In compliance of the direction of the Hon'ble High Court Calcutta this Court gives the opportunities of hearing to both the sides. Heard both sides.

It appears from the record that Ld Trial Court granted decree against the defendant/appellant in TS 30 of 2010 for eviction from the suit property. The appellant/defendant instituted this appeal and pray for stay of the execution proceeding arising out of that decree. It is found from the record that the respondent filed the written objection stating inter alia that the stay may be granted subject to payment of occupational charge.

Today Ld Advocate for the respondent furnished the rental valuation report dated 24.01.2019. This report reflects that the monthly fair rent value should be Rs 13,321.42/-.

Ld Advocate for the respondent submitted that a condition of stay of execution of proceeding should be subjected to pay a reasonable occupational charge for occupation of the suit room as decided by the **Hon'ble Supreme Court in Atma Ram (P) Ltd. Vs. Federal Motors (P) Ltd in (2005) 1 SCC 705.**

Now, the question is whether occupational charge can be granted in this suit against the defendant/appellant?

It is found from the record that the plaintiff/respondent admitted the defendant/appellant as his daughter in paragraph no. 3 of the plaint. Plaintiff also narrated in the plaint that defendant has been residing in the suit premises and she is in occupation of the one room of the ground floor which was described in the schedule of the plaint.

The appellant/defendant submitted the petition on 7th May, 2018 stating inter alia that Ld ACJM at Sealdah passed an order to right to residence in favour of present appellant with a direction upon the original plaintiff/respondent not to oust petitioner/appellant from the residence which is present suit property in case 636 of 2007 on 13.01.2012. The certified copy of the said order is placed before this Court. It is found from the said complaint case no. 636 of 2007 that said order was passed against Madan Mohon Ghosh and Soumen Ghosh. Madan Mohon Ghosh is the father of appellant Kakoli Ghosh and Soumen Ghosh is the brother of Kakoli Ghosh. Madan Mohon Ghosh died during pendency of the appeal and Soumen Ghosh and Saptarsi Ghosh have been substituted in the appeal. The order of the Ld ACJM under protection of women from Domestic Violence Act is in force. The said order has not been challenged or set aside at any Court. It is found from the order of Ld ACJM that present appellant is entitled to get physical protection under Section 18 of Protection of Women from

Domestic Violence Act and safe residential accommodation under Section 19 of Protection of Women from Domestic Violence Act.

Section 26 of Protection of Women from Domestic Violence Act lays down that any relief available under 18, 19, 20, 21 and 22 may also be sought in any legal proceeding before a Civil Court, Family Court or a Criminal Court. Such relief can be sought for in addition for or along with other relief.

After scrutiny of the entire record, it appears to me that the appellant/defendant has been enjoying the right to residence by the order of Ld ACJM at Sealdah, since, 13.01.2012. Now, the respondent/plaintiffs pray for occupational charges for the occupation of the said suit premises where the appellant/defendant got order of Ld ACJM at Sealdah for safe residential accommodation under Section 19 of Protection of Women from Domestic Violence Act.

Ld Advocate for the appellant submitted certified copy of a judgement in connection with C Case no. 636 of 2007. So, I, think at this stage, the appellant/defendant should not be directed to pay occupational charges for the occupation of the suit premises where he got the order of right to residence. It is also found from the record that the State Government is providing the Ld Advocate for the representation of the appellant through DLSA considering the financial condition of the appellant/defendant. Therefor, if, the appellant is directed to pay the charges for occupation then it would be a hardship upon her. So, I, also think on that score, the occupational charges should not be imposed. I also think that the fact of the case as decided by **Hon'ble Supreme Court in Atma Ram (P) Ltd. Vs. Federal Motors (P) Ltd in (2005) 1 SCC 705** is not identical with present case in hand.

Hence, it is

ordered

that the occupational charge as prayed by the respondent in written objection is hereby rejected.

To 01.07.2019 for hearing of appeal.

Dictated & corrected by me

Addl. District Judge,
FTC- I, Sealdah.

Addl. District Judge,
FTC- I, Sealdah.